

WAUKESHA COUNTY
MINUTES OF THE PARK AND PLANNING COMMISSION
THURSDAY, JANUARY 21, 2021 1:00 P.M.

Due to COVID-19, the meeting was conducted virtually via the Microsoft Teams application and phone access was also available. The meeting was open to the public and individuals were invited to participate via telephone or Microsoft Teams.

CALL TO ORDER

Mr. Mitchell, Chairperson, called the meeting to order at 1:00 p.m.

Commission

Members Present: William Mitchell (via Microsoft Teams)
Robert Peregrine (via Microsoft Teams)
Richard Morris (via Microsoft Teams)
James Siepmann (via Microsoft Teams)
Thomas Michalski (via Microsoft Teams)

Members Absent: None

Staff

Members Present: Jason Fruth, Planning and Zoning Manager (via Microsoft Teams)
Perry Lindquist, Land Resources Manager (via Microsoft Teams)
Sandy Scherer, Senior Planner (via Microsoft Teams)
Ben Greenberg, Senior Land Use Specialist (via Microsoft Teams)
Kathy Brady, Support Staff Supervisor (via Microsoft Teams)

CORRESPONDENCE None

MEETING APPROVAL None.

MINUTES

- **Approval of the November 19, 2020, Minutes**

After discussion, Mr. Peregrine moved, seconded by Mr. Siepmann and carried unanimously for approval, of the November 19, 2020, Minutes, as presented.

- **Approval of the December 10, 2020, Minutes**

After discussion, Mr. Peregrine moved, seconded by Mr. Siepmann and carried unanimously for approval, of the December 10, 2020, Minutes, as presented.

PUBLIC COMMENT

Loren Rausch spoke of a property (173 acres) he owns with a farm in the Town of Ottawa and was wondering if the Waukesha County Parks or Mr. Siepmann would be interested in making an offer on the property. Mr. Fruth responded that he would pass the information on to the Parks division staff.

- **RZ74 (Relentless Properties, LLC Koch) Town of Mukwonago, Section 19**

Mr. Fruth pointed out the location of the property at S92 W33360 CTH NN. He indicated the request is to apply a Planned Development District Overlay (Heritage Hill Estates, PDD-17).

Mr. Fruth indicated the rezone request is for a conservation design subdivision to be categorized as a planned development district. The 56-acre property is located north of CTH NN, opposite of the Red Brae subdivision. The proposed lots would be a minimum of 1.5 acres in size. The majority of the proposed lots are located outside of the environmental corridor (EC). Areas that contain EC include the rear of Lots 8 through 10, a small area in the northwest corner of Lot 7, a small area in the north part of Lot 5 and Lot 11 which has 6 acres including the existing residence, barn and other agricultural buildings. Outlot 1 would contain open space and Outlot 2 would be held for future development as another developer who owns acreage immediately to the north plans to subdivide in the future. A preliminary plat has been received and it is contingent upon approval of this rezone.

After discussion, Mr. Peregrine moved, seconded by Mr. Morris and carried unanimously, for approval, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

- **CU51 (Prairie Hill Waldorf School) Town of Delafield, Section 23**

Mr. Fruth pointed out the location of the property at N14 W29143 Silvernail Road. He indicated the request is for conditional use approval for the addition of four (4) outdoor classrooms to an existing school.

Mr. Fruth indicated the property is located south of I-94 and access is via Silvernail Road. He presented a site plan (Exhibit A of the Staff Report) for those joining via Microsoft Teams. The plan indicates 4 locations for the proposed structures (outdoor classrooms) on the west side of the property. He pointed out the existing school building on the north portion of the site. Mr. Fruth presented a photograph of the proposed outdoor classroom structure which is octagonal in shape and constructed with wooden poles. The surrounding walls of the structure would be constructed with wood and extend approximately 8 ft. high. The roof would be made from a fire-retardant canvas type material and connect to the canopy pole and the perimeter poles via ropes/cables. A fire pit may be utilized to provide a heat source during cold weather. At the public hearing, the fire pit was discussed along with other safety concerns. The Town Building Inspector noted the structure was unconventional and he has been working with the State to identify the proper codes to permit the structure. Multiple people spoke at the public hearing in support of the proposal. Ms. Ring, Prairie Hill Waldorf School Administrator introduced herself and indicated she was available to answer any questions of which there were none.

