

PLAN COMMISSION MINUTES

November 8, 2021

CALL TO ORDER: Chairman Wolter called the meeting to order at 6:33 pm.

ROLL CALL: Chairman Dean Wolter, Trustee Representative David Baum, Commissioners Matt Kimmler, Peter Nilles, and Tony Laszewski were in attendance. Commissioner Bill Shadid and Bob Williams were absent and excused. Also present were Community Development Director Jeff Retzlaff, Associate Planner Emily Zandt and Planning Assistant Lori Johnson.

PUBLIC INPUT:

None

APPROVAL OF MINUTES:

MOTION Baum second Nilles to Approve the Minutes from October 25, 2021.

MOTION carried unanimously.

Mark and Jennifer Reinert-W168 N12184 Century Lane and Jim Birmily-W168 N12196 Century

Lane. The property owners are requesting approval of a Land Use Plan map amendment, rezoning application and 2-lot certified survey map to divide the existing 4.9-acre residential property containing 2 existing single-family houses. Director Retzlaff summarized the proposal.

Public Hearing opened at 6:42 pm.

Public Hearing closed at 6:42

MOTION Baum second Nilles to approve the proposed 2020 Land Use Plan map amendment to change the 4.9-acre parcel from Agricultural/Conservation Residential to Rural Residential as proposed.

MOTION carried unanimously.

MOTION Baum second Nilles to approve Rezoning the property from the Rs-1:Single-Family District to the Rs-2: Single-Family District with a Planned Development District (PDD) overlay containing the following changes to the underlying Rs-2 District requirements as set forth in a formal conditions & restrictions resolution for the PDD:

- 1. Reduce the front/street yard building setback to 45 feet or the existing setback, whichever is greater (applies to the existing dwellings only).***
- 2. Reduce the side yard building setback to the existing setback or 15 feet, whichever is greater (applies to the existing dwellings only).***
- 3. Reduce the minimum lot width/frontage from 220 feet to the existing lot width/frontage.***
- 4. Revise the rear yard building setback to 25 feet outside of the delineated wetland boundary or 35 feet, whichever is greater.***

MOTION carried unanimously.

MOTION Baum second Nilles to approve the proposed 2-lot Certified Survey Map (CSM) to divide the 4.9-acre parcel jointly owned by Mark & Jennifer Reinert and Jim Birmily located on Century Lane subject to the following conditions:

- 1. All technical issues and plan corrections identified by the Public Works Department surveyor (see letter dated November 4, 2021) shall be addressed and reflected in a revised CSM submitted to the Village prior to Village Board action.***
- 2. The CSM shall be revised to include the underlying Rs-2 District setback requirements or as established in the PDD conditions and restrictions resolution.***

MOTION carried unanimously.

Matthew & Amy Seban for TLC Acres - W210 N10738 Appleton Avenue. Conditional Use Permit #08-19 requires that the CUP be reviewed by the Plan Commission one year after approval and include a public hearing. The purpose for this review is to receive a status report from the owner regarding the activities authorized under the CUP and compliance with the conditions upon which the CUP was granted for the 53.4-acre TLC Acres property. Director Retzlaff summarized the proposal. He indicated 3 complaints have been received related to mud tracking onto Appleton Avenue and have been addressed by the owner sweeping the roads and recently the construction of an asphalt driveway. He said no action is required or recommended by staff regarding the conditional use permit.

Matt Seban commented on his business. He stated he received 3 documented complaints in the 2.5 years he's had the property. He indicated it has become clear that the issues his neighbors have are with the construction of tier #2 and not the landscaping business. He said the completion of tier 2 has been delayed and he does not know when it will be finished. He indicated he has worked hard to reduce the neighbor's concerns by installing white noise backup alarms on his equipment, instructing the truck drivers to use vibrators and slam brakes only when necessary. He also paved the driveway and has maintained open communication with his neighbors.

