

**TOWN OF DELAFIELD
PLAN COMMISSION MEETING
TUESDAY, JUNE 7, 2022, 6:30 P.M.**

Video Link: https://www.youtube.com/watch?v=88ehsQpX5_M

Prior to the start of the scheduled Plan Commission meeting there will be two public hearings in front of the Plan Commission, Town Board and a representative of the Waukesha County Department of Parks and Land Use, Planning and Zoning Division to solicit public input on the following:

1. Establishment of a Waukesha County Shoreland and Floodland Protection Ordinance jurisdiction over an area extending 1,000 feet from the Ordinary High-Water Mark of a navigable pond, as determined by the DNR. The proposed county zoning districts are the A-2 Rural Home, EC Environmental Corridor Overlay, C-1 Conservancy Overlay, HG High Groundwater, and A-1 Agricultural Districts, all located in the SE ¼ and SW ¼ of the SW ¼ of Section 25 and the NE ¼ and NW ¼ of the NW ¼ of Section 36, T7N, R18E, Town of Delafield.

Public Comments:

Engineer Tim Barbeau displayed the current shoreland area. Waukesha County jurisdiction is located on the east side of Sylvan Drive. There is a pond that was determined to be navigable, about 4 years ago. The County has jurisdiction within 1000 feet of that boundary. There are two small pieces of A-1 in southeast and southwest corners. There is A-2 and High Groundwater, based on the soils. There is also C-1 Conservancy, mapped wetland. The Town zoning, before this determination, was A-2 rural home district.

Rebecca Leto, Waukesha County Planner, explained the differences between A-1 with the county and town is that the Town requires a much larger lot size. The County only requires 3-acre minimum lot sizes. There are 19 properties affected by the zoning change, and all parcels are developed. Some are entirely encompassed, and some, only a portion. The only ones not developed are in The Retreat subdivision, of which, only two parcels in that subdivision will be affected.

Lynn Serafin, W288S110 Elmhurst Road, asked if the map could be explained more clearly. Rebecca Leto clarified the map in question.

Chairman Fitzgerald closed the public hearing for this item.

2. Request by Dan Studer, W289 N106 Elmhurst Road for a zoning amendment to the Waukesha County Shoreland and Floodland Protection Ordinance from C-1 Conservancy Overlay District to A-2 Rural Home District to accommodate a residential driveway for a future home located south of his residence.

Public Comments:

Engineer Barbeau explained there are two small areas of C-1 that the applicant is looking to rezone to A-2. The first is approximately 1,095 square feet. The second is on the north side, and is approximately 260 square feet. This is located where there is a driveway. The request is to accommodate that driveway. The property is 11.38 acres and there is access off Elmhurst Drive. The rezone would give them access to the east side of their property, off Sylvan Trail.

Rebecca Leto explained the C-1 applies to all wetlands, and does not allow for driveways. The driveway being proposed is to accommodate a land split. The north C-1 portion was filled in 2017, and the DNR granted approval for that. As part of the land division, it would require a building envelop to be established to limit development on the isolated natural resource area. The applicant would have adequate upland area to propose a second lot. SWERPC did a wetland delineation in 2018.

Chairman Fitzgerald questioned if you could put a driveway in C-1 zoning. Rebecca stated the existing driveway would not be allowed. The land division cannot utilize the existing driveway, as they are capped on the number of shared driveways off Elmhurst. Engineer Barbeau explained that a CSM request would require Town approval and approval for a flag lot from the Town and County.

Keith Kindred, N2W28651 Sylvan Trail, stated he asked the DNR to determine navigability on his lot. In the Fall of 2017, the neighbor called asking why he had been chain sawing trees, which he was not. He found bulldozers were driving through the wetlands. A permit was granted from Leif at Waukesha County, under pretenses that there was a road in existence. The historical photo does not show a roadbed. The intent of this is for a double flag lot. The past Plan Commission denied this flag lot. The Plan Commission does have the right to deny flag lots. The developer is begging permission after the fact to fill the wetlands. He questioned why the applicant did not come here on day 1, and explain what he wanted to do. He has not noticed flooding on his property, but there is flooding on the other side of the wetland area.