After discussion, Mr. Siepmann moved, seconded by Mr. Michalski and carried unanimously, as conditioned, for approval, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

- **SP126 (Prairie Hill Waldorf School) Town of Delafield, Section 23**

Mr. Fruth indicated the Site Plan/Plan of Operation request is related to the previous Conditional Use (CU51) listed above.

After discussion, Mr. Siepmann moved, seconded by Mr. Michalski and carried unanimously, as conditioned, for approval, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **CU49 (Dan Saccomando Deb Tarnow) Town of Genesee, Section 9**

Mr. Fruth pointed out the location of the property at S30 W31878 County Trunk Highway E. He indicated the request is for land altering activities associated with the construction of a new single family residence with attached garage.

Mr. Greenberg, Senior Land Use Specialist pointed out the location of the property on the aerial photograph for those joining via Microsoft Teams. He stated the property is slightly under 1 acre in size and is currently vacant. The site is challenging and contains a very large kettle with high seasonal groundwater located 4 ft. below the surface. The site drains internally with no natural outlets to the road or other external drainage ways. Adjacent properties/homes to the east and west are higher up and also drain onto this property. Significant fill, up to 8 ft. is being proposed to allow water to drain away from the proposed residence as well as to construct a full basement that meets groundwater separation requirements. To compensate for the fill, the petitioners are proposing a significant excavation cut in the rear yard to create an infiltration area to address some of the stormwater management. The petitioner will be required to meet County stormwater standards/requirements. The Town approved the proposed request with conditions, one of which was that the Town Engineer would need to review and approve any plans. Chairperson Mitchell asked if the Town or County would review the septic? Mr. Greenberg replied that the septic was permitted and alternative drainage outlets are being required for the west side of the proposed residence to keep any conflicts between septic and site drainage separated.

After discussion, Mr. Peregrine moved, seconded by Mr. Siepmann and carried unanimously, as conditioned, for approval, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **PPC21 001 (Dean Kincaid, Inc.) Town of Ottawa, Section 8**

Mr. Fruth pointed out the location of the properties at S22 W38420 and W377 S2283 Kincaid Lane. He indicated the request is for the creation of a lot not abutting a public road and a remnant parcel not shown on the Certified Survey Map (CSM).

Mr. Fruth pointed out the location of the property south of Kincaid Lane on the aerial photograph for those joining via Microsoft Teams. The request is to divide two, side by side parcels, a 40-acre parcel to the west and the acreage containing the existing residence and outbuildings to the east. In addition, the petitioner owns acreage north of Kincaid Lane which has additional improvements and is not part of the request. He pointed out a typographical error in the Staff Memorandum. The sentence in the first paragraph which reads “The petitioner is proposing to merge two parcel together (289 acres) and divide off 159 acres as a new parcel” will be revised to read “The petitioner is proposing to merge two parcel together (189 acres) and divide off 59 acres as a new parcel.” He noted the Staff Memorandum would be corrected. The acreage is located in the Farmland Preservation area within the Town. The request is for the creation of a lot not abutting a public road and a remnant parcel waiver to not survey the larger remnant parcel. Mr. Michalski asked why the petitioner is not being required to survey the lands? Mr. Fruth indicated that is very expensive to survey large farm parcels and it is a common request when splitting off existing improvements and to leave the farmland to be surveyed at another time.

After discussion, Mr. Michalski moved, seconded by Mr. Morris and carried unanimously, as conditioned, for approval, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

- **PPC21 002 (Judith Lurvey Trust Mark Lurvey) Town of Ottawa, Section 22**

Mr. Fruth pointed out the location of the property at W365 S4068 Hwy 67. He indicated the request is for a remnant parcel not shown on the Certified Survey Map.

Mr. Fruth pointed out the location of the property on the aerial photograph for those joining via Microsoft Teams. He noted the acreage is located on both sides of STH 67. The acreage to be divided is located on the east side of STH 67. The petitioner is proposing to divide the south 22 acres from the eastern 40 acres for a new residence. The acreage on the north portion of the parcel extending to CTH D was part of the Tibby Line (old rail corridor). It is shown on the Town’s Plan as having the potential for a future trail corridor to connect from the Glacial Drumlin Trail to the State Forest and campgrounds. The Planning staff spoke with the Wisconsin Department of Natural Resource representatives, however, at this time, the owner of the property is not interested in offering the property for sale but understands the interest in achieving the trail corridor at some point.