Discussion followed. Trustee Baum said he's received complaints regarding noise saying that no one can sit outside on their porch in the evenings or weekends without hearing banging and beeping from trucks. Chairman Wolter asked Director Retzlaff if the public hearing is on the CUP that outlines the hours for the landscaping business and storing of vehicles and not for the fill or creation of the tiers. Director Retzlaff explained that filling and grading is allowed on a property with an erosion control permit if it is required.

Public Hearing opened 7:05 pm.

- Chairman Wolter read comments from Sara Bojarski, N105 W21151 Oak Lane - concerns with noise, banging of metal from dump trucks unloading, disruptive vibrations, noise pollution, mud, and a nuisance to the community, rocks on road, rescind the CUP for TLC Landscape.
- Chairman Wolter read comments given to him from Trustee Phil Hudson received from Bobby Siewert, N105 W21005 Oak Lane - still not a good neighbor to residents on Park Hill and Oak Lane, truck noise, street is dirty.
- Linda Arnold, W210 N10779 Appleton Avenue, did not feel she also needed to complain about the same issues as her neighbors, doesn't know if mud and dirt issue will be resolved after the asphalt driveway was put in, look forward to having good relations with TLC.
- Bill Paplham, W209 N10589 Oak Lane, has very little complaints, will live with the trucking until its finished, he's done a great deal with the property put in grass and trees and should be allowed to continue.
- Tanya Kapp, W210 N10735 Appleton Avenue, timeline has long passed, traffic is up, deliveries, numerous accidents, mailboxes knocked over, dust, trucks coming in before the sun comes up, traffic warning signs needed at top of the hill.
- Sharon Gleixner, W210 N10743 Appleton Avenue, her mailbox was hit 3 times, dangerous area with all the trucks coming and going, crazy hours, noise is loud with windows shut, workers are there as early as 5 am, dust, dirt, feels like a construction company.
- Tom Steinbach, W204 N10609 Hilltop Drive, said Mr. Seban has addressed his concerns, understands land owners have a right to do things on their property, he wants the project completed, there should be a way to measure noise, timeframe for completion needed, put controls on vibration issue and slamming tailgates.

- Dennis Myers, Trustee, spoke to Washington County regarding Appleton Avenue. State DOT went out and put signs up letting people know coming from north to south of upcoming traffic issues.

Public Hearing closed 7:37 pm.

Discussion followed. Director Retzlaff questioned if the dumping or truck noise is part of the landscaping operation or the tier construction, and will the noise and dust go away when the tier is completed. Clearly from the comments made, the trucks associated with the landscape business, are creating a dusty situation for the neighborhood and is related to the operations permitted under the conditional use permit that has specific days and hours of operation. Discussion continued regarding tier 2. Mr. Seban said he is not that far from tier 2 being finished but does not know how long that will take. He said his engineering firm has finished the topo and calcs for the loads, but he did not have that information with him for the meeting. Trustee Baum suggested that he provide that information to Director Retzlaff to determine a time frame of how long it will take to complete the project. Discussion continued regarding putting time limitations when trucks could dump but Mr. Seban said the project could take longer with those conditions. He said he doesn't haul any trucks on Sundays. Trustee Baum stated residents would be happy if dumping was limited to certain times. Mr. Seban said the neighbors have his personal cell phone number to reach him with complaints or concerns.

Director Retzlaff stated the Village Engineer was at the site to follow up and found the site was in compliance with the erosion control permit. He indicated the topographic survey could calculate how many more loads are required to finish, but a fixed number of loads are not brought in every day. Mr. Seban commented traffic has gone down significantly and that he hasn't had 200 trucks in the last month. Chairman Wolter asked if the Plan Commission could limit the number of trucks that can dump or based on the zoning is it a right of something that is allowed and could be contested. Director Retzlaff said he has reached out to the Village Attorney and asked the question can the hours be regulated beyond the standard hours in the code dealing with noise, essentially 10 pm to 6 am under a nuisance action, but he has not heard back. If a nuisance complaint is filed and investigated and is deemed to be creating a nuisance for the neighborhood, we would do something to mitigate the nuisance. But we have not heard complaints regarding noise, only the mud tracking. He encouraged residents to file a complaint.

