

**WAUKESHA COUNTY
MINUTES OF THE PARK AND PLANNING COMMISSION
ADMINISTRATION CENTER, ROOM AC 255/259
THURSDAY, NOVEMBER 16, 2023 - 1:00 P.M.**

CALL TO ORDER

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

Commission

Members Present: James Siepman Richard Morris Robert Peregrine
 William Groskopf Gary Szpara

Commission

Members Absent: None

Staff

Members Present: Jason Fruth, Planning Manager
 Jacob Heermans, Senior Land Use Specialist
 Erica Anderson, Land Use Specialist
 Kathy Brady, Support Staff Supervisor

CORRESPONDENCE: None

MINUTES: Approval of the October 19, 2023, Minutes

After discussion, Mr. Peregrine moved, seconded by Mr. Morris and carried unanimously for approval, of the October 19, 2023, Minutes, as presented.

PUBLIC COMMENT: None.

SCHEDULED MATTER

- **1:00 pm** **Consideration of a Year 2023 Request for Amendment to the Comprehensive Development Plan for Waukesha County**
 3B - Spheris/Lakelands Inc. – T/Oconomowoc

Mr. Fruth indicated that the public hearing for the County plan amendment was held in August 2023. The Planning and Zoning division was awaiting the Town's decision on the parallel amendment which was approved on October 16, 2023.

Mr. Heermans explained, the property in question is currently located in the Rural Density and Other Agricultural Land category and the requested amendment would change the designation to the Low Density Residential category to allow for a potential single family residential subdivision. The Planning and Zoning Division staff and the petitioner conducted internal meetings to discuss issues which were brought up at the public hearing. The petitioner submitted an original concept plan with 24 lots, however, has since been revised to 23 lots and will be further refined during the plat review process. The property is bordered by Lac La Belle Drive and North Lake Road. The property to the east and properties abutting Lac La Belle Drive are also located in the Low Density Residential category. Properties located to the south are in the High Density Residential and Medium Density Residential categories. There are two subdivisions developed in the late 1990's to the north and west, which are in the Rural Density and Other Agricultural Land category. At that time, the County had a townwide density banking system for the Rural land use category which is no longer utilized. The overall density is 1.7 acres per dwelling unit and is consistent with surrounding residential development.

Mr. Heermans explained that the property has some soil types that are known to have seasonal high groundwater and this concern was brought up at the town public hearing. He explained that preliminary soil tests were conducted and a report was submitted indicating that many of the properties would utilize a gravity drainage system to address the high groundwater. The storm water issues will be addressed during the plat review process. Access to the development will be off of both North Lake Drive and Wood Lake Circle. The wetlands and environmental corridor are proposed to be maintained in outlots and open space. The County is recommending approval of the request.

Mr. Davy, Lake Country Engineering project engineer, indicated that he submitted a report dated September 29, 2023, which outlines the design process of the proposed subdivision. He recommended to the developer that the preliminary plat should also have a preliminary grading plan across the entire site to show how the basements will drain by gravity system. He indicated that 80% of the lots touch an outlot and will have exposed rear yards. A Form A test was completed for 2 lots (located in the woods) to find out where the high ground water was located. Due to drainage issues, those lots will need to be built up. Mr. Groskopf asked Mr. Davy to identify the 2 lots in question? Mr. Davy replied, Lots 6 and 7. He indicated the houses would have to be located in the woods. Mr. Peregrine complimented Mr. Davy on the design for the subdivision considering the difficulties of the site. Mr. Davy noted one of the difficulties of this subdivision is that there is a 20 ft. to 30 ft. terrain drop.

Mr. Fruth suggested that the conceptual gravity drainage letter be attached to the Staff Report, to which the Commission agreed.

After discussion, Mr. Peregrine moved, seconded by Mr. Groskopf 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.

