

# Minutes of the Waukesha County Shoreland Zoning Advisory Committee

Friday, February 19, 2016 (Room AC-255, Waukesha County Administration Center)

## Committee Members Present

Tim Barbeau	Town of Delafield Planner and Engineer
Thomas Day	Lake Management District Representative, Waukesha Co. Board of Adjustment
Bill Groskopf	Builder (Groskopf Construction/MBA)
Tim Schwecke	Town of Mukwonago & Eagle Planner
Kyle Kohlmann	Landscape Architect (Seasonal Services)
Kathryn McNelly-Bell	Env. Consultant (Kapur & Assoc.), T/Mukwonago Plan Comm., Spring Brook Dist.
Bob Peregrine	Town of Oconomowoc Plan Comm., Waukesha Co. Park & Planning Commission
Sandy Scherer	Town of Ottawa Planner, Waukesha County PLU
Paul Schultz	Architect (Sunarc Studios)
Jim Siepmann	Developer (Siepmann Realty/MBA), Waukesha Co. Park and Planning Comm.
Tony Zanon	Engineer (Jahnke & Jahnke)
Dave Zimmerman	Waukesha County Board, County Rep. of four Lake Management Districts

## Committee Members Unable to Attend

Marilyn Haroldson	Town of Merton Planner
Jeff Herrmann	Town of Genesee & Oconomowoc Planner
Don Reinbold	North Lake Management District
Tom Slawski	SEWRPC/Biologist

## Staff and Others Present

Jason Fruth	Waukesha County PLU (SZAC Chair)
Amy Barrows	Waukesha County PLU (Lead Staff)
Kim Haines	Waukesha County Corporation Counsel
Perry Lindquist	Waukesha County PLU, Land Resources
Leif Hauge	Waukesha County PLU, Land Resources
Jason Wilke	Waukesha County PLU, Landscape Architect

## Agenda overview

Mr. Fruth explained that the committee would resume work regarding the impervious surface materials that were discussed at the January 20, 2016 SZAC meeting. He indicated that staff had worked with Land Resources Staff to try and answer questions raised at the prior meeting. He noted that the committee would then discuss building bulk regulations and options, and if time permits, non-conforming structure regulations. Ms. Barrows noted that the proposed shoreland zoning bill that would modify several shoreland zoning regulations further continues to progress through the legislative process.

### **1. Review and approval of January 20, 2016 meeting minutes**

Mr. Fruth asked if there were any comments or questions regarding the minutes. There being none, he noted that Ms. Scherer had previously provided some technical corrections that would be incorporated.

### **2. Review & consideration of proposed Impervious Surface options (continued from 1/20/16)**

#### ***a., c. Definition and Treated Impervious Surface (taken out of order)***

Ms. Barrows explained proposed changes to the impervious surface (IS) definition and summarized that there were several questions raised at the last SZAC meeting regarding surface types that could be

deemed exempt from impervious surface calculations. Mr. Groskopf asked if runoff from decks can be treated. Ms. Barrows explained that Staff had discussed this issue with the DNR and DNR staff confirmed that decks must be considered an impervious surface. However, she noted that if treatment practices are employed beneath the deck, the deck area may be excluded from calculations. Mr. Lindquist, Waukesha County Land Resources Manager, advised that decks do not absorb water but noted that installation of vegetation or porous surfaces below a deck that would treat runoff and meets the proposed ½ inch treatment standard would allow for the deck area to be excluded from calculations.

There were questions from the committee regarding roadways and shared driveways and how they would be addressed by the proposed impervious surface standards. Ms. Barrows and Mr. Fruth noted that pending legislation contains language that would exempt public roadways from IS calculations. Staff explained that the language that would exempt private roads serving more than two residences was drafted in an attempt to provide flexibility and to recognize that many private roadways look and function very similar to public roadways. Some committee members felt that private roads or driveways should be counted in IS calculations. Others expressed that they felt that shared drives should be exempt or that the user of the driveway should be responsible for the IS that crosses someone else's property via easement. Staff suggested that, in light of the possible law change affecting roadways, Staff would reach out to DNR to seek additional guidance and report back to the committee.

Ms. McNelly-Bell suggested that utility boxes be excluded from calculations and the committee agreed. Staff advised that they would add utility boxes to the exclusion list. Mr. Zanon suggested that consideration should be given to whether retaining walls would be counted in calculations. There was some discussion of other incidental surfaces and the committee concluded that writing in all possible surface types is difficult and felt that the prepared list of exclusions was sufficient.