Chairman Wolter explained the CUP deals with the businesses that are operated on the property, the fill is his right as a land owner based on the zoning. He asked the residents if their issues were caused by the fill or the business. The main complaints he's received have been noise of the dump trucks, dirt on the highway, banging and vibration, and hours of operation of the dumping which seems to be mostly related to the fill. So what can we legally do to help limit that but then knowing that limiting the time to dump will lengthen the time to fill the property.

Attorney Sajdak commented that the lack of complaints puts us in a tough spot. He said we could as part of a nuisance type action look to have limits on the numbers or hours, but it would be hard to establish there is nuisance because we don't have the complaints. Trustee Baum suggested Mr. Seban put a plan together to handle the complaints that will be coming forward.

Director Retzlaff asked the Plan Commission for feedback on the visual screening as listed in Condition #5 of the CUP. Trustee Baum stated Plan Commission wanted a fence, a wall, a berm or landscaping and it was not their intent for the owner to use a sea-can as a buffer. Mr. Seban feels

the sea-can looks better than a cedar fence adding he had planted 12 to 15 spruce trees along Appleton Avenue. The container is meant to block the view on the other side of the building. He understands it will still need to be approved. Director Retzlaff said the berm and trees along the north property line are satisfactory and the view from the west is hidden by the building. If standing on Appleton Avenue you could not tell there was anything behind the shipping container and it looks like the building. It is the view from the south that that is not buffered. Trustee Baum did not like that you can see the equipment and trucks. Mr. Seban stated he will commit to working with Director Retzlaff to screen it the way the Village wants. Trustee Baum stated he can accept using the shipping container if it is the same material as the building.

Chairman Wolter advised Mr. Seban the message was loud and clear tonight and whatever he can do to remedy the complaints would be appreciated from the Village as well as the neighbors. He added that people want to know about when the project will be completed and whatever he could do to provide that information would be appreciated. He said he can understand the aggravation and frustration that it causes the people that surrounding the property and he appreciated everyone coming out and for those that contacted us with their concerns as well as for Mr. Seban coming here and addressing each concern as it was brought to him.

No action was taken.

***MOTION Baum second Laszewski to go to Item E on the agenda.
MOTION carried unanimously.***

Jacob & Julie Schneider - N115 W20265 Woodland Drive. The property owners are seeking approval to construct a privacy fence in a front yard at a height of 6' on their residential lot.

***MOTION Baum second Nilles to Approve the proposed installation of a fence 6' in height along the Woodland Drive front/street yard for the residential lot located at N115 W20265 Woodland Drive.
MOTION carried unanimously.***

***MOTION Baum second Laszewski to go back to Item C on the agenda
MOTION carried unanimously.***

Robert Zignego - Lot 38 Harvest Hills Subdivision & Mike & Pamela Madrzak - N116 W13444 Elm Lane. The property owners are seeking approval of a 3-lot Certified Survey Map, Rezoning from Rs-3 single family residential to Rs-1 single family residential and Rs-2 single family residential and a Conditional Use Permit to allow development within the required 25' wetland setback for the property located north of the Elm Lane and Forest Drive intersection. Associate Planner Zandt summarized the proposal.

Public Hearing opened at 8:37 pm

- Chairman Wolter read a comment from Carrie Boehlke, she was concerned with water drainage, traffic on Elm Lane, the driveway is too big for one home.
- David Yurk, Surveyor-Payne and Dolan Inc., agent for Robert Zignego, questioned why staff is recommending Rs-1 Zoning because the owner wants to keep the woods on his lot. Associate Planner Zandt explained the Rs-1 zoning is better aligned with the zoning districts, allows horses as a permitted

use and larger accessory structures. She stated access to the buildable area of the lots without going through wetland and the 25-foot setback is preferred.

