

PLAN COMMISSION MEETING

Tuesday, May 2, 2017

Members present: T. Oberhaus, L. Krause, E. Kranick, C. Dundon, K. Fitzgerald, G. Reich

Member absent: P. Kanter

Also present: T. Barbeau, *Town Engineer*, 33 citizens

First order of business: Call to Order and Pledge of Allegiance

Chairman Oberhaus called the meeting to order at 7:01 p.m. and led all in the Pledge of Allegiance.

Second order of business: Approval of the minutes of April 5, 2017.

**MOTION BY MR. FITZGERALD, SECONDED BY MS. DUNDON, TO APPROVE THE MINUTES OF THE APRIL 5, 2017 MEETING AS AMENDED.
MOTION CARRIED.**

Third order of business: Communications (for discussion and possible action):

- A. Email from Judy Sandgren regarding the proposed residential subdivision on the Riemer and Sheets farm

Fourth Order of business: Unfinished Business:

- A. Michael & Donna Southard, W302 N898 Maple Avenue
Re: Consideration and possible action on the approval of a Certified Survey Map to split their land into two (2) lots located at the southwest corner of Maple Avenue and Bryn Drive.

**MOTION BY MR. KRANICK, SECONDED BY MS. DUNDON, TO REMOVE THIS ITEM FROM THE TABLE.
MOTION CARRIED.**

Engineer Barbeau explained that Mr. Southard's attorney advised him not to include the easement discussed at the last Plan Commission meeting or deed restrict Lot 2. Engineer Barbeau said the Town could require that a condition be placed on the CSM in the form of a note that states that "in the event that Lot 1 is split in the future and an access is located directly adjacent to Lot 2 of this CSM, then the owner of Lot 1 must allow access from Lot 2 of this CSM to the easement and access drive and the owner of Lot 2 must connect his/her driveway to that access drive at that time and remove and restore any other access to the satisfaction of the Town". The surveyor has addressed all Town comments. He is waiting for comments from Waukesha County. The new site will be served by a mound system. SEWRPC will be re-delineating the wetland boundary this spring and the new boundary and 75 ft. setback will be shown on the CSM.

Subject to the resolution of the direction given to Mr. Southard at the last meeting with respect to the deed restriction, Engineer Barbeau recommended approval of the Certified Survey Map subject to the following:

1. Incorporating the updated wetland delineation onto the CSM and notation of a 75 ft. setback.
2. Incorporation of any technical comments from the other reviewing agencies (City of Delafield, Waukesha County)
3. Applicant shall, on demand, reimburse the Town for all costs and expenses of any type that the Town incurs in connection with this CSM, including the cost of professional services for the review and preparation of required documents or attendance at meetings, as well as to enforce the conditions in this conditional approval due to a violation of these conditions.

Engineer Barbeau expressed his concern about trying to make sure that the Town can have a restriction on the property regarding the farmhouse driveway and any possible future driveway to the south at this time when the same property owner is involved. Mr. Southard has indicated that if Lot 1 of the CSM was ever split, the Plan Commission at that time could require the farmhouse to connect to the new driveway. But if that didn't happen there would still be access off of Bryn Dr. near the 90 degree turn that could be used to access a lot further to the south.

Mr. Southard would like to keep all of the options open so that future access could either be along Bryn Dr. or within the 66 ft. access area on the northwest side of Lot 1. The farmhouse drive could be moved to the east at any time. He stated that there's still access available on the farmhouse property Lot 2 from the existing driveway to the east. If for some reason that owner wanted to move the driveway further east, they could do so at any time even before any potential future easement is created there. He'd like to keep some flexibility on the north side of the property regarding moving that driveway in the future. He said that on the last CSM that was presented, he had no access all along Maple on the north property boundary except for the farmhouse drive.

Mr. Oberhaus and Engineer Barbeau clarified that if Lot 1 is ever divided again, the split would require Plan Commission approval with a new CSM. The Plan Commission could act as they determine is best at that time. Lot 2 would not be involved in any future division of Lot 1. The owner of Lot 2 could not be forced to connect to Lot 1 because that property would not be part of the new CSM. The main issue for the Town is that for safety reasons it does not want two driveways close to each other on that section of the road. Currently, even though the mirror shows what's coming from the west, the farmhouse driveway is in the wrong spot for safe access.