Ms. Barrows briefly summarized the committee's prior discussion of the Treated Impervious Surface (TIS) topic. She also indicated that Land Resources Staff will develop technical standards for the various types of TIS practices. Mr. Peregrine asked how the TIS standard would be measured. Mr. Zanon and Mr. Lindquist advised that a mathematical calculation would need to be performed to achieve treatment of the first ½ inch of runoff standard.

Mr. Lindquist distributed a permeable paver technical standard and explained that technical standards would set the minimum requirements to satisfy the design standards that a project is attempting to meet. He also noted that there are similar guidance documents for rain gardens that could be relied upon to develop technical standards for rain gardens. He indicated that the guidance document advises what needs to be done but will not tell you exactly how to do it.

Mr. Day asked whether mitigation can be required for re-builds. Ms. Barrows responded that property owners get to keep the same amount of impervious surface that they previously had when re-building. She noted that there may be limited scenarios where other NR 115 requirements would require mitigation for a relocated residence.

There was group consensus regarding the proposed TIS scheme, the proposed IS definition and the proposal for addressing IS exclusions. Staff advised that the exclusions would be expanded to include utility facilities. Staff also advised that they would report back with more information regarding shared driveways.

### ***b. IS Regulation Options***

Mr. Fruth summarized the three impervious surface options that were presented at the prior meeting. He emphasized that Option 1, the General Standard (15% IS limit, 30% IS, with mitigation) is the

standard that must be employed for rural shorelines that do not meet the Highly Developed Shoreline criteria. He noted that this option would likely apply to less heavily developed shorelines (along many rivers and streams and less densely settled lakes such as Willow Springs Lake).

Mr. Fruth noted that both Option #2 and #3 would involve employing the optional Highly Developed Shoreline provisions of NR115. He explained that Option 2 is the most permissive NR115 option (30% IS, by right, 40% IS, w/mitigation for residential development). He noted that Staff had reached out to the DNR for clarification regarding DNR's opinion regarding Option 3. He explained that DNR believes that a 25% option would be more restrictive than NR115. Mr. Fruth noted that Planning and Corporation Counsel Staff do not agree with DNR's interpretation. However, he noted that because Option 2 and 3 are quite similar relative to maximum IS, Staff recommends that the SZAC consider abandoning further consideration of Option 3 to avoid conflict with DNR on this issue. Mr. Groskopf noted that Option 3 has some limitations in that the ranges create some inequitable overlap.

Mr. Fruth explained map exhibits that were produced by Planning Staff that depict approximate IS coverage for each lot surrounding three lakes (North, Pretty and Upper Phantom). Mr. Fruth noted that the development pattern on the examined lakes generally showed that approximately one-half of the lakefront properties contained more than 25% IS. He noted that because of recent law changes, zoning ordinances must allow property owners to keep what they have relative to IS coverage. He explained that Staff had planned to recommend that "tear downs" be held to the stated IS percentage limitations, but because of the recent law change, that option is no longer available. He noted that Staff, after considering the observed development pattern and the constraints of the "keep what you have" law constraints, recommends Option 2 as the preferred alternative.

There was extensive discussion amongst group members relative to the two options. Two committee members (Mr. Day and Ms. McNelly-Bell) felt that Option 1 should be the preferred alternative, citing environmental need (water quality, fishery considerations) and added environmental benefits. Ultimately, there was substantial agreement of the SZAC that Option 2 (Highly Developed Shorelines) should be advanced as the preferred alternative. The SZAC confirmed that they would like Staff to examine all lakes to determine which might qualify for "Highly Developed" designation.

Mr. Lindquist noted that voluntary mitigation programs or incentive based programs may be a good alternative to achieve additional shoreline/water quality benefits. He also noted that Land Resources is working with lake districts on aquatic invasive plans and there may be opportunities for collaboration on this issue. There was discussion that the Lac la Belle Lake District provides grants of up to \$2500 to property owners for shore buffer establishment.

### **3. Building Bulk**

#### ***a., b. Floor Area Ratio and Open Space***

Ms. Barrows explained the floor area ratio and open space summary sheets and highlighted some of the limitations that Staff had observed in these two regulations over time. She noted the FAR and Open Space scheme has been particularly limiting for substandard lots. Ms. Barrows explained that owners of the most severely substandard lots cannot achieve compliance with the minimum required floor area provisions of the ordinance because of the current FAR percentage constraints and high open space square footage requirements.

#### ***c. Footprint Alternatives***

Mr. Fruth presented an overview of the four "footprint" alternatives. He noted that roughly one half of the lakefront properties in the County are less than 20,000 square feet in area. He emphasized that FAR

variances have been requested and granted with great regularity. He explained that Staff discussed possible fixes to the FAR system including increasing allowable FAR for smaller properties, counting exposed basements and limiting overall height. He noted, however, that some of the fundamental difficulties of FAR, such as counting possible useable attic spaces, etc. would still remain. He noted that because of these challenges Staff, instead, explored a possible footprint or lot coverage scheme.

