

**WAUKESHA COUNTY  
MINUTES OF THE PARK AND PLANNING COMMISSION  
ADMINISTRATION CENTER, ROOM AC 255/259  
THURSDAY, JULY 15, 2021 - 1:00 P.M.**

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**CALL TO ORDER**

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

Commission

Members Present: William Mitchell      Robert Peregrine      James Siepmann  
William Groskopf      Thomas Michalski

Members Absent: Richard Morris

Staff

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

**CORRESPONDENCE:**      None.

**MEETING APPROVAL:**      None.

**MINUTES:**      Approval of the June 17, 2021, Minutes.

*After discussion, Mr. Siepmann moved, seconded by Mr. Peregrine and carried unanimously for approval, of the June 17, 2021, as presented.*

**PUBLIC COMMENT:**      None.

• **RZ80 (Kaerek Riteway Bus) Town of Lisbon, Section 2**

Mr. Fruth pointed out the location of the property at N95 W23759 County Line Road in the Town of Lisbon on the aerial photograph. He indicated the request is to rezone the property from the A-10 Agricultural District to the R-2 Single-Family District (Town).

Mr. Fruth indicated the property was recently before the Commission for a land use plan amendment. The property is located on the county line, south of CTH Q and east of North Road in the Town of Lisbon and contains approximately 42 acres. In February 2021, the Town of Lisbon Board adopted the rezone, however, they incorrectly amended the C-1 wetland areas to an upland category. In May 2021, the error was corrected and the rezone was adopted by the Town of Lisbon Board. He noted the corrected Town ordinance is still under review by the Town Attorney and the proposed rezone cannot be advanced until the corrected Town Ordinance has been received. The proposal would allow a 19 lot residential subdivision with lots approximately 1 acre in size with access from the west and a stub to the south. There is an area of wetlands in the northwest corner which will be conserved.

*After discussion, Mr. Peregrine moved, seconded by Mr. Michalski 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.*

- **RZ81 (Kaerek Riteway Bus) Town of Lisbon, Section 2**

Mr. Fruth pointed out the location of the property at N95 W23759 County Line Road in the Town of Lisbon on the aerial photograph. He indicated the request is to rezone the property from the A-1 Agricultural, HG High Groundwater and C-1 Conservancy Districts to the R-2 Residential District (HG and C-1 will remain unchanged) (County).

Mr. Fruth indicated the petitioner is requesting to divide off approximately 1.15 acres of land on the northwest portion of the property and attached it to the adjacent property to the west. The property would be rezoned to the R-2 Residential District and would match the Town designation.

*After a brief discussion, Mr. Siepmann moved, seconded by Mr. Peregrine 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.*

- **RZ83 (Town of Mukwonago Board) Town of Mukwonago**

Mr. Fruth pointed out the location of the properties on the aerial photograph. He indicated the request is for a comprehensive map amendment to rezone part or all of various properties in Section 2 of the Town of Mukwonago to correct a mapping error.

Mr. Fruth indicated this would be an area wide change for a number of properties located in the Valley Woods subdivision (located south of CTH I) from the P-1 Public District to either the A-1 Agricultural District or the R-1 Residential District. The P-1 District was designated for the areas of environmental corridor on a number of lots within the subdivision. The existing Environmental Corridor overlay designation will remain for the properties. There is a parcel included in the rezoning which is State owned by the WDNR and the Town would like to change the zoning on it from the P-1 Public District to the A-1 Agricultural District because it was part of a planned unit development.

*After discussion, Mr. Siepmann moved, seconded by Mr. Peregrine 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.*

- **CU59 (Joseph and Cyle Firnrrohr) Town of Ottawa, Section 1**

Mr. Fruth pointed out the location of the property at W349 S2040 Waterville Road in the Town of Ottawa on the aerial photograph. He indicated the request is for after-the-fact land altering activities associated with the construction of 2 landscape berms.

Mr. Fruth explained there is a current violation complaint regarding fill being stockpiled on the property without the necessary permits. The petitioner applied for an after-the-fact conditional use for 2 landscape berms which are approximately 20 ft. wide and 5 ft. in height to be placed on either side of the driveway entrance near Waterville Road. He noted there is a 33 ft. trail easement (Ice Age Trail) between the proposed berms and Waterville Road. The material placed on the property is close to the wetland and easement boundaries. Conditions of note include:

- The grading activities must be constructed outside of the Ice Age Trail easement and isolated natural resource areas. To confirm this, an As-Built grading plan must be provided to the Planning and Zoning Division staff.
- A stormwater permit would be required.
- The fill material be topped with 4 in. of topsoil.
- The project completion date would be September 15, 2021, and the As-Built survey of the berm construction is required to be submitted 30 days after the completion date.

*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.*

- **CU54 (Dan and Diane Bay) Town of Mukwonago, Sections 29 and 30**

Mr. Fruth pointed out the location of the property in Sections 29 and 30 of the Town of Mukwonago on the aerial photograph. He indicated the request is to amend the existing Conditional Use (CU-1285) for Lakewood Farms Preserve to allow the petitioners’ lot to exceed planned unit development impervious surface standards with consideration of alternative mitigation.