Mr. Kranick added that the Plan Commission wants to make sure that in the future, should that lot be split, there isn't a situation where the Town has two driveways within 50 ft. Any potential future driveway access on Maple Ave. should be one driveway and in a safer location than the driveway that's been there for 100+ years.

Mr. Fitzgerald stated that the current plan is fine but if the owners come back for a split in the future they may have problems with the driveway locations on Maple Ave. or the Town may allow a driveway on Bryn Dr.

Mr. Krause said that having two driveways on Bryn Dr. is not bad because of the traffic situation.

Mr. Reich requested that this discussion be documented so that if, 5 years from now, the Lot is developed and the Plan Commission membership has changed, the Town representatives have the ability to see what the current members thought about future development in this location. He would like a notation on the CSM that at the discretion of the Plan Commission, any future development of Lot 1 would have driveway access to Bryn Dr. or it may have access to Maple Ave. if the farmhouse driveway hooks up to it.

Mr. Kranick stated that the note issue is what brought this topic back to the Plan Commission because the owners did their due diligence and learned that they will have legal issues with the addition of a note. They have requested that a note not be added. Ultimately, he said, this body or future bodies like this one will have to make the call at the time that further development of this property is proposed as to where they want to allow the access.

MOTION BY MR. KRANICK, SECONDED BY MR. KRAUSE, TO RECOMMEND TO THE TOWN BOARD THE APPROVAL OF THE CSM DATED 4/19/2017 SUBJECT TO THE INCORPORATION OF THE FOLLOWING CONDITIONS:

- 1. INCORPORATION OF THE UPDATED WETLAND DELINEATION ONTO THE CSM AND NOTATION OF A 75 FT. SETBACK.**
- 2. INCORPORATION OF ANY TECHNICAL COMMENTS FROM THE OTHER REVIEWING AGENCIES (CITY OF DELAFIELD, WAUKESHA COUNTY).**
- 3. THE APPLICANT SHALL, ON DEMAND, REIMBURSE THE TOWN FOR ALL COSTS AND EXPENSES OF ANY TYPE THAT THE TOWN INCURS IN CONNECTION WITH THIS CSM, INCLUDING THE COST OF PROFESSIONAL SERVICES FOR THE REVIEW AND PREPARATION OF REQUIRED DOCUMENTS OR ATTENDANCE AT MEETINGS, AS WELL AS TO ENFORCE THE CONDITIONS IN THIS CONDITIONAL APPROVAL DUE TO A VIOLATION OF THESE CONDITIONS.**

MOTION BY MR. REICH, SECONDED BY MR. FITZGERALD, TO AMEND THE MOTION THAT A NOTE ALSO BE PLACED ON THE CSM "IN THE EVENT LOT 1 IS SPLIT IN THE FUTURE AND AN ACCESS IS LOCATED DIRECTLY ADJACENT TO LOT 2 OF THIS CSM, THEN THE OWNER OF LOT 1 MUST ALLOW ACCESS FROM LOT 2 OF THIS CSM TO THE EASEMENT AND ACCESS DRIVE OF LOT 1 AND THE OWNER OF LOT 2 MUST CONNECT HIS/HER DRIVEWAY TO THAT ACCESS DRIVE AT THAT TIME AND REMOVE AND RESTORE ANY OTHER ACCESS TO THE SATISFACTION OF THE TOWN."

AMENDMENT FAILED 3/3 WITH MR. REICH, MR. FITZGERALD AND MS. DUNDON VOTING "YES" AND MR. KRAUSE, MR. KRANICK AND MR. OBERHAUS VOTING "NO".

ORIGINAL MOTION CARRIED 5/1 WITH MR. FITZGERALD, MS. DUNDON, MR. KRAUSE, MR. KRANICK AND MR. OBERHAUS VOTING "YES" AND MR. REICH VOTING "NO".

- B. RJ Manders, Lake Country Auto, N47 W28229 Lynndale Road
Re: Consideration and possible action on modifications to the plan of operation/CUP to allow rental of U-Haul vehicles from the site

MOTION BY MR. KRAUSE, SECONDED BY MS. DUNDON, TO REMOVE THIS ITEM FROM THE TABLE. MOTION CARRIED.