- Bruce Bernarde, N120 W13645 Freistadt Road, concerned about water, wetlands, the size of the driveway installed, future division of property
- Robert Zignego, N120 W17520 Freistadt Road, explained the Rs-2 lot line follows the tree line and the natural shape of the land. He said there aren't a lot of buildable sites on the property and changing the driveway gives up land for a 4.5-acre lot. He said there are no more wetlands on the property to cross and explained the larger driveway is to provide the fire department better access to the home sites.
- Marcus Stern, W132 N11550 Forest Drive, concerned that land may be devalued because of a half hazard development, the driveway is already in, and the wetlands were destroyed.
- Bob Aiken, N119 W17780 Cove Lane, thinks what the Zignego's have in mind will be very nice for their home, concerned with disturbing the wetlands and the driveway culvert pipe should have flared ends.
- David Yurk, State Statute allows one more lot, but needs approval from the Village.
- Bruce Bernarde, N120 W13645 Freistadt Road, does not have a problem with building a house, he has a problem with the water and the proper permit wasn't received to put the driveway in.
- Robert Zignego said he has a permit with the DNR and Army Corps of Engineers and a culvert permit from the Village. He thought that's all he needed.
- Marcus Stern, W132 N11550 Forest Drive, is there some recourse because Zignego didn't apply for a permit.

Public Hearing closed 9:08 pm.

Discussion followed. Director Retzlaff explained Mr. Zignego applied for and obtained a culvert permit for work in the right of way just off the edge of Elm Lane. Under the subdivision regulations for a private shared driveway for up to three lots, the proposed 30-foot ingress egress easement is consistent with what the code requires. However the driveway was constructed before consulting with the Village about anything north of the culvert in the right-of-way. He obtained permits from the DNR to fill small portions of the wetland but that doesn't mean the Village can't issue its own permit and does require a conditional use permit for encroachment into a setback area and make sure the wetland is protected. There was an assumption the amount of wetland was limited to what was shown, but there may be additional driveway wetland crossing further north that has not been accounted for in the conditional use permit and therefore it is incomplete, will need to be amended and action tabled.

Trustee Baum was comfortable with the width of the driveway but said a revised driveway survey showing the other wetland crossings is needed. He does not see the property becoming a subdivision because there is limited area where structures can be located. Director Retzlaff explained this parcel had a number of proposals to divide it, but the developer decided to create one single lot at that time and deal with it the future. At that time the Village thoughts were if the parcel was divided it should be with as few lots as possible because of the wetlands and other features. This plan is more consistent with what staff preferred. The change to the zoning will prohibit division of the property any further without coming back for a public hearing and rezoning and essentially prohibits any other division of the lots in the future. Mr. Zignego stated he has no intention of dividing the property any further.

***MOTION Baum second Kimmler to Approve the Rezoning of the 37.18-acre property from Rs-2:Single Family Residential and Rs-3:Single Family Residential to A-2:Agricultural to Rs-1: Single-Family Residential, as proposed by Village Staff:
Lot 1 - A-2: Agricultural***

Lot 2 - Rs-1: Single-family Residential

Lot 3 - Rs-1: Single-family Residential

MOTION carried 4-1 (Nilles)

MOTION Baum second Kimmler to Approve the proposed 3-lot Certified Survey Map (CSM) for the Zignego/Madrzak property to create two buildable lots and increase the acreage of the existing single-family lot totaling 37.18 acres into three parcels located north of Elm Lane subject to the following conditions:

- 1. All technical issues and plan corrections identified by the Village Public Works Director and consultant engineer in a memo dated November 4, 2021 shall be addressed and reflected in a revised CSM submitted and approved by the Public Works Department prior to taking the application to the Village Board for final action.***
- 2. Proposed Lot 2 shall be increased in size to meet the 5-acre minimum in the Rs-1 Single-family Residential District.***
- 3. ~~The proposed lots shall be reconfigured to allow access to the buildable areas on Lots 1 and 2 without additional encroachment within the required 25' setback from the delineated wetlands.~~***

Commissioner Nilles said he could not support approving the CSM until he sees the revised CSM with the adjusted lot lines.

MOTION to Amend Kimmler second Nilles to Postpone action until the CSM has been revised. MOTION to Amend carried.

MOTION to Approve as Amended to Postpone carried.