- **RZ125 (Spheeris/Lakelands, Inc.) Town of Oconomowoc, Section 20**

Mr. Fruth pointed out the location of the property, north of the intersection of N. Lake Road and Lac La Belle Drive in the Town of Oconomowoc on the aerial photograph. He indicated the request is to rezone the property from the A-T Agricultural Transition District to the R-2 Residential District.

Mr. Heermans indicated this is the companion rezone for the property described above in 3B Spheeris_Lakelands, Inc., Comprehensive Development Plan Amendment. He mentioned that the lots meet the design requirements of the R-2 Residential District. The Planning and Zoning Division staff is recommending approval of the rezone with conditions.

After discussion, Mr. Peregrine moved, seconded by Mr. Szpara and carried unanimously, for approval, as conditioned, 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.

- **RZ131 (Valerie Charapata) Town of Oconomowoc, Section 17**

Mr. Fruth pointed out the location of the property at W389 N7868 Pennsylvania Street in the Town of Oconomowoc on the aerial photograph. He indicated the request is to rezone the property from the FLP Farmland Preservation District to the R-1 Residential District.

Chairperson Siepmann indicated that the petitioner requested the rezone be delayed until Spring 2024. No action was taken.

- **RZ134 (Text Amendment) Town of Genesee**

Mr. Fruth indicated that the request is for a text amendment to the Town of Genesee Zoning Code to repeal and recreate Section 19 (A) relating to Accessory Uses and Structures.

Mr. Fruth indicated the text amendment will update the Town's accessory building size standards. Currently, accessory structure size provisions are based upon a property's zoning district. The proposed text amendments would adjust the accessory building size based upon lot size rather than zoning district. He further explained that accessory buildings for lots of less than ½ acre would be limited to 500 sq. ft., lots between ½ and 0.99 acres would be limited to 900 sq. ft. and lots of one acre or more would be limited to 1,000 sq. ft. or 2% of lot size, which ever is greater. Larger accessory buildings could be allowed through a special exception process depending on the site circumstances, neighboring properties, look of the building, etc. In addition, Plan Commission review would be required for any structure 1,600 sq. ft. or larger.

After discussion, Mr. Peregrine moved, seconded by Mr. Morris and carried unanimously, for approval, in accordance with the "Staff Report and Recommendation".

- **CU99 (Golden Mast Inn, Inc.) Town of Oconomowoc, Section 36**

Mr. Fruth pointed out the location of the property in part of the NW ¼ of Section 36, Town of Oconomowoc on the aerial photograph. He indicated the request is for Conditional Use approval for a marina expansion including piers for docking and mooring.

Mr. Fruth indicated that the Golden Mast Inn restaurant and banquet facility is located on Okauchee Lake. The marina has been operating for a few decades in this location. They are authorized by the State to offer boat launches to the public. The petitioner is requesting to expand the amount of seasonal and permanent moorings on the site. The property is located in the Downtown Okauchee District and the marina provisions were recently updated to allow the total length of piers within this district to be determined based upon the Wisconsin Department of Natural Resources (DNR) requirements and town and county review. The petitioner received a permit from the DNR to increase the number of piers on-site. At the public hearing, a number of persons spoke strongly in support of the request and another neighbor to the east called to express concerns that the Pier A extension would negatively impact his open water view and cause navigation issues. He pointed out the property in question on the aerial photograph and explained he visited the site and noted the neighbor's property has steep slopes to the lake and the residence is located at the top (30 ft. above the water). The views from the residence are currently going through trees/canopies and the backside of a building on the property at the shore. At the water's edge there is open water in front of all of the piers. The DNR indicated there was ample room for boats to get in and out of the piers even with the extensions. He presented photographs of the different views.