After discussion, Mr. Peregrine moved, seconded by Mr. Siepmann and carried unanimously, as conditioned, for approval, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

- **RZ64 (Waukesha County Park and Planning Commission) Town of Ottawa, Sections 7, 8, 17 and 18**

Mr. Fruth pointed out the lands affected by the School Section Lake Dam Failure Analysis and indicated the properties are proposed to be rezoned from various upland districts to the C-1 Conservancy Overlay District.

and

- **RZ65 (Waukesha County Park and Planning Commission-Text Amendment) Town of Ottawa**

Mr. Fruth indicated the request is for a text amendment to the Waukesha County Shoreland and Floodland Protection Ordinance to adopt a dam failure analysis for the School Section Lake Dam.

Mr. Fruth indicated the above two matters RZ64 (map amendment) and RZ65 (text amendment) would be heard together. He stated that 4 public hearings were held where County Staff provided information and answered questions regarding the proposal for the affected landowners. In addition, an informational session was held prior to the first public hearing in August 2020 where a powerpoint explaining the proposal was presented.

Mr. Lindquist, Waukesha County Land Resources Manager explained the powerpoint presentation today would be presented by himself, Ms. Hase (WDNR) and Mr. Fruth

- **An overview of State Dam Regulations presented by the Wisconsin Department of Natural Resources (WDNR) representative.**

Ms. Hase, Dam Safety Engineer for the WDNR gave a brief overview of the dam program and regulations. She explained that all large dams in Wisconsin are required to do a dam failure analysis when reconstruction or construction activities are proposed. Chapter 31 of the Wis. State Statutes gives the WDNR jurisdiction over dams which provides protection of public rights in navigable waters and also protects the life, health and property from unsafe dams. The WDNR permits new dams, permits dam transfers, monitors water levels and flows, provides plan approval repairs/reconstruction/removal, conducts safety inspections, provides emergency response and approves dam failure analyses. A dam failure analysis is required for large dams (6 feet in height and maximum storage of greater than 50 acre-feet). The purpose of the analysis shows the areas downstream that would be covered in water if the dam were to fail and how deep the water would be. The information in the analysis determines the hazard potential, design capacity requirements, inspection schedule and is used in an emergency action plan if there were an incident on the dam. She further explained that Section NR 116 requires that lands downstream of dams be zoned and regulated by municipalities with floodplain zoning ordinances.

Chairperson Mitchell asked if the WDNR provides suggestions as far as remedies (rezoning vs. deed restrictions)? Ms. Hase replied that NR116 stated that rezoning is required when lands are in private ownership. Mr. Zach, affected property owner asked regarding floodplain areas which are rezoned, if there was a reason why they cannot be specific to a dam failure? Ms. Hase replied that they are considered a dam failure floodplain and not a regional flood floodplain, however, the dam failure floodplain needs to meet all of the requirements, restrictions and development standards in that floodplain zoning ordinance. Mr. Zach said if there was a flood it would dissipate within 24 to 48 hours and added that if the area was permanently changed to floodplain it could be flooded whether there was a dam failure or not. Ms. Hase said the rezone is for regulatory purposes for what can or can't occur within that mapped area and what standards apply to any proposals for a dam failure within a 100 yr. flood. Mr. Fruth added that the County zoning districts are uniquely identified on the division's zoning maps. The zoning maps also identify dam failure study areas. The dam failure study floodways are uniquely called out from FEMA floodways. With respect to Mr. Zach's comment above, he stated that this is an action required by the State to designate an area as a dam failure floodplain and dam failure floodway and no action is to be taken to change what would be occurring on a given day on the property. It is a designation on a piece of paper or zoning GIS layer and there would be no physical form change as a result of the study being adopted. Mr. Zach clarified that there has been tampering with the watershed on the Kincaid property and Paradise Valley. He expressed concerns that if it turns into floodplain, not specific to the dam failure it would give permission to tamper with the watershed more and possibly flood this area. He stated according to what Mr. Fruth stated that it would not be the case in this situation.

