

**PLEASANT PRAIRIE PLAN COMMISSION MEETING  
VILLAGE HALL AUDITORIUM  
9915 39TH AVENUE  
PLEASANT PRAIRIE, WISCONSIN  
5:00 P.M.  
October 10, 2005**

A regular meeting for the Pleasant Prairie Plan Commission convened at 5:00 p.m. on October 10, 2005. Those in attendance were Thomas Terwall; Michael Serpe; Donald Hackbarth; Wayne Koessl; Jim Bandura; John Braig; and Judy Juliana. Eric Olson was absent and Larry Zarletti was excused. Also in attendance were Michael Pollocoff-Village Administrator; Peggy Herrick, Assistant Village Planner and Zoning Administrator and Tom Shircel, Assistant Village Planner and Zoning Administrator.

- 1. CALL TO ORDER.**
- 2. ROLL CALL.**
- 3. CORRESPONDENCE.**
- 4. CONSIDER THE MINUTES OF THE SEPTEMBER 12 AND 26, 2005 PLAN COMMISSION MEETINGS.**

Mike Serpe:

Move approval.

Jim Bandura:

Second.

Tom Terwall:

**MOTION BY MIKE SERPE AND A SECOND BY JIM BANDURA TO APPROVE THE MINUTES OF THE SEPTEMBER 12 AND 26, 2005 PLAN COMMISSION MEETINGS AS PRESENTED IN WRITTEN FORM. ALL IN FAVOR SIGNIFY BY SAYING AYE.**

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

- 5. CITIZEN COMMENTS.**

Tom Terwall:

If you're here for the first three items on the agenda, Item A under Old Business and Items A and B under New Business, those are public hearings. We would ask that you hold your comments until that public hearing is held so we can incorporate your comments as part of the public record. However if you're here on any other item or on any item not on the agenda, now would be your opportunity to speak. We would ask that you step to the microphone and begin by giving us your name and address.

Augie Schepker:

Augie Schepker, 4201 104<sup>th</sup> Street . . . and I just have a question of the Plan Commission. Now, as you all know we've had a recent meeting and information meeting on the expansion of 165. And what I'd like to know, my question is was the Pleasant Prairie Plan Commission or any Pleasant Prairie representative involved in any way with the State's plan for the widening of 165 in the area of ML to EZ to further Pleasant Prairie's future plans or future expansion . . . project.

Tom Terwall:

I'll speak for me, Augie, no. We were not in any way involved. We were not asked to participate. I'll let everybody else speak for themselves, but we got the same information you got at the same time you got it and that's where it is.

Augie Schepker:

That's all I want to know, and no will be in the minutes of the meeting. That's all I want to know. Thank you.

Tom Terwall:

Anybody else who wants to speak under citizens' comments?

## **6. OLD BUSINESS**

**A. TABLED PUBLIC HEARING AND CONSIDERATION OF A ZONING TEXT AMENDMENT to amend Section 420-84 C (2) of the Village Zoning Ordinance related to setbacks for hot tubs from principal or accessory structures and to amend the definition for swimming pools in Section 420-152 of the Village Zoning Ordinance.**

Tom Terwall:

We need a motion to remove it from the table.

Mike Serpe:

So moved.

Jim Bandura:

Second.

Tom Terwall:

**MOTION BY MIKE SERPE AND A SECOND BY JIM BANDURA TO REMOVE THIS ITEM FROM THE TABLE. ALL IN FAVOR SIGNIFY BY SAYING AYE.**

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

Peggy Herrick:

On August 22, 2005, the Plan Commission approved Resolution #05-12 to initiate a zoning text amendment to re-examine the Village's swimming pool requirements that were last amended in 1999.

The request in particular related to the setback for hot tubs. Currently hot tubs are defined as swimming pools. Therefore, hot tubs are required to be set back the same distance as swimming pools with respect to principal or accessory structures. The amendment proposes to create a separate setback to principal and accessory structures for hot tubs. It is recommended that hot tubs be located a minimum of two feet from any principal or accessory structure. However, hot tubs would still need to meet all the same requirements of a swimming pool.

On September 26, 2005 the Plan Commission tabled the amendment and requested that the staff provide a definition for hot tubs.

