

**TOWN OF CEDARBURG
PLAN COMMISSION MEETING MINUTES
September 21, 2022**

Present: David Salvaggio, Dan Wundrock, Larry Lechner, Mark Wittenberg, Kerry Carmichael, Anne Lewandowski, Don Borgwardt (via ZOOM)
Also Present: Eric Ryer, Administrator, Jack Johnston, Assistant Administrator/Clerk, Brad Hoeft, Town Attorney

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chairman Salvaggio called the meeting to order at 7:00 pm. The meeting began with the pledge of allegiance.

2. MINUTES OF PREVIOUS MEETINGS

a. Approval of August 17, 2022 Plan Commission Meeting Minutes*

Commissioner Wundrock made a motion to approve the August 17, 2022 Plan Commission Meeting Minutes. Commissioner Wittenberg seconded, and the motion passed unanimously.

3. PUBLIC HEARING

a. None

4. OLD BUSINESS

a. None

5. NEW BUSINESS

a. Discussion and possible recommendation on a final plat for a major land division by EBL Partnership for property with tax key #030050500000 [NW ¼ Sec. 5, 87.9 acres, zoned E-1 Estate Residential and C-1 Conservancy]*

EBL Partnership (Don and Ben Levy) had a major land division preliminary plat approved in July of 2021 for 87.9 acres of property located in the northwest corner of Section 5 (running north to Cedar Sauk Road, with the private shared driveway entrance coming off of Brandt Road). Since that time, the improvements including the shared private driveways, stormwater, grading, and public road extension (binder course) have been completed. The final plat determines that the proposed development is satisfactory from the standpoint of public interest, ordinances and regulations of the Town as well as the Comprehensive Plan.

Administrator Ryer introduced the item, explaining items #5a and #5b are related. This item addresses a recommendation on the final plat, while item #5b addresses a recommendation on the development agreement and acceptance of the public roadway extension. The developer has installed all of the improvements, including the stormwater, first lift of asphalt for the private driveway and new public roadway. raSmith confirmed the improvements were consistent with the preliminary plat approved last year.

Attorney Hoeft noted the applicant was very recently made aware of an easement WE Energies would like added to the plat. He explained that the plat can still be approved, contingent on staff review and addition of the utility easements, should the Plan Commission be comfortable with that.

Administrator Ryer noted all of the legal documents have been submitted, and asked the Commission consider a contingency that the Town Attorney review them for completeness and accuracy. Further, the Wisconsin Department of Administration has been sent the plat

for review, but has not issued an approval letter at this time. Staff requested any recommendation of approval be contingent upon approval from WDOA as well.

Following discussion, Commissioner Lewandowski made a motion to recommend that the Town Board approve a final plat for a major land division by EBL Partnership for property with tax key #030050500000, contingent on Town Attorney review of all legal documents, the addition of the utility easement, and approval by WDOA. Commissioner Lechner seconded, and the motion passed unanimously.

b. Discussion and possible recommendation on Resolution 2022-16, “Resolution Approving a Major Land Division and Subdivision Development Agreement for Brandt Woods Subdivision, and Accepting a Roadway Extension as a Public Improvement”*

This item continues from #5a. Administrator Ryer clarified this item addresses the development agreement and acceptance of the public roadway extension of Brandt Road.

Commissioner Lechner made a motion to recommend that the Town Board approve Resolution 2022-16, “Resolution Approving a Major Land Division and Subdivision Development Agreement for Brandt Woods Subdivision, and Accepting a Roadway Extension as a Public Improvement.” Commissioner Wundrock seconded, and the motion passed unanimously.

c. Discussion and possible recommendation on an Ordinance to rezone 9.02 acres of land from A-1 Agricultural & C-1 Conservancy to E-1 Estate Residential & C-1 Conservancy located at 1109 Granville Road [Petitioner: Asher Cocos, NE ¼ Sec. 19, 9.02 acres]*

Asher Cocos has submitted applications for the following items to be considered by the Plan Commission:

1. A petition to rezone property located at 1109 Granville Road from A-1 Agricultural to E-1 Estate Residential. The rezoning petition would leave the parts of the property zoned C-1 Conservancy unchanged.
2. An architectural and site plan review for a proposed 2,560 square foot outbuilding (64’ x 40’). An architectural and site plan review is required by Town Code for outbuildings greater than 2,000 square feet in the E-1 district.