- **Overview of the School Section Lake Dam background, dam failure analysis and floodplain mapping results, by Mr. Lindquist, Waukesha County Land Resources Division.**

Mr. Lindquist continued with the powerpoint and presented an aerial photograph of the wetland before School Section Lake was created, and another photograph from 2015 and noted that the inflow and outflow is the same. In 1938, as part of a WPA project, a 3,000 ft. long earthen berm was constructed on the west/northwest side which is what created School Section Lake that is now approximately 123 acres in size. The outflow from the lake is a spillway/concrete structure with wood stop logs which control the water level and outflow rates. He presented a slide showing the cross section of what the dam looks like. He further explained the earthen berm is up to 10 ft. tall constructed from sand and peat from materials excavated onsite. The stop logs are 41 inches high (two, 9 ft. sections). There is a concrete base

underneath the stop logs which is part of the permanent dam. The base outflow is 2 to 6 cu. ft./second and the peak outflow is 188 cu. ft. during a 100 yr. storm event. In 2018, due to muskrat dens there was a partial failure of the dam and the lake was drawn down 41.3". A technical advisory team was created with local, county and state officials as well as the lake district. The Waukesha County Board authorized \$200,000 for repair expenses and to apply for a WDNR dam repair grant. Designs were completed in July 2018 for sheet piling and spillway repairs. The dam permit was applied for in August 2018 and in October 2018 bids were accepted for the sheet piling and concrete repair. In December 2018 an intergovernmental agreement with the School Section Lake District was executed because the County was concerned that they were responsible for other costs associated with the lake district under state law and wanted to make sure that no landowners were billed for dam repairs. The dam repairs were completed between October 2018 and April 2019. The County staff completed the repair of the dam breach itself. The contractor installed the sheet piling repair, from the north side of the concrete spillway to 525 lineal ft. north of the spillway with 12 ft. long vinyl panels (waterproof membrane and varmint resistant). The concrete repairs were completed in April 2019 and by May 2019 after a new set of wooden stop logs was installed, the lake level was returned to normal. In the fall of 2019 shoreline stabilization was installed (biologs, native plant plugs) to protect from shoreline erosion. Mr. Lindquist explained that within 1 year of the WDNR approving the dam failure analysis it must be incorporated into the County's zoning ordinance.

Mr. Lindquist explained in detail and presented slides showing the complicated steps in collecting data and analysis for the dam failure analysis, in which the end product is a hydraulic shadow of the dam (where the water goes in case the dam fails). Mr. Lindquist addressed and responded to the various public comments received (see below).

- Low hazard dams do not require dam failure analysis/hydraulic shadow zoning.
-NR 333 requires it and NR116 dictates the zoning portion.
- Dam failure analysis is based on flawed modeling and maps.
-There may have been confusion regarding stream channels shown on the maps which did not match some of the ditches which are on the site. He explained those details do not matter because what is being shown is the peak flows that occur upstream coming down the main channel (which is in the correct position) and would not affect the floodplain. The flows are based local rainfall data.
- Has a 10 day, 100-year design storm ever occurred here?
-Yes, in 2008 over 12 in. of rain fell in this area. It is difficult to say how many other times this has happened because it is not a common reporting unit. The School Section Lake dam could barely handle this event.
- In over 100 years, we have never seen water this high.
-The dam hasn't failed yet at the peak of a 100 yr. event but that is what is being required to model for the dam failure analysis.
- Why is groundwater, not studies, part of the dam failure analysis?
-The dam failure analysis assumes that the soil is saturated after a 10 day event. This study is a surface water study.

- Farm drainage systems will be negatively impacted long-term by proposed floodplain zoning.
-A floodplain zone does not grant permission to flood lands, but rather restricts what you can do within an area so structures are not built and later destroyed by a flood event. If you are farming in high groundwater it is very high maintenance to get high groundwater to lower so you can get a root zone for crops to grow in. No downstream owner is required to maintain existing drainage ditches. No changes in farming practices are required in a floodplain zoning district. This analysis has nothing to do with the WDNR wetland restoration work or the Paradise Valley project.
- Highway Z bridge should be enlarged to avoid upstream backwater during dam failure.
-The bridge was built 50 years before the dam failure analysis. Current standards for county bridges are to pass the 100-year flood without overtopping or creating significant backwater. This bridge in its current state meets that design. When bridges are replaced, new footings/pilings are created behind old footings, expanding the opening size.
- School Section Lake property owners were given priority over downstream properties. There should have been a public hearing before starting the dam repair.
-The partial dam failure occurred in 2018, an analysis was run to see what the impacts would be if the dam was taken out. For dam repair, no hearing is required unless the dam was proposed to be removed. Not repairing the dam would have been a significant negative impact on School Section Lake property values.