Director Retzlaff stated the CUP addresses the impact to the wetland setback area, but because the driveway now goes through more than what was originally thought, it will need to be amended. He requested a plat of survey or something showing where the driveway is.

MOTION Baum second Nilles to Postpone action on the Conditional Use Permit until there are drawings that show the wetland crossings.

MOTION to Postpone carried unanimously.

TR Capital LLC - W219 N11588 Appleton Avenue. The property owner is seeking approval of site development and building plans for three commercial self-storage buildings and outside storage on the 3.65-acre property. Associate Planner Zandt summarized the proposal. Discussion followed regarding the condition to revise the setback to meet the recommended 15 feet from the north property line in order to preserve the tree line.

Jon Then, TR Capital, said moving the building to meet the 15-foot setback will shrink it. Eric Roberts, TR Capital, said there is nothing along the north tree line worth saving and that they plan to put in a new berm with trees. He added that the abutting neighbor, Richard Ehrlich, W216 N11718 Appleton Avenue wants the trees removed because they are mostly dead. He asked that condition #3 be removed. Director Retzlaff said it was unfortunate there was nothing left in the tree line worth saving adding staff feels the landscaping needs to be enhanced there. He does not believe the amount and level of enhancement can be put within 10 feet. A revised landscape plan to enhance the buffer on the north needs to be submitted for review. Discussion continued. Director Retzlaff stated the zoning code sets minimum standards for setbacks and requires site plan approval where

other things are considered based on circumstances including type of landscaping. He explained the area to the north is a farm field now, but the 2020 Land Use Plan shows this area suitable for residential development. The possible future development of the land to the north is what is driving staffs concern and requirement for the 15-foot setback to provide an enhanced landscape buffer that is consistent with the Village arborist's recommendation. Discussion continued.

Associate Planner Zandt stated the Village arborist feels some trees along the north property line are worth saving and that is why there is a condition to send an arborist to the site to determine what can and should be saved. Mr. Roberts stated changing the north setback to 15 feet changes everything for them.

Trustee Baum questioned what the Plan Commission was approving because there were different plans presented. He had concerns with putting evergreen trees in a 10-foot area and was also concerned the bottom panel on the building would rust out because there is no wainscoting on the building. He said the berm drains back into the building and will be problematic for the building. He agrees with staff's recommendation that more space is needed along the north and wants to see the right drawings, right elevations, site plans with the back ends, corrected drawings and corrected landscape plan.

Chairman Wolter was not opposed to the 10-foot setback. He appreciates the owner redoing the property to make it look better and understands the struggles with the brownfields. He is more forgiving on the north property line and establishing a relationship with the adjacent property owner regarding the berm and then presenting something to Planning. He also understands Director Retzlaff's concerns regarding the future land use plan, but if the developer can show a landscaping plan that does some of the things he is looking to accomplish there and still have the site plan with the 10-foot setback, he is willing to look at it in consideration of what the applicant is doing to the property. He said it is hard to approve the proposal without seeing it and needs more clarity in the picture.

Eric Roberts said they want to grade the property before the frost hits and finish cleaning it up. Director Retzlaff stated cleaning and grubbing the site could continue, but a grading plan is required. Chairman Wolter said the landscape plan does not need a berm. It needs to show how the view will be blocked and provide the type of plantings that will be used. Director Retzlaff explained any construction related items, landscaping, berming and filling would need to be shown on the site plan and the adjoining property. Associate Planner Zandt said the developer could apply for a permit to demolish the buildings, but a site and grading plan is required before grading can be done.

MOTION Baum second Nilles to Postpone until appropriate drawings can be brought to the next Plan Commission meeting.

Chairman Wolter stated he appreciates what the property owner is doing to the site.
MOTION carried unanimously.

Blaeser Construction, Agent for Wendy's Restaurant - N96 W17600 County Line Road. The property owner has submitted building plans for site and building renovations and replacement signage for the existing restaurant. Director Retzlaff summarized the proposal. Discussion followed on the building design and renovations. Trustee Baum commented the proposed renovations do not do anything to enhance or improve the building.