Plan Commission members discussed:

- What is allowed under the current Plan of Operation and CUP;
- The type and number of vehicles, etc., allowed for sale, lease, and service on the property (Cars, trucks, trailers, a general auto dealership business);
- The amount of traffic involved with the dealership and its services;
- The U-Haul related business (lease, service, and possible sales of old equipment); the perception and appearance of the overall business operation (this is considered the gateway to the Town and is very visible); vehicles, etc., need to be displayed in an orderly manner;
- The need for the owner/operator to come for operational approvals prior to implementing the change.

Mr. Reich stated this is technically a different business than what was approved. He stated that the CUP was granted for car sales, servicing and leasing. A U-Haul business is different. He wondered how many U-Hauls will be involved and will this permission creep to allow a storage facility next. Mr. Reich said this is a very visible business. There should be a legitimate limitation on expansion of the business and it should not be a major U-Haul center.

R.J. Manders, general manager, Lake Country Automotive, stated the business is designed for sales and service. The U-Haul portion of the business is mainly for servicing of the U-Haul vehicles with some rental. He does not want the rental portion to choke out the car sales or the retail customer repair facility. He has no plan to bring in a storage facility which would be unrelated to his automotive business. Sales, service, leasing and rental of vehicles goes on at every dealership – it just may not be U-Haul related rentals. In October, the property was a blight to the Town but he states he has tried to make it a lot more presentable. He said he has brand new cars and clean, neatly parked used cars at his dealership in addition to the U-Haul business. He is proud of what his company is doing. The U-Haul part of the business has the capability of bringing many vehicles and area residents to his business due to both local and cross-country usage. He does not want U-Haul to change the characteristics of what he's trying to accomplish in his business with late model, used, high quality vehicles, building relationships with people, and serving a lot of local residents. He wants his business to survive the right way and he will seek Town approvals when appropriate.

Mr. Manders stated his intention is to have approximately 100 vehicles, as is allowed, on display. He has an estimated 42 used vehicles on the lot right now but wants his lot to look as full as possible. Although used vehicles will be the primary vehicles on display, he does display the U-Haul trucks and trailers. He is trying to foster his business so that it is successful in that location.

Mr. Kranick expressed concern about the perception of any business operation on that property since it is the gateway to the Town. He said it is better to have a business like this dealership with U-Haul trucks than to have a vacant building on the property. He wants to be sure that any business operation changes are done properly.

Mr. Reich hopes the business is successful but doesn't want the U-Haul portion of the business to be so prominent. He wanted to restrict the number of U-Haul vehicles that are visible in the front display area.

Mr. Oberhaus commented that Mr. Manders is the business owner and knows what he perceives to look the best to bring in customers and do business. The job of the Plan Commission is to prevent blight on the community. He asked the Plan Commission members to indicate if they considered this Plan of Operation to be a significant change to the CUP. **Mr. Oberhaus requested that the minutes reflect that the Plan Commission determined that the revised Plan of Operation is not a significant change to the CUP.**

MOTION BY MR. FITZGERALD, SECONDED BY MR. KRAUSE, TO APPROVE THE PLAN OF OPERATION AS PRESENTED AND MAKE CONFORMING CHANGES TO THE CONDITIONAL USE PERMIT AS REQUIRED. MOTION CARRIED 5/1 WITH MR. FITZGERALD, MS. DUNDON, MR. KRAUSE, MR. KRANICK AND MR. OBERHAUS VOTING “YES” AND MR. REICH VOTING “NO”.

Fifth order of business:

New Business:

- A. Elizabeth Riemer Survivor’s Trust/Larry and Judy Sheets Living Trust, owners, by Bill Zach, Iron Pipe Development
Re: Consideration and possible action on the following matters related to a single family development on lands located west of Cushing Park Road, south of Abitz Road and north of Scuppernong Creek in the Northwest ¼ and Southwest ¼ of Section 31, Town of Delafield, Tax Key No. DELT0842-999:
- a.) Rezoning a portion of their land from A-2 Rural Home to A-1 Agricultural District
 - b.) Planned Unit Development Conditional Use Permit to allow the development of the land as a single family subdivision.