Mr. Fruth presented Exhibit B showing the existing piers and proposed extended piers and mooring slips. Presently there are 28 existing seasonal moorings and the proposal is to add 11 which would be a total of 39 slips. The visitor slips would double from 5 to 10 and the utility maintenance pier would remain for a total of 50 slips. In reviewing the proposal, the Planning and Zoning Division staff compared this operation to a marina on Pewaukee Lake and the piers extend a similar distance as what is being proposed. He reviewed the proposed conditions regarding the piers, signage of docking slips, exterior lighting, and that the terms of the DNR Permit must be adhered to and the total number of docking slips and configuration shall be as proposed. The petitioner noted in the Conditional Use application that this establishment is one of the last waterfront banquet type facilities in Waukesha County and the petitioners expressed that the request is important to the long-term viability of the business.

Mr. Groskopf asked if the 10 new visitor slips would be identified, to which Mr. Fruth pointed out the locations on Exhibit B. Mr. Szpara asked how Condition No. 4, referring to activities on the property not becoming a nuisance, would be policed? Mr. Fruth replied it would most likely be based on a complaint basis or the Town Planner may notice. Mr. Peregrine stated, if the petitioners go ahead with the recreational facility on “The Island”, they would need a barge to comply with the health requirements. He asked where the barge would be parked. Mr. Fruth replied, it would need to be determined, but presumably they would need to designate one of the slips for the barge.

After discussion, Mr. Peregrine moved, seconded by Mr. Groskopf and carried unanimously, for approval, as conditioned, 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.

- **SP207 (Golden Mast Inn, Inc.) Town of Oconomowoc, Section 36**

Mr. Fruth indicated the Site Plan/Plan of Operation request is related to the previous Conditional Use (CU99) listed above.

After a brief discussion, Mr. Peregrine moved, seconded by Mr. Morris and carried unanimously, for approval, as conditioned, 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.

- **PPC23 006 (John Grogan) Town of Oconomowoc, Section 36**

Mr. Fruth pointed out the location of the property at W340 N4963 Road O in the Town of Oconomowoc on the aerial photograph. He indicated the request is for approval of a retaining wall located within 5 feet of the north and south property lines.

Ms. Anderson, Land Use Specialist, indicated in Fall 2022, a complaint was received for retaining walls being constructed without the necessary permits. A site visit was conducted by the Planning and Zoning Staff noting that a series of retaining walls were being constructed without approvals. A Stop Work Order was placed on the property. The property owner applied for an after-the-fact Zoning Permit for the retaining walls. The existing retaining walls were curved and the owner wanted to replace them with a squared off and more linear type engineered retaining wall. The Planning and Zoning Division staff determined that the proposed plan could be permitted as in-kind, since the retaining wall heights and the closest point of the new wall to the lake was remaining the same, other than the curved walls being squared up. The existing retaining wall was 2 ft. from the lot line and the new proposed wall is approximately 4 ft. from the lot line and would need approval from the Waukesha County Park and Planning Commission for retaining walls located within 5 ft. of a lot line. In January 2023, the petitioner received after-the-fact approval from the Park and Planning Commission to permit the replacement retaining walls with conditions. In February 2023, a Zoning Permit was issued to permit the owner to complete the project to replace the curved walls with the squared up walls. In June 2023, a new complaint was received regarding non-compliance with the issued Zoning Permit. A site visit was conducted and revealed the height of the retaining walls did not conform with the approved plan submitted with the Zoning Permit. The new walls were constructed taller than the walls approved. The Planning and Zoning Division staff informed the owner that that they would need to seek variance approval for the walls, then come back to the Town and County Park and Planning Commissions for new approval of the walls within 5 ft. of a lot line.

Mr. Fruth explained the reason for the Board of Adjustment variance request is that in-kind replacement of retaining walls that are non-conforming or substandard is allowed within the 75 ft. setback area, however, these walls were closer to the shore. Ms. Anderson indicated the Board of Adjustment met on November

8, 2023 regarding the variance request and approved the retaining walls subject to the conditions in the Staff Recommendation. Included was the removal of a 2 ft. seat wall which would be replaced with a transparent railing (for safety) to remove the bulkiness (height) on the top of the retaining wall. She indicated the Planning and Zoning Division staff is recommending approval of the request subject to conditions. She presented photographs of the retaining wall to the Commission. Mr. Fruth added that arborvitae were planted along the wall for screening.