Mr. Heermans, Senior Land Use Specialist indicated the property is located within the Mukwonago River Watershed. The petitioners own Lot 7 within the subdivision and are proposing to amend the terms of the Conditional Use to allow for treated impervious surface in the form of a rain garden, to treat their existing illegally placed patios and walkway, which exceed the 7,500 sq. ft. impervious surface maximum requirement. The Town and County affixed impervious surface limitations to the original Conditional Use and noted that Condition No. 44 states that the amount of impervious surface for Lots 4 through 9 was limited to 7,500 sq. ft. per lot because of the close proximity to a natural area which was deeded to the Waukesha Land Conservancy by the developer. In 2011, a Zoning Permit was issued to the Bay’s for the construction of a new single-family residence with attached garage and screen porch. The residence and driveway complied with the 7,500 sq. ft. impervious surface limitations, and at the time, impervious surface was not regulated countywide and the county had not yet defined whether overhangs count as impervious. Impervious surface standards were officially adopted by the County in 2016 and roof overhangs are now included as part of the definition, however, the Town of Mukwonago does not count such overhangs. Condition No. 7 of the petitioner’s approved Zoning Permit stated that no retaining walls, decks, or patios were permitted as part of the new home permit. The petitioner indicated that the landscape company installed 2 concrete patios during construction of the new residence and indicated that no permits were obtained, which was an oversight.

Mr. Heermans said in February 2021, the County received an anonymous complaint that the Bay property exceeded the allowable impervious surface limitations. An as built survey was submitted which indicated the unpermitted sidewalk and 2 unpermitted patios had exceeded the overall impervious surface at 7,830 sq. ft., 330 sq. ft. over what is allowed excluding the roof overhangs. The petitioner was given 3 options to resolve the violation:

1. Remove the unpermitted impervious surface.
2. Remove the excess impervious surface and replace it with pervious pavement or permeable pavers.
3. Apply for an amendment to the existing Conditional Use permit to allow for some type of mitigation.

Mr. Heermans indicated that the petitioner offered to construct a rain garden to mitigate the additional impervious surface. The rain garden has been oversized to handle roughly ten times more water than would be expected from the area of impervious surface coverage. Rain gardens allow water to soak into the ground and replenish the groundwater and prevent flooding. He noted that a Stormwater and Erosion Control Permit would be required. The Planning Staff is recommending approval of the request with conditions. Conditions of note include that the Bay's lot (Lot 7) is allowed a maximum impervious surface area of 8,220 sq. ft. but must provide mitigation in the form of a rain garden to treat the impervious surface and a Stormwater and Erosion Control Permit must be obtained. The Town approved the request. He noted there was concern from lot owners in the subdivision and members of the Town Plan Commission and Board as to whether or not the request should apply to one, individual lot owner or all owners in the subdivision. Ultimately, the request was approved for Lot 7 only to remedy the violation.

Chairperson Mitchell clarified that a Deed Restriction is being required which will pass with the property for any new owners of the property in the future, to which Mr. Heermans replied "Yes."

Mr. Groskopf asked if there were impervious surface requirements prior to the County's adoption in 2016? Mr. Heermans responded that the impervious surface requirements were applied by the town to this subdivision because of its presence in the Mukwonago River watershed. Mr. Groskopf asked if there were mitigation options at the time the Town imposed the requirements. Mr. Heermans responded the initial permit was amended in 2008 to allow for pervious concrete. Mr. Siepmann asked how much the downspout picks up from the back of the residence? Mr. Heermans replied that he was unsure. The petitioner explained that the downspout picks up a fairly large area of roof. Mr. Siepmann asked if the backyard would need to be regraded, to which Mr. Heermans replied that the natural grade of the property runs from the back of the driveway, south towards the proposed rain garden and no grading should be required. Mr. Bay, petitioner, introduced himself and explained the builder figured the inside square footage of his home and did not realize that the original As-Built survey should include the outside square footage and did not create the patios and sidewalk maliciously and wants to be in compliance. Mr. Michalski asked what type of maintenance is required for a rain garden? Mr. Bay responded that it needs to be weeded to make it look decent and debris needs to be removed so it is able to absorb water. Mr. Fruth noted that some species may need to be replaced if wildlife browsing occurs or some plants fail to perform.

*After discussion, Mr. Michalski moved, seconded by Mr. Peregrine 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.*

• **CU60 (Goeman Ruebl) Town of Merton, Section 30**

Mr. Fruth pointed out the location of the property at W332 N6345 CTH C in the Town of Merton on the aerial photograph. He indicated the request is for land altering activities associated with the construction of a new single-family residence with an attached garage, deck and retaining walls.