MOTION Baum second Laszewski to Approve the site and building plans for the proposed exterior building remodeling renovations for the Wendy's restaurant located at N96 W17600 County Line Road subject to the following 4 conditions:

- 1. This approval is subject to all the conditions and requirements set forth herein and adopted by the Plan Commission. Approval is granted for the architectural plans dated September 14, 2021, unless superseded by subsequent plan sheets approved by the Village Planner or pursuant to revisions required herein and/or by the Plan Commission.**
- 2. In the event there is a need to replace the existing HVAC mechanicals as part of this remodeling project or in the future, a separate plan shall be submitted for review and the possible need for visual screening from County Line Road and Rivercrest Drive.**
- 3. The existing sample manhole serving the Wendy's restaurant needs to be reconstructed to eliminate the deck (per Village standards). Reconstruction shall include proper cone size, chimney replacement, seal installation, and replacement of all iron per current Village specifications. The current Village specifications shall be documented in a revised plan sheet added to the application. Contact Tim Zimmerman, Wastewater Utility Superintendent, for details and specifications.**
- 4. State approved plans and a \$20,000 occupancy bond are required by the Building Inspection Department as part of the building permit application.**

MOTION carried 4-1 (Baum)

MOTION Baum second Nilles to Approve the proposed pylon sign face replacement for the Wendy's restaurant located at N96 W17600 County Line Road subject to the following condition:

- 1. An electrical permit shall be obtained from Inspection Services prior to installation of any/all electrical components.**

MOTION carried 4-1 (Baum).

Michaels Signs, agent for ZPG Development LLC, property owner - W210 N13150 Gateway Crossing. The request is for approval of a new ground sign for the multi-tenant building. Associate Planner Zandt stated the proposed sign is very similar to the Zilber 2 and Zilber 3 signs approved in 2018.

MOTION Baum second Laszewski to Approve the proposed ground sign for ZPG Development property located at N210 W14150 Gateway Crossing subject to the following conditions:

- 1. The street address coordinates on the base of the sign shall be a minimum of 5 inches in size. Revised plans shall be submitted to Planning Staff prior to installation.**

MOTION carried unanimously.

RJB Contracting, agent for Walmart - W190 N9855 Appleton Avenue - Application for exterior remodeling of the existing Walmart retail store. Director Retzlaff explained the remodeling is the addition of more blue paint on the entry features from what was previously approved in 2017. A rep for Walmart asked for forgiveness saying it was a misstep on their part. Trustee Baum said it was too much blue that contradicts with the overall scheme of the building. Audrey Freeman, Walmart, said it was a miscommunication not getting a permit for the repaint. She commented that this is a project for all the Walmart stores to be consistent with the rebranding. Commissioner Kimmler and Laszewski

also did not like blue. Amy Miles, Walmart, stated this is a standardized look for Walmart. Trustee Baum said he fully understands an accent color to pop out the entrances and features but this color has no basis with the context of the building and looks like a mistake.

Chairman Wolter asked what would appear more acceptable to the board. Trustee Baum stated an earth tone color that will match the existing color pallet would be more acceptable. Chairman Wolter commented that they can go back to the way it was previously approved.

MOTION Baum second Nilles to Approve the site and building plans for the proposed remodeling of the Walmart retail store located at W190 N9855 Appleton Avenue.

MOTION Failed (3-2 Baum, Laszewski, Kimmler)

Director Retzlaff explained the property owner could go back to what was previously approved without coming back to Plan Commission or they could propose something else.

Community Development Department - 2050 Land Use Plan Update and Discussion

Director Retzlaff asked Plan Commission members of their availability for a special meeting in November. It was decided the next 2050 Land Use Plan discussion meeting will be held November 29th.

ANNOUNCEMENTS Chairman Wolter said the Christmas Parade and candy cane run are this weekend. The festivities will be held at Firemen's Park new pavilion. Also the Veterans Day memorial event will be Sunday at 11:00 am at the Germantown War Memorial.

ADJOURNMENT: There being no further business, the meeting was adjourned at 10:48 pm.

Respectfully submitted,

Lori Johnson, Planning Assistant