Assistant Administrator/Clerk Johnston explained these applications stem from the applicant’s desire to construct an outbuilding on the property. Currently, with A-1 zoning, a 100’ side yard setback is required. The applicant is seeking a rezoning out of A-1 and into E-1 which requires a 40’ side yard setback. The rezoning would provide flexibility to locate the outbuilding in a more desirable area for them.

Commissioner Lewandowski made a motion to recommend that the Town Board approve an Ordinance to rezone 9.02 acres of land from A-1 Agricultural & C-1 Conservancy to E-1 Estate Residential & C-1 Conservancy located at 1109 Granville Road. Commissioner Carmichael seconded, and the motion passed unanimously.

d. Discussion and possible recommendation on an architectural and site plan review for a 2,560 square foot outbuilding located at 1109 Granville Road [NE ¼ of Section 19, 9.02 acres, zoned A-1 Agricultural & C-1 Conservancy (applied for rezoning into E-1 Estate & C-1 Conservancy)]*

This item continues from #5c. Assistant Administrator/Clerk Johnston explained an architectural and site plan review is required for the proposed outbuilding as all outbuildings

in E-1 greater than 2,000 square feet are required to come before the Plan Commission and Town Board for approval.

Commissioner Lechner made a motion to recommend that the Town Board approve an architectural and site plan review for a 2,560 square foot outbuilding located at 1109 Granville Road, taking into account the principles and standards as outlined in Sec. 320-29 of the Town Code. Commissioner Wundrock seconded, and the motion passed unanimously.

e. Discussion and possible direction on a concept plan for a rezone and minor land division for property located at 1219 CTH I [Petitioner: Elsa Dippman, NE ¼ Sec. 22, 27.84 acres, zoned A-1 Agricultural]*

Elsa Dippmann and Travis Keshemberg have submitted a concept plan for the 27.84 acre property located at 1219 CTH I. Of note, approximately 10 acres of this parcel was a former quarry that has been almost completely filled.

The concept plan proposes splitting the exiting parcel into two, as well as rezoning one of the new parcels. The first parcel would be approximately 3 acres in total and would contain the original farmhouse that would be renovated and occupied as a primary residence. The plan proposes this parcel to be rezoned into TR-2, as the existing zoning of A-1 has a 5-acre minimum. TR-2 is an available zoning option for this parcel per the Comprehensive Plan. The second parcel would be approximately 24.84 acres in total and would remain A-1, with no proposed improvements. Administrator Ryer explained that this parcel is located within the City Growth Area and is subject to extraterritorial plat review.

Travis Keshemberg spoke, explaining the property has been in his family since the 1840's and is still titled to his grandfather's trust. It is their intention to settle the trust and divide the property. Currently, there are three heirs to the property and it is their intention to reduce that to two owners with a land division. He would take possession of the three acre parcel and restore the house, and Ms. Dippmann would maintain the larger parcel for agricultural use. The former quarry land is best described as green space, as not much can be done with the fill site. A small amount of their parcel still needs to be filled in as well.

Commissioner Lewandowski asked about the dotted line on their concept plan, asking if that would eventually be separated as well. Mr. Keshemberg responded that they have expressed interest in potentially donating the former quarry site to the Town and/or City of Cedarburg once the reclamation is completed. The dotted line shows the potential lot line.

The Plan Commission directed the applicant to proceed with a formal application.

f. Discussion and possible recommendation regarding a pond conditional use permit application to construct one pond totaling less than one acre in size on the 8.23 acre property at 12042 Cedar Creek Road [Petitioner: Gregory Farley, zoned E-1 Estate Residential and C-1 Conservancy, SW ¼ of Section 7]*

Gregory Farley has submitted an application for the construction of one pond totaling less than one acre on his 8.23 acre property zoned E-1 Estate Residential and C-1 Conservancy located at 10242 Cedar Creek Road. A conditional use permit is required for this project because the pond is within 100 feet of the east property line, is larger than 1,000 square feet, and exceeds three feet in depth (and is thus regulated by Town ordinance).