The following clarification relating to hot tubs is proposed to be added to the definition of a swimming pool:

The swimming pool definition is proposed to read: Any structure, including a hot tub, that is intended to hold a minimum of 36 inches of water for recreational or therapeutic purposes, that has electrical service or utilizes a pump and/or a filter, or any structure for recreational or therapeutic purposes that is intended to hold water with a water depth of 42 inches or greater. A hot tub is defined as a factory-fabricated hydro massage unit for recreational or therapeutic use which is designed for immersion of users and at a minimum has a filter, heater and motor-driven blower that is integral to the unit.

This definition for hot tub was obtained with assistance from the Building Inspection Department and from definitions related to hot tubs and spas from the National Electrical Code.

Tom Terwall:

This is a matter for public hearing. Is there anybody wishing to speak on this matter? Anybody wishing to speak? Anybody wishing speak? Hearing none, I'll open it up to comments and questions from Commissioners and staff and I'll begin. Does this mean that if you have a hot tub you have the same fence requirements that you have if you had a swimming pool?

Peggy Herrick:

There is an exception in the swimming pool requirements that for hot tubs if you have a rigid cover that can be fastened you do not need a swimming pool enclosure. So there's that exception, and then the exception regarding the two feet that's being proposed tonight. All the rest of the requirements apply to hot tubs that apply to swimming pools.

Tom Terwall:

Thank you. Comments or questions?

Wayne Koessl:

Mr. Chairman, I'd move that we send a favorable recommendation to the Village Board to approve the zoning and text amendment as presented.

Jim Bandura:

Second.

Tom Terwall:

**MOTION BY WAYNE KOESSL AND SECOND BY JIM BANDURA TO SEND A FAVORABLE RECOMMENDATION TO THE VILLAGE BOARD TO APPROVE THE AMENDMENT AS PROPOSED. ALL IN FAVOR SIGNIFY BY SAYING AYE.**

Voices:

Aye.

Tom Terwall:

Opposed? So ordered. Thanks to the staff for doing that for us.

## **7. NEW BUSINESS**

Tom Terwall:

Since Items A and B are related, with the Board's permission I'm going to ask that these two items be taken together in one public hearing, but we'll still require two votes.

Don Hackbarth:

So moved.

Mike Serpe:

Second.

Tom Terwall:

**MOTION BY DON HACKBARTH AND SECOND BY MIKE SERPE THAT THESE TWO ITEMS BE TAKEN TOGETHER IN ON PUBLIC HEARING. ALL IN FAVOR SIGNIFY BY SAYING AYE.**

Voices:

Aye.

**A. PUBLIC HEARING AND CONSIDERATION OF A PRELIMINARY PLAT for the request of Ajay Kuttemperoor, agent for Crestwood Development LLC owners of the property generally located west of 39<sup>th</sup> Avenue at 97<sup>th</sup> Street for a Preliminary Plat for the proposed 41 single family lot subdivision to be known as Meadowdale Estates Addition #1 Subdivision.**

**B. PUBLIC HEARING AND CONSIDERATION OF A ZONING MAP AMENDMENT for the request of Ajay Kuttemperoor, agent for Crestwood Development LLC owners of the property generally located west of 39<sup>th</sup> Avenue at 97<sup>th</sup> Street to rezone the field delineated wetlands within Outlot 2 into the C-1, Lowland Resource Conservancy District, Outlot 1 and the non wetland areas within Outlot 2 into the PR-1, Park and Recreational District and the proposed single family lots into the R-3, Urban Single Family Residential District.**

Peggy Herrick:

This is for a preliminary plat and zoning map amendment for the next stage of Meadowdale Estates known as Meadowdale Estates Addition #1. This subdivision is located west of 39<sup>th</sup> Avenue and at 97<sup>th</sup> Street. I'm just going to give you a little bit of background information.

On December 6, 1999 the Village Board conditionally approved a Conceptual Plan for the proposed 110 single-family lot development located east of 39<sup>th</sup> Avenue and south of 93<sup>rd</sup> Street known as Meadowdale Estates. The Conceptual Plan as conditionally approved was in compliance with the approved Neighborhood Plan as adopted by Plan Commission Resolution #00-21. There is a typo in the staff memo. The neighborhood plan and the conceptual plan required that the lots meet the R-3, Urban Single Family Residential District requirements wherein lots shall be a minimum of 20,000 square feet with a minimum frontage of 100 feet. However, lots may reduce their frontage if they're on a curve or a cul-de-sac. The lots exceed these minimum requirements of the R-3 District and provide for a transition between this development and existing development called Meadowdale Farms to the east of this development.