Questions/comments asked after Mr. Lindquist's presentation:

- Why wasn't the dam failure analysis done prior to the dam repair, to make the repair higher or larger so it doesn't fail given a 100-year flood?
- It would be extremely expensive to raise a 3,000 ft. long earthen berm and since it currently meets all regulatory flow requirements it wouldn't have changed the structure itself. If you raise the dam then the downstream impacts would be increased. The higher you would make the dam the larger the dam failure impacts would be downstream because there would be more water.
- Mr. Michalski stated in one of the letters submitted, an owner suggested that because the land was in the flood zone he would not be able to maintain his drainage ditches. He wanted to verify the validity of this statement based on the above presentation.
- The dam was rebuilt, the berm was fixed, there is existing zoning in place that protects life and safety, the dam could be used as is and the water flow could be controlled, why this is not be considered? Property values are not the same if they are in a floodplain vs. not in a floodplain.
- This is being done per the WDNR for public safety, what is the County doing to maintain or keep trees/debris out to keep the water flowing to avoid flooding?
- WDNR does not require a C-1 Conservancy Overlay, the County does, and there should be an exception made for this area.

Mr. Lindquist replied to some of the above comments. He stated that the County or any other entity is not responsible for maintaining drainage in the ditches. It was built as a cooperative landowner relationship and something has changed overtime. If the drainage system is not working anymore, the existing landowners would have to get together and apply for the permits needed to maintain the ditches.

Mr. Fruth responded that other questions above would also be answered in the next segment of the presentation.

- **Floodplain Zoning**

Mr. Fruth continued with the powerpoint and explained the purpose and intent of the Shoreland and Floodland Protection Ordinance is to protect the life, health and property, prevent increase in flood heights which could increase flood damage, discourage development in the floodplain if there is any practicable alternative and showing floodplains on maps so when properties are being marketed the next buyer knows what they are buying and if there are any restrictions. The C-1 Conservancy District is an overlay district and the underlying zoning categories would remain in place. The C-1 District contains wetlands, floodplain/floodfringe and floodways. The ordinance contains unique provisions for the sub-types of C-1 lands, including floodplains and floodways. All of the undeveloped floodplains in Waukesha County are zoned in the C-1 Conservancy District and both the State and FEMA have certified the floodplain ordinance. He mentioned 5 other dam failure studies previously adopted into the County's ordinance since 2002 located in the Towns of Eagle, Merton, Oconomowoc, Mukwonago and Genesee. He specifically noted the Mukwonago Dam where there was a real fear that the dam might have a total failure and evacuations occurred. He stated that is why this program exists and protective measures are required to avoid the need to relocate people in a hurry during a major event and to protect their life's investment (home/other buildings). He described examples of permitted uses within the C-1 Conservancy District such as pasturing of livestock, construction/maintenance of fencing, cultivation of existing agricultural fields, harvesting of wild crops, maintenance/repair of existing agricultural drainage systems, silviculture, hunting and dam maintenance. In addition, the ordinance allows for legal non-conforming use of lands to continue.

Mr. Fruth explained that the C-1 Conservancy District contains language stating that flooding, draining, ditching, tiling, dredging, excavating and fill necessary to maintain the level of drainage required to continue any existing agriculture use (permitted use). There is also language stating that side casting of spoils is not permitted into the adjacent floodplain and there were questions as to how to efficiently remove the spoils which were dredged. The WDNR clarified that it is acceptable per State law and code to allow for side casting of spoils within floodplains/floodways under the following circumstances:

- Within floodways, it can be permitted provided that an analysis is completed to ensure there are no adverse impacts.
- Within floodplains, it can be permitted as long as there is an equal cut above the groundwater table if lands are within a flood storage district.
- Spoils may be spread to a depth of a few inches without a study with a WDNR consult.

Mr. Fruth presented a map showing the non C-1 areas which would become C-1 Overlay/floodplain, existing FEMA floodplain, floodway areas, wetlands, dam failure floodplain shadow on the aerial photograph for this area. He pointed out several properties and the areas which would have the C-1 Conservancy overlay added per this rezoning. He noted that Table A of the Staff Report shows all of the

affected property owners and acreage affected by the dam failure shadow and indicated it is a total of 7.6 acres which are upland areas outside of high groundwater in existing C-1 Districts which would now be C-1 Conservancy Overlay district, none containing principal residences.

Mr. Fruth referred to Page 6 of the Staff Report noting 2 conditions which are addressing the concerns raised during the 4 public hearings and submitted comments.