Sean Beres, N3W28650 Sylvan Trail, has noticed more water on his retention ponds and other areas since the driveway was put in. This was never a road, just a path that deer traveled on.

Jon Spheeris, S1W33859 Abitz Drive, explained that Mr. Studer wants to split the parcel in two and downsize from his current home. He stated the applicant has a 9-page packet of back information on this property.

Dan Studer, W289N106 Elmhurst Road, showed the Plan Commission areal photographs from 1970, where a driveway was created for access to the back of the property. He explained most of the time the area is dry. There is a conservancy on Mr. Beres' property that is identified on the GIS map. He stated Mr. Beres has been moving dirt on his property, and Mr. Kindred has not noticed any increase of water. He explained that is because the water flows from the north to the south. There is a swale along the side of the driveway to the west where overflow water is captured, and runs down. He stated the driveway has nothing to do with water. Leif wanted a 24" culvert so water could continue to flow, and the appropriate permits were pulled. In 2005, there was a CSM that identified the driveway as an easement access for the back portion of the driveway. The board approved the split with contingencies of deeding land to the Town. Under Waukesha County zoning, it allows the owner to split the land. On November 28, 2017, Mr. Kindred asked for a wetland determination, and no work has been done on the driveway since. Mr. Studer explained the plan is to build a retirement home on the second parcel of land after a CSM is approved.

Chairman Fitzgerald closed the public hearing.

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

Chairman Fitzgerald called the meeting to order at 7:06 p.m. and led all in the Pledge of Allegiance.

Members present: Supervisor Kranick, Commissioner Dickenson, Commissioner Janusiak, Town Chairman Troy and Plan Commission Chairman Fitzgerald.

Also present: Engineer Tim Barbeau and Administrator Dan Green.

Excused: Commissioner Diderrich and Commissioner Frank.

Second order of business: Approval of the minutes of May 3, 2022.

Motion made by Supervisor Kranick to approve the May 3, 2022, minutes. Seconded by Commissioner Janusiak. Motion passed 5-0.

Third order of business: Communications (for discussion and possible action): None

Fourth order of business: Unfinished Business: None

Fifth order of business: New Business:

- A. Waukesha County Dept. of Parks and Land Use, Re: Consideration and possible recommendation on the establishment of Waukesha County Shoreland and Floodland Protection Ordinance jurisdiction and establishment of proposed zoning districts to include A-2 Rural Home, EC Environmental Corridor Overlay, C-1 Conservancy Overlay, HG High Groundwater and A-1 Agricultural Districts, all located in the SE ¼ and SW ¼ of the SW ¼ of Section 25 and the NE ¼ and NW ¼ of the NW ¼ of Section 36, T7N, R18E, Town of Delafield

Engineer Barbeau stated that any recommendation should acknowledge that the jurisdiction has been established and provide a recommendation to the Town Board, in accordance with the latest drawing provided by Waukesha County.

Motion by Chairman Troy to recommend approval of the establishment of Waukesha County Shoreland and Floodland protection Ordinance jurisdiction and establishment of proposed zoning district to include A-2 Rural Home, EC Environmental Corridor Overlay, C-1 Conservancy Overlay, HG High Groundwater, and A-1 Agricultural Districts, subject to staff recommendations. Seconded by Commissioner Dickenson. Motion passed 4-1 with Supervisor Kranick opposing.

- B. Dan Studer, W289 N106 Elmhurst Road, Re: Consideration and possible recommendation to Waukesha County on a zoning amendment under Waukesha County Shoreland and Floodland Zoning from C-1 Conservancy Overlay District to A-2 Rural Home District.