Mr. Groskopf asked how tall the retaining wall was? Mr. Fruth responded at the highest point to the top of the seat wall was 10 ft. A representative from Central Services indicated it was approximately 9 ft. and with the seat wall removed it would be 6.75 ft. Mr. Fruth said some of the grades on original plan were incorrect and it threw everything off. The old walls were approximately 8.5 ft. The Planning and Zoning Division staff tried to come up with a compromise to the new plan that would get the total wall height as viewed from the water closer to what had been there prior, which is what the Board of Adjustment approved but in a different configuration. The Planning and Zoning Division staff spoke with the petitioner in regard to backfilling the walls, however, there is a drainage system which needs to outlet in that area and redoing the bottom or lower wall would mean taking the entire wall system apart. He noted that the petitioner has submitted a more robust landscaping plan than was originally planned. Mr. Grogan, petitioner provided an updated landscape planting plan to the Commission which attempted to comply with the Board of Adjustment's decision. Mr. Grogan indicated there would be a horizontal cable system matching the railings of the deck which would be transparent. Mr. Morris asked what the height of the railing would be and the petitioner responded 39 in. Chairperson Siepmann confirmed that all of the walls would be reduced by approximately 2 to 2.5 ft. for all of the patio area. Mr. Szpara asked if the height would be similar to what was originally proposed? Mr. Grogan replied that it must be, because the patio grade did not change and was at the walkout. Mr. Fruth explained that the 2 lower walls are taller by 1 ft. each. He added that as viewed from the water, it is a very similar amount of vertical surface than what used to be there and when the landscaping is planted you will not be able to see much of the wall surface.

Mr. Groskopf expressed concerns with the original plan that was submitted in January 2023, and subsequently approved by the Commission, when in fact, the wall height tripled in size. He stated that a condition of approval was the revised site plan shall be provided indicating the top and bottom wall elevations prior to issuance of the Zoning Permit. He asked if staff knew if the wall would be 9 ft.? Mr. Fruth replied, "No", what was built was taller than what was showed numerically on the plans. Mr. Groskopf indicated the original request was after the fact and now there is another after the fact request. Mr. Grogan said he was in contact with the Planning and Zoning Division staff and asked if the walls needed to be looked at and were told that everything was fine. Mr. Groskopf expressed concerns that if he turned in a plan like the petitioner did, it would not have been approved. Mr. Fruth said the Planning Staff indicated in meetings with the petitioner that they could not recommend approval for this wall as constructed. That is why the petitioner was willing to remove a 2 ft. seat wall which would be replaced with a transparent railing and more extensive landscaping. That is what the Planning Staff told the petitioner would be a reasonable potential remedy. He believed that the error of the elevation on the plans was unintentional. Mr. Groskopf asked if there was any opposition at the Board of Adjustment meeting? Mr. Fruth indicated a concern of the neighbor was that the top corner of the wall could be seen from the adjacent deck. The modification seemed to be more acceptable to her than leaving it as is. Mr. Groskopf asked if a hardship was stated by the petitioner at the Board of Adjustment meeting? Mr. Fruth responded that the Board of Adjustment application described the problems with the plan documents that were initially submitted. The Planning staff attempted to point out all of the options available to the petitioner that they could entertain to seek after the fact approval. He said the Commission's action today would be after the fact approval for the retaining wall within 5 ft. of the side lot line.

Mr. Morris asked if the Commission is being asked to approve the new plan with the modified seat wall. Mr. Fruth replied no, it is part the Board of Adjustment decision and conditions. Those conditions include:

1. A wall modification plan shall be submitted to Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The plan shall include complete removal of the seat wall and the installation of safety railing designed to be mostly open or transparent.
2. A final wall screening plan shall be submitted to Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The plan shall provide effective year-round screening of the walls as viewed from nearby properties and the lake.
3. Approval by the Waukesha County Park and Planning Commission for a retaining wall within five feet of a lot line, prior to the issuance of a Zoning Permit.