Mr. Heermans indicated the property was previously 2 lots which were combined earlier in 2021. The property contains steep slopes to Okauchee Lake. The 2 existing residences and boathouses have been removed and the lot is currently vacant. The petitioners are proposing to construct a new single family residence with an attached garage, deck and retaining walls. In order to provide level access from the road to the home and garage, significant fill, approximately 6 ft. would be needed on the roadside of the

residence. The lakeside of the residence would require approximately 5 ft. of fill due to the steep slopes. In order to retain and stabilize the lakeside fill and provide adequate frost protection for the new foundation and better accessibility across the site, a series of retaining walls ranging from 3 ft. to 5.5 ft. in height is being proposed. Swales, dry creek beds, catch basins and drain tiles have been incorporated into the proposed grading plan. The Waukesha County Land Resource Division staff has reviewed the proposed grading and drainage plans and determined that the proposed retaining walls are necessary to stabilize the slope and protect the foundation of the home. He noted that the Waukesha County Board of Adjustment acted on the retaining walls proposed within 75 ft. of the shore which required a shore setback variance. The variance was approved, however, the Board removed a condition stipulating that a Deed of Restrictions be prepared stating that no boathouses could be constructed on the property in perpetuity. The Planning and Zoning Division staff is recommending approval of the request with conditions, however, staff has recommended that no boathouses be allowed. He explained the reason for the condition is that the site is heavily manipulated and allowing a boathouse on the property would further the need for additional grading. He noted it is a trade off for allowing the retaining walls and to not have further destruction of the site. There are flat areas that the petitioners could utilize for enjoyment of the property.

Mr. Groskopf stated that the boathouse would contribute to footprint and asked if the maximum impervious surface had been reached. Mr. Heermans explained that the petitioners have approximately 215 sq. ft. left and boathouse minimum size standards are 200 sq. ft. Mr. Groskopf said they would have room for a small boathouse. Mr. Heermans responded that the petitioners are reducing the impervious surface on the lot and indicated that 29.3% is being proposed and 30% is permissible. Mr. Groskopf asked what the impervious surface was on the existing lot to which Mr. Heermans replied 60.2% for both lots (2 residences, garages, boathouses, driveway, etc.) In addition, Mr. Heermans explained the Planning and Zoning Division staff is recommending that the proposed retaining walls be screened with vegetation consistent with the landscape plan.

Mr. Groskopf asked why the Planning staff opposes allowing the petitioners to have a boathouse on the property after the Waukesha County Board of Adjustment removed the condition? Mr. Fruth explained that the petitioner's proposal includes a significant set of retaining walls, more than what existed on the 2 separate lots before they were combined and variances were needed for the retaining walls too close to the shore and it is a departure from what are typical terrain conditions. The petitioners are not planning for a boathouse according to the plans submitted, and the staff felt it would be a double dip to propose a further significant modification to the shoreline when there is already a definite plan being advanced with the series of retaining walls. Mr. Siepmann asked if having a boathouse would significantly change the view from the lake, which is the goal of the ordinance? Mr. Fruth responded it is more than just views, including impervious surface very near the water and he stressed the retaining walls approved by the Board of Adjustment count as impervious surface. Mr. Siepmann asked if the petitioner would want a boathouse in the future? The petitioner said in the future, they may want to have small storage building for items (kayaks, life preservers, paddleboards, etc.) because it is a far walk up the steps from the lake to the house. Mr. Ruebl added that it is not being proposed at this time, but it would be nice to have the option to do it in the future. It would keep the area near the water clean and from an accessibility or safety standpoint, it might be a good idea.

After a lengthy discussion, the Commission decided to remove Condition No. 6 regarding a boathouse not being allowed on the property.

*After discussion, Mr. Siepmann moved, seconded by Mr. Peregrine and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation” with the removal of Condition No. 6 which states:*

~~*6. A Declaration of Restrictions shall be prepared stipulating that no boathouses can be constructed on the property in perpetuity. The restriction shall be submitted to the Planning and Zoning Division staff for review and approval. Prior to the issuance of any permits, the approved 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 Planning and Zoning Division staff.*~~

*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 010 (Thomas and Nancy Conlin) Town of Oconomowoc, Section 36**

Mr. Fruth pointed out the location of the property at N53 W34451 Road Q in the Town of Oconomowoc on the aerial photograph. He indicated the request is for approval of retaining walls within 5 ft. of the west and east property lines.

Mr. Fruth indicated the property is located on Tierney Lake. A total of 4 retaining walls are being proposed to be replaced on the steep slopes. A small portion of the westerly retaining wall proposed to be replaced exceeds 4 ft. in height. A condition was added stating that a registered engineer review and approved the retaining wall plan to ensure safety. The petitioners are proposing to remove a lannon stone patio near the shore. Mr. Dowden, landscape architect, presented photographs of the existing and newly proposed retaining walls.

*After a brief discussion, Mr. Siepmann 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.*

**ADJOURNMENT**

*With no further business to come before the Commission, Mr. Peregrine moved, seconded by Mr. Michalski to adjourn the meeting at 2:01 p.m.*

Respectfully submitted,

*Thomas Michalski*

Thomas Michalski

TS:kb