On February 7, 2000, the Village Board conditionally approved the Preliminary Plat through Resolution #00-05. The 2000 Preliminary Plat proposed 110 new single family lots located on approximately 87.47 net acres with an average lot size of approximately 34,639 square feet and a net density of 1.26 units per net acres. The Preliminary Plat provides an open space corridor

along the southern portion of the development which is intended to extend from 39<sup>th</sup> Avenue to the electric tower lines within the Village Green Neighborhood and continue west into the High Point Neighborhood to connect to a future school site and nature preserve.

On November 20, 2000, the Village Board approved the Final Plat and related Development Agreement for the first stage of Meadowdale Estates, and that was through Resolution #00-51. The first stage included the platting of 67 single-family lots and five Outlots.

On December 4, 2000, the Village Board approved Ordinance #00-55 which included the following zoning map changes:

1. Outlot 3 of the existing Meadowdale Estates Subdivision was rezoned to PR-1, Park and Recreational;
2. The wetlands as field delineated by the Regional Planning Commission on August 10, 1993 and reconfirmed in the field by SEWRPC on August 26, 1999 and as shown on the Final Plat of the Meadowdale Estates Subdivision in Outlot 1 and Outlot 2 and on portion of Lots 54 and 55 in the Meadowdale Estates Subdivision were rezoned to C-1, Lowland Resource Conservancy District.
3. The non-wetland areas of Outlot 1 were rezoned to PR-1, Park and Recreational District.
4. Outlot 5 remained zoned R-3, Urban Single Family Residential District. Outlot 5 of the Meadowdale Estates Subdivision plat was proposed to be further subdivided.

At this time the developer is requesting approval of a Preliminary Plat for the second stage of Meadowdale Estates to be known as Meadowdale Estates Addition #1 because the previously described Preliminary Plat conditionally approved on February 7, 2000 expired on February 7, 2002. Therefore, prior to consideration of the Final Plat for the second stage, a new Preliminary Plat is required and a zoning map amendment to correct the C-1, Lowland Resource Conservancy District, as a result a new wetland staking shall be approved.

This preliminary plat tonight has a few minor changes that have come into effect because of the wetlands that needed to be restaked.

- < The location of the wetlands within Outlot 2 of Meadowdale Estates Subdivision have changed and that change is reflected on this new Preliminary Plat and is reflected on the zoning map amendment that I will discuss in a minute. Specifically, the field delineated wetlands known as Outlot 2 of the Meadowdale Estates Subdivision were field delineated by SEWRPC on August 10, 1993 and reconfirmed by SEWRPC on August 26, 1999 and were rezoned into the C-1, have been required to be re-delineated since this staking was completed more than five years ago. A new staking was completed on July 5, 2005 by Justin Funk of Natural Resources Consulting, Inc. and the staking was approved by the Wisconsin Department of Natural Resources on August 16, 2005.
- < As a result of these wetlands getting a little bit larger, the location of 43<sup>rd</sup> Avenue was adjusted further west.
- < In addition, 96<sup>th</sup> Place will not extend to the west to service future development as a result of a wetland staking on the adjacent property. If 96<sup>th</sup> Place went further west it

would end up in wetlands on the adjacent property. So a public roadway connection will be made at 97<sup>th</sup> Street only which is south. Lots 89 through 95 have been adjusted slightly to account for the right-of-way being removed.

The Preliminary Plat includes the remaining 41 single family lots and will dedicate a 6.6 acres of a wooded park area to the Village which is shown as Outlot 1. Lots 101 through 103 are wooded and are proposed to be deed restricted and the number of trees to be removed will be limited. The rear lot areas of Lots 89 through 97 and Lots 104 through 106 are also wooded and also have deed restrictions to protect the trees. Meadowdale Estates Addition #1 is approximately 45.04 acres and 36.89 net acres. Net acres excludes road-right-of-ways and wetlands. The average lot size in this phase is 29,956 square feet and the subdivision has a net density of 1.11 units per net acre.

Outlot 2 will be owned and maintained by the Homeowners Association. Outlot 2 is mostly wetlands, and surrounding the wetlands are some upland areas which are wooded as well. The retention facilities in stage 1 in Outlots 1 and 4, which there's two basins, one is at the entrance of 97<sup>th</sup> Street and 39<sup>th</sup> Avenue, and the other is at 43<sup>rd</sup> Street and 93<sup>rd</sup> Street, those outlots and those retention facilities were designed to accommodate the storm water requirements for this phase as well. All existing wetlands will be preserved and are located within Outlot 2.