Assistant Administrator/Clerk Johnston introduced the item, reminding the Commission that the applicants had previously come before the Commission for an architectural and site plan

review for an outbuilding earlier this year. The application before the Commission this evening was for a landscaping pond on the property totaling 0.15 acres.

Troy Hartjes of raSmith commented they had performed a review and provided a comment letter to the applicant. In summary, the comments and corrections needed were minor. Assistant Administrator/Clerk Johnston also commented that WDNR requires a permit for the pond due to the proximity to the navigable Cedar Creek. He noted that external agency approvals were include as conditions in the draft CUP included in the packet materials.

Commissioner Carmichael made a motion to recommend the Town Board approve a pond conditional use permit application to construct one pond totaling less than one acre in size on the 8.23 acre property at 12042 Cedar Creek Road, contingent on engineering comments being addressed as well as external agency approvals being attained. Commissioner Lechner seconded, and the motion passed unanimously.

g. Discussion and possible recommendation on an Ordinance to rezone two parcels with tax key number 03-010-05-003.00 & 03-010-05-004.00 from E-1 Estate Residential to A-1 Agricultural [Petitioner: Michael Gauthier, 9.95 acres total, NW ¼ Sec. 10]*

Items #g-I are related. Michael Gauthier appeared before the Plan Commission in July of 2021 with a concept plan to construct a pond/recreational lake (hereafter referred to as “pond”) across two parcels they own located east of Covered Bridge Road and north of Cedar Creek Road. The pond at that time was 13.6 acres on land that is currently zoned A-1 and C-1. A conditional use permit for such a water feature is required because the pond is within 100 feet of the east property line, is larger than 1,000 square feet, and exceeds three feet in depth. The concept plan showed the construction entrance coming off of Covered Bridge Road. The consensus of the Plan Commission was for the applicant to proceed with a formal application. Since that time, the applicant has assembled a detailed plan that includes the following:

- Rezoning application for two adjacent parcels they own to have consistent zoning across all related lands.
- CSM to combine and clean up parcel boundaries associated with this project.
- Pond CUP application for the construction of slightly smaller pond that is compliant with Town ordinance.

Administrator Ryer introduced the item. Item #g addresses the rezoning petition for the two parcels currently zoned E-1 east of Wildwood Drive. He explained that the rezoning petition would change the parcels to A-1 zoning. The CSM to be considered next would then combine many of the parcels into one larger parcel. The rezoning of these parcels into A-1 would provide mostly uniform zoning for the newly created parcel.

Commissioner Wundrock made a motion to recommend that the Town Board approve an ordinance to rezone two parcels with tax key number 03-010-05-003.00 & 03-010-05-004.00 from E-1 Estate Residential to A-1 Agricultural. Commissioner Carmichael seconded, and the motion passed unanimously.

h. Discussion and possible recommendation on a certified survey map consisting of eight existing parcels totaling ~119.55 acres owned by various Gauthier, LLCs in order combine/reshape parcel boundaries for the purpose of constructing a pond [Petitioner: Michael Gauthier, NW & SW ¼ Sec. 10, parcels zoned A-1 Agricultural, E-1 Estate Residential, R-2 Single Family Residential, and C-1 Conservancy]*

This item continues from #5g. Administrator Ryer explained that the proposed CSM would reduce the total number of parcels from eight to four. Of note, parcel #4 on the map currently exists with split-zoning – the western part of the parcel is A-1, while the eastern part is R-2. Administrator Ryer brought this to the attention of the Commission and the applicants to see if they would like to address it.

In response to the split-zoning, Commissioner Lewandowski inquired whether or not the Commission could request uniform zoning for parcel #4. Attorney Hoeft responded that the Commission could make a motion to recommend approval contingent on the split-zoning being addressed, but such a condition is not required by Code.

Troy Hartjes from raSmith commented on the review of the CSM, noting some clean-up for lot lines in regards to the road right-of-way is required, the setback for the outbuilding on lot #4 is nonconforming, and seeking some clarifications on the applicant's intent on rezoning.