The recommendation of the Planning and Zoning Division staff for an after the fact retaining wall withing 5 ft. of the north and south property lines is that the request be **approved** subject to the following conditions:

1. A revised plat of survey or site plan shall be provided indicating proposed final top and bottom of wall elevations which is in accordance with the conditions of the Board of Adjustment decision BA180, prior to issuance of the revised Zoning Permit.
2. The retaining walls shall be effectively screened year-round with vegetation and in accordance with the conditions of the Board of Adjustment decision BA180. Such plantings and screening shall be maintained in perpetuity. At the time of initial planting, the proposed vegetation shall effectively cover at least 50% of the face of the walls. Any modifications to the landscape plan shall be approved by Waukesha County.
3. A Declaration of Restrictions must be prepared noting that the wall screening plan required in the above condition be permanently maintained unless modified by the Waukesha County Planning and Zoning Division. Prior to the issuance of any permits, the Declaration of Restrictions must be signed by the owners, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.

Mr. Szpara stated that the petitioner did not follow the original plan submitted and went ahead with the construction of the retaining wall knowing that it was incorrect and the Planning staff had to incur more time to resolve this issue. He asked if there was an option for the staff to recover the time wasted such as the petitioner being fined for not following the proper procedures and to cover the staff costs? Mr. Fruth responded, with enforcement work there is rarely a full return on the investment. He explained that the options available in this case are that after the fact permitting and Board of Adjustment fees are doubled which is some recouperation of costs. The Planning Staff could also utilize the citation process, but if the petitioner is cooperating by applying for after the fact permits and applications, a citation may not be necessary. The citation process utilizes more staff time preparing with the County's attorneys which would needs to be considered. Another option would be to initiate a lawsuit, however, voluntary compliance with the petitioner is the most efficient way to resolve issues and utilizes the least amount of staff and legal time.

Mr. Grogan stated he hired a contractor to do the work. They made a mistake, because the property has a Nashotah mailing address. In Spring 2022, the contractor went to the Village of Nashotah to apply for a permit to replace an existing retaining wall. They did not start the project with the intent to do work without permits. When they applied for the after the fact permit for approvals at the January 19, 2023 Commission meeting, the lowest tier wall was already completed and was at the right height and distance from the lake.

The contractor (with the after the fact approval), thought that the wall was right. When the County visited the site and measured and photographed the retaining wall it was part of the application in January. They didn't intend for the mistake to happen and he just wanted to replace a patio and retaining wall that was failing and falling over into the neighbors yard. All of the estimates he received indicated the patio and retaining wall must be replaced and could not be repaired. Plantings would have been done to soften the views of the wall already, but when he received the violation in June he didn't know if he would be allowed to keep the wall. Had he known at the original meeting or before the second or third tier of the retaining wall was constructed, that the bottom wall was too high and needed to be removed, that would have been the best time for him to reconsider the project and do something different. He has agreed to remove the seat wall, add additional plantings to soften the look and put in a transparent railing. There is not a possibility to modify the wall without causing structural problems.

Mr. Groskopf said the landscape company should have known that the wall was not being built according to the submitted plans. Mr. Fruth said that since there are different municipalities surrounding the lake that he believed that they made a good faith effort to ask the right questions but made a small error that cascaded.

After discussion, Mr. Morris moved, seconded by Mr. Peregrine and carried by a vote of 4 to 1 (Mr. Groskopf voted against), as conditioned, for approval, in accordance with the "Staff Memorandum". 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.

ADJOURNMENT

With no further business to come before the Commission, Mr. Morris moved, seconded by Mr. Groskopf to adjourn the meeting at 2:09 p.m.

Respectfully submitted,

Robert Peregrine

Robert Peregrine
Secretary

RP:kb