1. All existing agricultural uses are permitted to remain within areas designated to be within the C-1 Conservancy Overlay District boundaries. There shall be no limitations with regards to the types of crops or animals that may be rotated on the existing farmed floodplain areas.
2. The maintenance and repair of existing agricultural drainage systems, including flooding, draining, ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue any existing Agricultural Use is permitted. The disposal of dredged spoils can occur within the dam failure floodway or floodplain, however, spreading of spoils within the floodway would require an analysis be completed and reviewed and approved by DNR to demonstrate that fill will not obstruct flows. If dredging is proposed within a navigable stream, dredging permits would be needed from the DNR and U.S. Army Corps of Engineers.

Chairperson Mitchell asked if anyone from the public wished to comment. Numerous people spoke and their comments are summarized below:

- A property owner stated he received a permit to clean a ditch, 1,382 ft. to the east of where the new C-1 Conservancy Overlay district would occur. The Army Corps of Engineers and WDNR required the dredge material be hauled out and was a large expense and the material needed to be removed from the site in 3 months otherwise he would need to apply for another permit. Due to the water in place the contractor needed to pile the material on 60 ft. piles. He wanted to clarify the requirements of the Army Corps of Engineers to the County Staff.

Mr. Fruth indicated he was unsure of the stretch of ditch being referenced or if it was navigable. The property owner stated it might be because of its proximity to School Section Lake that the special measures were required. Mr. Hauge, Waukesha County Land Resources staff clarified that the material could not be staged there because it was wetland.

- Attorney Booth representing several property owners and their concerns, stated the issue is if the C-1 District is the appropriate district for these properties. Has a study been done on the effect of the C-1 District? Based on the landowner's experiences, areas which have been changed to C-1 have resulted in degradation of the water controls and ditching and the raising of water levels in not only the C-1 areas but also areas upstream. Farmlands and pasture lands were dry and when C-1 was applied those areas became unusable because the water level raised. The county has not shown how the C-1 District protects/benefits the area downstream and the same result would happen in a flood if it was C-1 District or the current designation. There are indications that by applying the C-1 District it would cause a rise in the water in the area and deprive landowners of their properties. Does the C-1 District cause more problems that it prevents? In addition, the Town of Ottawa Plan Commission and Board were opposed to this request. Protests have been filed by more than 50% of the landowners affected. The C-1 District is not required by statute or regulation. NR 116 does not specify what land use controls need to be adopted. Section 333 states that there are other land use controls that can apply, such as restrictive covenants, easements and other appropriate arrangements. The County should find

the least restrictive zoning and land restrictions that are appropriate and the C-1 District is too restrictive. The C-1 District is a district that is intended to maintain the natural conditions of land. Currently there is not natural conditions, and the landowners are entitled to the current uses and other uses of the current zoning. If C-1 District is applied and their lands taken from them because of flooding and raising of the water table they are entitled to compensation.

- A farmer stated he is not against conservation but he is against the degradation of private lands in its path. He spoke of the Paradise Valley and how changes in nearby lands can impact private lands. One hundred year old tiles and ditch systems are not only cutoff, but are now back flowing into fields causing wet areas because the developed lakes at Paradise Valley are so high now. There is high water in the soil, making buildable lands are unbuildable, it is destroying land values, there is a loss of crops and it is also killing hundreds of oak trees. He spoke of a property next to his property which was deemed uninhabitable due to high groundwater from backed up drain tile which is too old to be recorded which cuts through his property. Other private landowners have lost parts of their farmland due to high groundwater or complete flooding which is 6 ft. deep in some areas, driveways that have been raised 3 times and are sinking now. When neighboring farmers tried to fix the problems they were having, the County denied every option, even tile line replacement. The State stepped in and allowed part of the drainage that they originally had for over 120 years. They can never get it back because the lake waters are too high.