Mr. Fruth explained that several local communities employ a footprint scheme. He referenced the City of Brookfield, Village of Elm Grove and Town of Mukwonago as examples. Mr. Schwecke noted that Mukwonago's footprint system is not currently employed because of a recent court decision affecting shoreland zoning.

Mr. Fruth explained that the Sliding Scale option (Option 1) is similar to the scheme that Mukwonago had employed. He noted that this option capped overall home size for the largest non-conforming lots at a more restrictive level than the other three options. He described that because it is not a percentage based system, there is some inequity in this option, as the owner of a smaller lot within a specified range would be entitled to the same footprint as a slightly larger lot within the same range.

Mr. Fruth explained the three "percentage range" options and noted that Staff initially prepared a 15% option which would essentially double the maximum building square footage available to unsewered lots, as compared to the existing FAR system. He noted that Staff was concerned that 15% might be too constraining relative to those that wished to develop ranch style homes. Ms. Barrows displayed an example of a modest ranch home (840 square feet) with a 576 square foot detached two car garage and small shed. Mr. Fruth explained that the owners wished to build a modest addition to accommodate ADA access on the 10,062 square foot lot and that the proposed 10' x 14' sunroom addition would not have complied with a 15% footprint scheme.

Mr. Fruth noted that Staff had considered a scheme that would limit footprint to 20% for ranch homes and 15% for a two story or more structure. However, Staff felt that the difficulty of defining stories would present administrative difficulties. Mr. Groskopf agreed and noted that such a system would bring back some of the same problems of FAR. Mr. Fruth indicated that Staff ultimately felt like 15% was too restrictive for ranch designs but that 20% was too permissive and decided to try an option in between at 17.5%. He indicated that Staff would lean towards recommending 17.5% today but that Staff is concerned about the permissive multi-story home size allowances that 17.5% would allow for lots between 14,000 and 20,000 square feet.

The committee noted several limitations with the FAR scheme and some committee members expressed a preference for moving away from FAR. Committee members confirmed that they felt that changes in building trends (cathedral ceilings, taller floors, etc.) had made FAR increasingly ineffective.

A few committee members expressed a preference for a percentage based option because of fairness that it provides as compared to the sliding scale. Mr. Zanon noted that he initially liked 15% but then when he considered garages, he felt 17.5% might be better. Mr. Groskopf expressed concern about excess bulk that individuals might pursue in maximizing envelopes.

#### ***d. Building Height***

Ms. Barrows presented an overview of the building height requirements of NR115 and explained that NR115 limits the height of buildings within 75' of the shoreline to 35'. She noted that NR115 does not describe how to measure height and explained that DNR had advised relying upon the illustrations in the State Model Shoreland Zoning Ordinance. She showed the illustration from the model which depicts height measured from the lowest exposed point of a structure to the highest point of the roof. Ms.

Barrows explained that Staff contacted DNR to determine whether there were any other alternatives that DNR would entertain. DNR indicated that they may consider accepting measurement of height from lowest exposure as measured from the average grade surrounding the structure to highest point of roof. Ms. Barrows explained that this might offer an additional four or five feet of height for buildings with exposed basements. Ms. Barrows explained that the County can consider regulating building height beyond 35' of the shore in a less restrictive manner.

Mr. Siepmann noted that building trends are gravitating towards higher pitched rooflines. Mr. Wilke asked about the ability to use available space within structures with high roofs. Ms. Barrows confirmed that with a footprint system, such space would be useable.

Ms. Barrows and Mr. Fruth described that the Metropolitan Builders Association had expressed a preference for a 45' height limitation when the height provisions of the code were last amended in 2005. They noted that MBA described a hypothetical house that contained two 10-foot stories, an 8-foot story and 12 foot high roofline, which resulted in an overall building height of 40'. Mr. Fruth noted that Staff is questioning whether the 45' number might be able to be reduced slightly and yet still accommodate designs similar to the one the MBA described previously. He also noted that, if FAR regulations are abandoned in favor of a footprint system, Staff is recommending that lots less than 65' in width be more limited relative to maximum height so as to prevent tower-like structures on severely non-conforming lots. Staff indicated that if bulk is to be regulated via a lot coverage scheme, building height will be an important issue in controlling bulk. With time running short, Mr. Fruth urged the committee members to continue thinking about footprint and height options and stated that the discussion would be continued at the next meeting.

**Next Meeting.**

March 10, 2016 from 8:30 a.m. to 11:30 a.m.

Topics:

- Building Bulk/Height- continued
- Non-conforming structures
- Mitigation