Chairman Troy questioned Mr. Kindred's comment about his lot being made a flag lot if the Town approved the driveway and CSM. Engineer Barbeau explained that nothing on Mr. Kindred's lot will change, and he will have the same access to Sylvan Trail. Rebecca Leto stated there is a temporary cul-de-sac easement, with a 66' wide easement, but does not say who the easement is granted to.

Mr. Troy questioned if the owner has the recourses to do what he wants without rezoning the property. Engineer Barbeau stated there are disturbance limitations and the property has steep slopes. What the applicant is asking for is the least disturbance for what he wants to do.

Supervisor Kranick questioned the reasoning behind why this pond was determined to be a navigable waterway. He expressed concerns that the Town's stormwater ponds would be under county jurisdiction. Rebecca stated artificial ponds are exempt from county zoning. Commissioner Dickenson asked if this was determined by the DNR. Engineer Barbeau stated yes, the DNR determines the navigability of streams, lakes, and ponds. Chairman Fitzgerald stated that the Town's ordinance would not allow a flag lot to be created, and we would require 200 feet of frontage.

Engineer Barbeau explained the rezone is for a driveway to reach the other end of the parcel. The owner has been clear on his intent to split his lot in the future. He explained that someone could place an accessory building on the 11-acre parcel, if a lot division is not approved. The driveway does not guarantee that the land split would be approved. The Plan Commission does not have to approve a CSM, and Waukesha County is not forcing the Town to do so. The rezone is for a small portion of land that does not affect the wetland substantially. The next step would be the land split if the rezone were approved.

Commissioner Janusiak questions whether this would be spot zoning. Rebecca Leto explained this would not be spot zoning because it is being rezoned to match the existing parcel. There is a 33' access

easement to the north portion. This was before Studer's parcel was created. A few years later, Mr. Studer's lot was created with a 66' easement. That easement must have been released by the Town at some point.

Commissioner Dickenson stated the Town typically takes an interest in what neighbors say, especially with water concerns. With this falling outside of the Town's jurisdiction, the Town still has to take into consideration the adjacent property owners and the negative effects of water runoff. Commissioner Janusiak had concerns regarding comments that were made by Mr. Studer concerning access for his two neighbors off Sylvan. She has reservations as she did not want to escalate tensions between neighbors.

Supervisor Kranick stated that historically the Town does not get involved with neighbor disputes. The DNR made a determination of navigability on this pond. Waukesha County has 1,000 feet of jurisdiction, therefore, the Town has very little jurisdiction or say in what happens with this parcel. We need to trust our partnership with Waukesha County. From a zoning perspective, the lots meet the minimum acreage.

Rebecca explained that the town's input is take under advisement. The County takes wetlands very seriously and typically do not rezone C-1 areas. Mr. Studer has pulled the require permits, and the Town can put any contingencies they deem fit for the rezone.

Motion by Supervisor Kranick to recommend to the Town Board approval of a zoning amendment under Waukesha County Shoreland and Floodland Zoning from C-1 Conservancy Overlay District to A-2 Rural Home District, subject to all permits from the DNR, Waukesha County and Army Corp of Engineers being up to date. Seconded by Chairman Troy. Motion fails 2-3 with Chairman Fitzgerald, Commissioner Dickenson, and Commissioner Janusiak opposing.

Sixth Order of Business Discussion: None

Seventh Order of Business: Announcements and Planning Items: Next meeting: Joint Plan Commission and Town Board Training & Closed Session Discussion: June 14, 2022 @ 5:30 PM. Next regular meeting: July 12, 2022 @ 6:30 PM.

Eighth Order of Business: Adjournment

Motion by Supervisor Kranick to adjourn the June 7, 2022, Plan Commission meeting at 7:33 p.m. Seconded by Commissioner Dickenson. Motion passed 5-0.

Respectfully submitted,

Dan Green, CMC, WCMC
Administrator-Clerk/Treasurer