

Minutes of the Waukesha County Shoreland Zoning Advisory Committee

Thursday, March 10, 2016 (Genesee Town Hall)

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)
Jeff Herrmann	Town of Genesee & Oconomowoc Planner
Kyle Kohlmann	Landscape Architect (Seasonal Services)
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.
Tom Slawski	Chief Biologist (SEWRPC)
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
Kathryn McNelly-Bell	Env. Consultant (Kapur & Assoc.), T/Mukwonago Plan Comm., Spring Brook Dist.
Tim Schwecke	Town of Mukwonago & Eagle Planner
Don Reinbold	North Lake Management District

Staff Present

Jason Fruth	Waukesha County PLU (SZAC Chair)
Amy Barrows	Waukesha County PLU (Lead Staff)
Kim Haines	Waukesha County Corporation Counsel

Agenda overview

Mr. Fruth provided a brief overview of committee decisions made at the previous meeting regarding impervious surface. He explained that Planning Staff is nearly complete with analyzing areas that may qualify as “highly developed shorelines” and that mapping for specific potential highly developed shorelines would be presented at the next SZAC meeting for discussion and consideration. He indicated that the day’s agenda would start with continued discussion of building bulk (floor area ratio, open space, building footprint and building height) followed by non-conforming structure and use regulations and mitigation. Ms. Barrows advised that the shoreland amendment bill that had been discussed at prior meetings has now been signed into law. She explained that the law changes preserve the shore setback requirements of the Delafield Shoreland Overlay District and Mr. Fruth noted that other aspects of the law will enable more shorelines to qualify as “highly developed.”

1. Review of February 19, 2016 meeting minutes

There were no comments regarding the minutes.

2. Building bulk and height regulations

Mr. Fruth summarized the discussion and concerns and preferences shared at the prior meeting regarding floor area ratio and footprint options. He explained that because of concern expressed by some at the prior meeting that a footprint system alone may allow for very large homes in some situations, Staff had explored additional sub-alternatives to the basic footprint options that had been previously presented. He referred to handouts that showed a 17.5% footprint alternative being paired

with either 25% floor area ratio or 30% floor area ratio. He explained that such options would more conservatively cap overall permissible square footage.

Several committee members expressed that they felt that adding a floor area ratio measure made calculations too complex in light of the fact that impervious surface allowances and footprint calculations would already be required. Others expressed concern that floor area ratio presents difficulties in that it doesn't neatly deal with basements and other spaces within buildings that may be finished. Multiple members suggested that height controls would better address overall bulk.

The committee elected to re-visit building height regulations prior to finishing discussion regarding footprint options. The group debated how best to measure height and discussed whether to measure from lowest exposure or from average grade. The committee ultimately determined that height should be measured from the lowest exposure. The committee made the following decisions on height:

- Limit overall building height (from lowest exposure to highest peak) to 35' for structures within 75' of the shore and on lots 65' or less in width.
- Limit overall building height (from lowest exposure to highest peak) for buildings more than 75' from the shore and on lots greater than 65' in width to 42'.
- Limit height to highest eave (from lowest exposure to the highest eave) for buildings more than 75' from the shore and on lots greater than 65' in width to 32'.

Mr. Groskopf raised questions about dormers and described a project in Waupaca County where eaves affiliated with dormers had to be carefully considered. Mr. Herrmann noted that a tiered height scheme creates an incentive for owners to move houses back to achieve additional height.

The committee resumed discussion regarding footprint options and came to consensus that a basic footprint option should be the preferred alternative and that floor area ratio should be eliminated. After a good deal of discussion, the committee concluded that the maximum footprint should be 17.5% in all residential districts and that, in all other districts, existing floor area ratio percentage requirements should be converted to maximum footprint percentages.