Mr. Fruth responded to some of Attorney Booth's comments above. Attorney Booth said that the same result occurs in a flood with or without a C-1 designation. For example, if there was 26 or 28 acres that did not have protective floodplain zoning on it, someone could apply for a permit to build a pole building or residence which would be issued. Without C-1 designation additional structures could be added in harm's way or flooded in an event and could further contribute to flooding downstream. Attorney Booth also said that NR116.08 does not state what controls should be used relative to protecting dam failure shadows, which is not true. NR116 is very clear and states that areas downstream of dams shall be zoned and regulated by municipalities with floodplain zoning ordinances in compliance with the standards in this section to reduce loss of life and property located downstream of the dams. NR116.08 provides an exception for small dams that are less than 6 ft. in height, however, the subject dam is a large dam and is not exempt. He noted that Attorney Booth and the landowners asked the WDNR if they would examine the relationship of NR333 which alludes to land use controls which the WDNR agreed to do. The WDNR coordinated with their legal counsel and delivered the determination at a public meeting, that NR116.08 stands alone and zoning is required. He stated for the record that Attorney Booth has been informed of the WDNR's determination.

Chairperson Mitchell asked if a deed restriction would only be used for public lands as Ms. Hase stated earlier in the discussion, and if other options had been explored and the C-1 District is the best alternative? Mr. Fruth responded that other dam failure analyses have been adopted over the years, and there has never been any mention of anything other than the use of protective zoning. County Staff has been responsive to the questions of the landowners during this process. The WDNR examined other options and confirmed that zoning is what was required.

Chairperson Mitchell asked Mr. Fruth if there was any other information to be presented? Mr. Fruth replied that he was unsure of what else could be researched at this point after 5 meetings where staff listened to concerns/comments and there is nothing new that already hasn't been heard or presented and responded to previously. Mr. Lindquist added that the issues have been discussed for the past 6 months. After the third time action was delayed at the Town, he met with WDNR and Attorney Booth and talked

through any other options, and there aren't any, the rezoning is part of the process. Mr. Zach reiterated the type of zoning is the issue, the C-1 District is not required by the state.

Chairperson Mitchell asked if the Commission was ready to act on this matter? Mr. Morris said he was not ready to vote on this matter.

Mr. Siepmann asked if the other dam flood shed areas in the County are all zoned C-1 District to which Mr. Fruth replied, "Yes." Mr. Siepmann clarified that there is no other zoning district that would include the protection of the floodplain and floodfringe areas other than the C-1 District, to which Mr. Fruth replied, "Correct" and added that the C-1 District is the only district applied to undeveloped floodplains. Mr. Siepmann asked if that the primary goal was to make the public aware of where the floodplains are located, to which Mr. Fruth replied "Yes." Mr. Siepmann stated if there is a situation where a covenant vs. zoning is done, the public could not go onto the county's GIS system and see those type of issues. Mr. Fruth replied, yes, explained that it might take a full title search for someone to become aware of a restriction such as this. Mr. Siepmann said it was his understanding that there are 2 choices, to use the C-1 District zoning or create a new zoning district which Mr. Booth is suggesting. Mr. Fruth asked how a new district would be different from the floodplain restrictions contained in the C-1 District? He added, for the 28 acres affected, if they are currently farming in those areas they can continue to do so and no uses are being taken away. The proposal to forward the conditional rezoning is responsive to Attorney Booth and the neighbor's comments and the conditions set forth make it clear. Mr. Siepmann said that it seems Attorney Booth would like additional conditions, and asked if the County staff had spent time discussing any additional conditions? Mr. Fruth responded, that they have spent time meeting with Attorney Booth discussing what might be a compromise and he wanted to rely on the existing zoning, to which the County's response was that the high groundwater district does not prevent someone from filling, constructing a greenhouse, etc. He said the A-5, AD-10, RRD-5 and A-T districts do not prevent structures, and relying on existing zoning does not do the job. Mr. Siepmann agreed.

Mr. Peregrine said that it appears to him that the landowners are objecting to NR116 provisions that are part of state code. In the Staff Recommendation it is clear that all of the uses which are existing are going to be permitted to remain. He indicated that he did not think the Commission had a choice but to impose the C-1 Overlay, and the objectors would need to seek change to the state NR116 and any other provisions of the administrative code which the County is trying to enforce.

After a lengthy discussion, Mr. Peregrine moved, seconded by Mr. Morris and carried unanimously, as conditioned, for approval, of RZ64 and RZ65 in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

Chairperson Mitchell said the next step is that this matter will be presented at the Waukesha County Land Use, Parks and Environment Committee meeting on February 16, 2021 at 8:30 a.m.

ADJOURNMENT

With no further business to come before the Commission, Mr. Siepmann moved, seconded by Mr. Peregrine to adjourn at 3:54 p.m.

Respectfully submitted,

Thomas Michalski

Thomas Michalski
Secretary