Following discussion, Commissioner Lechner made a motion to recommend that the Town Board approve a certified survey map consisting of eight existing parcels totaling ~119.55 acres owned by various Gauthier, LLCs in order combine/reshape parcel boundaries, contingent on staff and engineering comments being addressed. Commissioner Wittenberg seconded, and the motion passed unanimously.

i. Discussion and possible recommendation on an application to construct an 11.42 acre pond on parcels to be combined by previous CSM [Petitioner: Ryan Toy, NW & SW ¼ Sec. 10, zoned A-1 Agricultural and C-1 Conservancy]*

This item continues from #5g and #5h. Ajay Singh from KSingh Engineering was present for the meeting via Zoom, noting the submitted materials show the pond would be ~2,200' long with a width varying 200' to 275'. The purpose of the lake would be for recreational water skiing. The pond would be filled with ground water from a deep well with drainage away from the pond. Some wetlands are shown on the map as well, with adequate setback provided. A dry pond is shown on the site plan closer to Covered Bridge Road that will be utilized as a stormwater management device which would be connected to the lake via a culvert, which is connected to another culvert along Covered Bridge Road that would then lead to Cedar Creek. They stated the pond would not increase peak flows.

Commissioner Lechner noted a DNR permit is required for the high capacity well, and asked if that permit, as well as a study on the water table, has been submitted to the Town's engineer for review. Troy Hartjes of raSmith responded, noting that specific information has not been submitted for review at this time. The applicant's engineer responded that Municipal Well & Pump is handling the design of the well and they can provide more information as needed. Based on conversations with them, their intent is to go into the limestone which is about 400' deep and then cement seal the well to ensure no impact on the shallow drinking water aquifer. Mr. Hartjes responded that he would need to see the completed study before he could issue comment on the well.

Mr. Hartjes then went into more detail on his comment letter. To summarize, he explained that more detail on existing topography is needed, as well as calculations on the stormwater management plan. He noted that to this point no access to the lake or boat launch has been shown. He also inquired if noise levels had been considered.

At the discretion of the Chairman, Susan Knox, 1760 Malibu Drive, spoke, noting she believed an easement existed that goes right through the proposed pond. The easement could provide access to her property, which is located east of the Gauthier properties. She asked

how the easement would be addressed as part of the proposed plan. Mr. Hartjes responded some investigation would have to be done to determine the validity of the easement.

Mr. Hartjes commented on the earthwork calculations, and asked for clarification if the soil disturbed would be moved off site or redistributed on the parcel. Mr. Singh responded the two shortlisted contractors for the project are proposing to leave the topsoil onsite as nonstructural backfill so the site would be balanced. Mr. Hartjes requested that to be shown on a future plan to ensure it does balance on site. If the top soil would be moved off site, he would request the haul routes be noted. Mr. Hartjes touched on remaining comments, summarizing that in general more detail is needed at this point.

At the discretion of the Chairman, Richard Mett, 1815 Covered Bridge Road, was allowed to speak. He questioned the dry pond, and how the drainage would work. He commented that during significant rain events, there is quite a bit of runoff and significant erosion, and the Town replaces gravel in the ditch following those events.

DPW Director Monticelli commented he would like to do some more investigation into the Town Code as well as DNR requirements for illicit discharges (certain discharges to the public ditch), as they are regulated by the DNR. He also noted the Town is in the process of updating their MS4 permitting with the DNR. That portion of Covered Bridge Road does experience erosion already, and explained he is not comfortable having water drain directly into that ditch. Mr. Singh clarified there is a culvert that goes under Covered Bridge Road and connects to Cedar Creek, which is where they are proposing discharging the water. He noted that while volume would increase, peak flows would be reduced. Director Monticelli asked if there had been any consideration on draining to the southwest, where the Gauthier land already connects to Cedar Creek. Mr. Singh responded that is was investigated, but is not the applicant's preference due to the potential of a future home site at that location.

Following discussion, Commissioner Lechner made a motion to table the pond application to a future meeting, to allow engineering comments to be addressed. Commissioner Wundrock seconded, and the motion passed unanimously.

Administrator Ryer sought clarification that since the rezone and CSM were all a part of the same broader project, those items would not progress to the Board until the pond application does; they would be tabled at this time as well. Chairman Salvaggio concurred with that statement.

6. ADJOURNMENT

Commissioner Wundrock made a motion to adjourn the meeting at 7:58 pm. Commissioner Lewandowski seconded, and the motion passed unanimously and the meeting adjourned.

Jack Johnston
Assistant Administrator/Clerk