On April 11, 2017, the Town Board and Plan Commission held a public hearing regarding rezoning a portion of the subject property from A-2 to A-1 in order to create a consistent zoning on the property and in preparation of an A-1 PUD Conditional Use request. Zoning to the west of the property is A-2; to the north A-2, to the east A-1 (however, a number of the lots are legal non-conforming) and to the south is A-2 on the Riemer/Sheets property and M-1 south of the Scuppernong Creek. The Land Use Plan (LUP) designation is “Rural Density and Other Agriculture Lands”; however, the text portion of the LUP allows the lands to be developed under a 2.75 acre per unit Planned Unit Development.

Mr. Oberhaus and the Plan Commission members complimented the residents present regarding their conduct and participation in the recent public hearing on this topic.

Engineer Barbeau explained the rezoning, planned unit development, density, lot layout, traffic calculations, and groundwater resources information. He made the following recommendations:

Zoning: The developer has stated that he has no intent to farm the open space lands or allow it to be used for agriculture. Therefore, he stated that he cannot recommend that the land be rezoned to A-1 for an eventual A-1 PUD.

Planned Unit Development CUP: The Town’s Land Use Plan and Zoning Code support the development of these lands as a PUD. Until the zoning of the land is determined, no action should be taken on the Conditional Use request. A different zoning on the land will affect the lot layout. He said the Town may want to seek additional information from the developer regarding a definitive plan for the restoration of the open space and the anticipated home construction requirements.

Engineer Barbeau said that rezoning is typical and is usually tied to the layout of the subdivision. Conditions of the CUP can be worked out but the zoning can move ahead. In A-1 zoning, the lots are smaller but the number of lots doesn’t change. In A-2 zoning, there is a reduction in the common open space and the lots are larger than in A-1. Since lot width is different, the layout is affected. Engineer Barbeau stated that the CUP can require what happens in those open spaces. The developer usually presents a plan regarding seeding areas as prairie, adding trees and walking paths, etc.

Mr. Fitzgerald questioned the type of zoning that is appropriate for this development. He concludes that this is a residential development – not agricultural. If it is rezoned, he said A-2 zoning would be appropriate for the entire parcel.

Mr. Oberhaus said that in recent years the Town has found it to be better to make the lots smaller and have bigger, commonly owned open space. He stated that the Town’s experience is that big lots do not make an area look like a neighborhood. Few people want to maintain a large lot. Larger amounts of open space in subdivisions can be turned into prairie or have lots of trees planted to continue the rural environment.

Mr. Reich agreed saying that from an ecological standpoint it is better to have building concentrated with open common areas as the Town has done in recent history. It supports wildlife and groundwater better and fosters knowing your neighbors.

Mr. Kranick questioned how the Plan Commission wants the open space to look and suggested that that would help determine the zoning.

Mr. Krause suggested zoning the property A-1 with more open space. He would like a few less lots, especially along Abitz Rd. Lots 1-6 could use a tree buffer along Cushing Park Rd. Ms. Dundon agreed with having fewer lots.

MOTION BY MR. KRAUSE, SECONDED BY MS. DUNDON, TO RECOMMEND TO THE TOWN BOARD THE REZONING OF THIS PROPERTY FROM A-2 TO A-1. MOTION CARRIED 5/1 WITH MR. REICH, MS. DUNDON, MR. KRAUSE, MR. KRANICK AND MR. OBERHAUS VOTING "YES" AND MR. FITZGERALD VOTING "NO".

Plan Commission members gave the following direction to the developers:

- Please present a plan showing the open space design.
- Suggested removing lots 23 and 36 (closest to Abitz Rd.)
- Surrounding density, not including Hunt Club Farms, averages 4 acres; this plan is too dense, the Code allows more lots but it should be more toward 27-30 lots to put the density more similar to the area
- Reconsider the road placement. It might be better to line up the intersection of Rustic Lane with the cul-de-sac coming off Abitz Rd. so there'd be only one intersection with good visibility. A road with lights shining into a neighbor's home will not be approved. The developer may need to reconstruct a portion of Abitz Rd. for sight distance.
- Consider connecting a walking path along Abitz Rd. to the Paul Sandgren Trail.
- Wow the Plan Commission with what it will look like from the other side of the road. Make it like you are almost in a state forest.