3. Non-conforming structures

Ms. Barrows provided an overview of the NR115 and shoreland zoning law requirements relative to legal non-conforming uses and legal non-conforming structures. Mr. Fruth described that Staff feels that some of the recent law changes may warrant further consideration by the legislature in the future. He noted that the removal of the mitigation requirement for the vertical expansion of homes that are at least 35' from the shore is a significant change and will likely make the use of mitigation much more infrequent. He noted that Staff feels that the removal of permit requirements for non-conforming structures could create potential problems in that, without permits, there would be no way to ensure that non-conforming structures are in fact simply replaced in the same location. He noted that this could create possible shore encroachment issues, floodplain fill potential, etc. and creates an unequal rule system for those that own conforming structures versus non-conforming structures. He clarified that because Waukesha County regulates other zoning matters such as floodplain requirements via the Shoreland & Floodland Protection Ordinance, projects within the County's jurisdiction will continue to require zoning permits.

Supervisor Zimmerman asked how the new State rules for horizontal expansions of non-conforming structures relate to the recommended language prepared by staff for other non-conforming structures. Ms. Barrows and Mr. Fruth explained that the proposal is to offer additional options for improvements

of other types of moderately non-conforming structures. They explained that structures may be non-conforming relative to a number of issues such as side offset, road setback or wetland setback and that NR115 does not deal with these issues. They indicated that Staff thought it was reasonable to offer similar improvement options to owners of these types of structures similar to what NR115 allows relative to structures that are non-conforming to shore setback.

Committee members expressed concern about the proposed language that would allow a structure that is non-conforming to side or road offset or setback to be built in the same location if no other more conforming location was deemed available. Mr. Groskopf described situations where excavations for foundations close to property lines have caused cave-ins for neighbors. Mr. Fruth suggested that the proposed replacement language could be removed from the proposal and that Staff would come back with refined language. In addition, there was discussion regarding whether allowing horizontal expansions in the required offset area, if no closer to the lot line, was appropriate without a special approval. The SZAC concluded that such horizontal expansions should continue to require a special exception.

Ms. Barrows indicated that Staff had envisioned also providing an option whereby Planning Staff would have the ability to administratively designate a building envelope to achieve the minimum building footprint area of 1,100 square feet provided that shore setback is complied with. She advised that Staff would prepare language to this effect for further consideration by the SZAC at the next meeting.

4. Mitigation

Ms. Barrows provided an overview of NR115 mitigation requirements and explained that mitigation is required if the basic impervious surface threshold requirements are exceeded, if structures are relocated within the shore setback and for horizontal expansions of structures that are substandard to shore setback but are located at least 35' from the shore. She indicated that, as described during the preceding non-conforming structure discussion, mitigation may also be considered for expansion of structures that are too close to wetlands.

Ms. Barrows explained that NR115 prescribes mitigation requirements and she noted that the State has left counties with broad discretion in choosing mitigation alternatives. She indicated that Door County developed a mitigation handbook that has been used as a sort of model around the State. She noted that Staff examined handbooks from Door County, the Village of Summit and various other counties in compiling the proposed mitigation handbook.

The committee expressed support for the mitigation handbook approach and felt that the list of options within the book was broad. Mr. Slawski suggested that another mitigation option might include retention of fallen trees in the water and other below shore habitat provisions such as "fish sticks." Mr. Slawski also suggested that another mitigation option might be to expand a neighboring lot buffer that already exists in order to enhance an established resource area. Ms. Barrows indicated that Staff could examine creating such options within the guidebook and would report back to the committee for their consideration.

Questions were raised as to whether deed restrictions would be required for mitigation and how mitigation would be monitored over time. Ms. Barrows and Mr. Fruth explained that deed restrictions are required by NR115 and that Staff felt that self-reporting may be the most efficient way to ensure mitigation practices are maintained. They indicated that they envisioned requiring an inspection by a landscape or natural resource professional every few years. The committee agreed with this approach. Staff advised that they would prepare recommended reporting requirements for the committee's consideration. A question was raised as to whether mitigation would continue to be used for certain

Board of Adjustment cases. Staff confirmed that mitigation can continue to be used by the Board of Adjustment.

4. Set next meeting date.

The next SZAC meeting was set for April 28, 2016 at the Waukesha County Administration Center.