Bill Zach, developer, and Keith Kindred, SEH, responded to the comments and presented a video of the proposed subdivision. Mr. Zach explained that they are attempting to preserve the current topography of the land. The area across from Rustic Lane is the lowest part of the property and will catch stormwater which is why they did not position the cul-de-sac entrance in that location. Their presentation showed trails connecting the cul-de-sac to the Paul Sandgren Trail and an easement so that the path can extend to other trails in the future. There would also be an easement by the cheese factory area for future use. Mr. Zach wants to keep the development as natural as possible but has not yet done a landscaping plan. The majority of the tree line will be preserved. Planting is planned for in the 100 ft. buffer open space area so that people driving past are not looking at the back of people's homes. He has increased the set-backs on lots 1-3 and did some density calculations for the lots resulting in about 3.4 acres for density.

Since this was not a public hearing, members of the public were encouraged to put their comments in writing and get them to the Clerk for presentation for the next Plan Commission meeting.

**MOTION BY MR. REICH, SECONDED BY MS. DUNDON, TO TABLE THIS ITEM.
MOTION CARRIED.**

- B. Jim and Janet Kuehn, W150 N7362 Wood View Drive, Menomonee Falls, WI.
Re: Consideration and possible action on a request to construct a retaining wall within 5 feet of a property line located on a vacant property north of and adjacent to W310 S478 Maple Avenue.

The Kuehn's own a 43 acre of land that was created in 1997 but never built on. The lot was created as a lot that does not abut a public road. Access to the lot is gained through a permanent shared access easement that is recorded with the County Register of Deeds. The owners are proposing to construct a house on the lot and in order to minimize damage to an isolated natural resource area and a sensitive grove of pine trees on a steep slope, they are proposing to build the driveway 1 ft. east of a delineated wetland area. To construct the driveway, they are proposing to build a retaining wall on the west side of the driveway and a portion of the east side of the driveway. Both walls cross the property line between the Kuehn property and the property to the south; therefore, it will be constructed within 5 ft. of the lot line.

Engineer Barbeau reported that the owner has provided notice to the adjacent neighbor for the Board of Appeals hearing as well as the Plan Commission meeting. The Board of Appeals granted their request for their driveway to be within 1 ft. of the wetland. Engineer Barbeau has reviewed the plans and found them to be in order. The plans indicate a wall height of no more than 3 ft. The owner plans to install a culvert to allow water to pass from east to west towards the wetland. Grading for the project will be minimal and no grading plan is necessary. The schedule is to have the driveway constructed this spring. There is no indication when the house will be constructed.

Engineer Barbeau said that the wall will not adversely affect the adjacent neighbors and the Town has not received any negative feedback from the neighbors regarding the proposed wall and driveway. The access easement allows a driveway to be installed within the easement area. Therefore, he recommended approval of the request and drawings prepared by David J. Frank Design Group dated 2/23/17. Engineer Barbeau stated that there can be no further development on this property other than the construction of the home.

Mr. Oberhaus stated he would have liked confirmation of the neighbor's approval.

**MOTION BY MR. FITZGERALD, SECONDED BY MR. REICH, TO APPROVE THE REQUEST TO CONSTRUCT A RETAINING WALL WITHIN 5 FT. OF A PROPERTY LINE LOCATED ON A VACANT PROPERTY NORTH OF AND ADJACENT TO W310S478 MAPLE AVE. AND THE DRAWINGS DATED 2/23/17 BY DAVID J. FRANK DESIGN GROUP.
MOTION CARRIED.**

C. Judd Wagner W303 N2606 Maple Avenue

Re: Consideration and possible action on a request for an exception to allow less than 20-ft. separation between principal structures for a proposed house at W303 N2606 Maple Avenue that will replace two existing non-conforming homes on lot.

Engineer Barbeau explained that Mr. Wagner proposed removal of two existing legal non-conforming structures on his land and building of a single family home. The width of his lot is 41.41 ft. at Maple Avenue and 34.40 ft. at Pewaukee Lake. (The lot to the north is 43.10 ft. wide and the lot to the south is 40.0 ft. wide.) His builder met with Waukesha County and determined the allowable building envelope. Due to the shore setback averaging provision imposed on this property (former Town Code provision now incorporated into the County's code) and the front setback averaging (former Town Code provision now incorporated into the County Code), and the side yard offsets of 7 ft., the resulting building envelope is approximately 50 ft. by 25 ft. Taking into account overhangs on the adjacent homes, the resulting separation distance is 12.4 ft. to the south and 16.2 ft. to the north. The applicant indicated that if they were to meet the required 20 foot separation, the resulting home would be approximately 15.5 ft. wide.

Mr. Wagner completed the Town's Decision Sheet stating that "Building a home that is 12'-15' wide provides a circumstance where enforcement of the requirements of Section 37 would result in a severe burden. This would make building a home suitable to our needs basically impossible." "The Town of Delafield's requirement will take away from the property's value as nobody will be interested in purchasing land that restricts the homeowner to building a house that is 15 feet in width. All of the surrounding properties are significantly wider than 15 feet." "The requested exception to follow the County of Waukesha's 7' side yard setback will not result in detriment to either neighbor. Our plan....has been discussed with our neighbors and is supported by both....we will be replacing an eye sore with a well-built home that does not materially impair the spirit of Section 37. The existing property is currently non-conforming and the homes will be replaced with a home built....in the spirit of the Town of Delafield's Comprehensive Plan – 2035."

Engineer Barbeau explained that the only way for the Plan Commission to deal with this type of request is to use the exception/decision sheet. Mr. Wagner's reasoning is on the sheet provided in the packet.

Mr. Wagner stated he bought the land knowing there are rules regarding what they can and cannot do. He has the approval of the County. The County has the 20 ft. separation requirement from the Town in their Code. He is now appealing to the Town for approval of the exception so that his house is suitable for his family and isn't only allowed to be 15 ft. wide in some areas and a maximum of 12 ft. wide in others. He explained that the current 900 sq. ft. cabin and the house on the property are very close to the property lines. He does not consider those structures to be safe or suitable for his family to occupy. The existing footprint won't work since the location of a new structure

needs to be moved in order to meet current rules. There is only one location on the lot where his house can be built. His new home will be an improvement to the property and closer to where a home should be placed. The two structures on the property, which have been rentals, will be taken down. One renter is already gone and the other is being allowed to stay until Sept. 1. He does not want to be an owner of rental properties. If the exception is not granted, he believes he won't be able to sell the property since the size restrictions will be recorded and will limit what any future buyer could build. He has discussed his plans with the owners of the neighboring properties and stated that they are both supportive of his plans. He has assured the neighbors that the grading plans will not create drainage problems for their properties. He won't be building until the fall so that construction doesn't disturb the neighbors as they enjoy their lake property this summer.

Engineer Barbeau said that Mr. Wagner's plans for a 25 X 50 ft. home with a walk-out basement will maximize the space on the property and will be similar to a nearby house. He noted that one neighbor is concerned about drainage. There will be a condition that a grading plan needs to be submitted to both the County and to the Town Engineer for approvals.

Mr. Oberhaus reviewed the decision sheet with the following results from Plan Commission members:

- Exceptional circumstances: All agree there are exceptional circumstances. No objection.
- Preservation of property rights: All agree there is a need to preserve property rights.
No objection.
- Absence of Detriment: All agree there is an absence of detriment to adjacent properties and this will be a benefit to the Town. No objection.

MOTION BY MR. KRAUSE, SECONDED BY MS. DUNDON, TO GRANT THE REQUEST TO MAKE AN EXCEPTION TO THE TOWN OF DELAFIELD'S 20 FT. SEPARATION REQUIREMENT BETWEEN STRUCTURES FOR THE PROPERTY AT W303N2606 MAPLE AVE. MOTION CARRIED.

Sixth order of business: Discussion: None

Seventh order of business: Announcements and Planning Items:

- Next meeting - Tuesday, June 6, 2017
- July meeting - Tuesday, July 18 due to lack of a possible quorum on July 5

Eighth order of business: Adjournment

MOTION BY MR. KRAUSE, SECONDED BY MR. REICH, TO ADJOURN AT 8:46 P.M. MOTION CARRIED.

Respectfully submitted,

Lauren Beale
Deputy Clerk/Treasurer

Minutes approved on: June 6, 2017