Future extensions are proposed to the south into the Village Center via 43<sup>rd</sup> Avenue and one connection to the west via 97<sup>th</sup> Street. This phase will not provide any new connections to 93<sup>rd</sup> Street and 39<sup>th</sup> Avenue. All public improvement and house construction vehicles will be required to access the site from 39<sup>th</sup> Avenue at 97<sup>th</sup> Street, not through the existing development.

The petitioner is requesting a Variance from the Village Board from Section 395-59 D A of the Village's Land Division and Development Control Ordinance not to construct the required temporary turn-arounds at the west end of the proposed 97<sup>th</sup> Street and the south end of 43<sup>rd</sup> Avenue to protect and preserve existing trees within Outlot 1 of the Development. The public hearing to consider this request is scheduled for the next Village Board meeting which is October 17, 2005. If they do not receive these variances from the Village Board, the first condition of the plat approval is that they then need to show these temporary cul-de-sacs on their plat and on their engineering plan.

Zoning map amendment. As a result of the wetlands being re-delineated and the location of 43<sup>rd</sup> Avenue being shifted a bit to the west the following zoning map amendments are proposed:

- < the wetlands within Outlot 2 to be zoned C-1, Lowland Resource Conservancy District,
- < the non-wetlands within Outlot 2 and Outlot 1 to be zoned PR-1, Park and Recreational District;
- < the Single Family Lots to be zoned R-3, Urban Single Family Residential District.

With that, this is a public hearing for a preliminary plat for Meadowdale Estates Addition #1 and a zoning map amendment.

Tom Terwall:

Before I open it up to comments, for the record please show that John Braig and Judy are in attendance. This is a matter for public hearing. Is there anybody wishing to speak on this matter?

Anybody wishing to speak? Anybody wishing to speak? Hearing none, I'll open it up to comments.

Don Hackbarth:

Can you show me where the trees are delineated on these drawings? Because I believe we made a rule or put an ordinance or whatever you want to call it that when a plat is formed we need to show trees.

Peggy Herrick:

Correct. If you look on I believe the second page of the plat it will show the easement locations, and on the slide it also shows the location of the trees.

Don Hackbarth:

Show me what area.

Peggy Herrick:

On the slide here these are where the trees are located right here, and this are approximately where Outlot 5 is, so you can see on the page of the plat it will show deed restrictions for easements following the tree line.

Don Hackbarth:

I'm sorry, but I would really appreciate, again I'll reiterate, because I'd really appreciate them drawing symbols that symbolize trees on here that I can understand what they're doing. I think we said that before. I don't know what we have to do to say this to these people, but I think we need to make it stronger.

Peggy Herrick:

Part of the issue was this was requested after this was submitted as part of their drawing.

Don Hackbarth:

Mr. Kuttemperoor could do that. He's got enough money to do that.

Tom Terwall:

Any other comments or questions? We can make that a condition of the final plat approval, correct? That could be a condition of the final plat?

Peggy Herrick:

You want it on the plat or on the engineering plans?



Don Hackbarth:

Peggy, all I'm saying is some people come in with drawings and they locate all the trees in a given area so I know where they're laid out and I can make a more intelligent decision on this. Just to say a block is here where trees are that doesn't suit for me. I would really like to see that. I'll reiterate it again. I love trees and Augie knows that. I love trees and I'd like to see it in order to make a better decision or more informed decision.

Mike Pollocoff:

One of the things that we require is that the trees be placed on the engineering drawings because that's where the contractors work off of those drawings, and that is part of the final plat.

Don Hackbarth:

And when are we going to get that?

Mike Pollocoff:

That's part of the final plat.

Don Hackbarth:

So when are we going to get it?

Mike Pollocoff:

When do they want to do final plat?

Tom Terwall:

It could be two years.

Don Hackbarth:

That's what I'm saying is we're making decisions already. I would say that would be one of the first things that comes through. We're making decisions now.

Mike Pollocoff:

Correct, but the premise of the preliminary plat and the final plat is that the developer gets some assurance that the preliminary plat is acceptable before they spend the money getting their stuff to the final plat. If you want to do that then we need to rewrite our ordinance so in essence there isn't a preliminary plat but you go straight to final plat.

Tom Terwall:

I'm not in favor of rewriting the ordinance, but I am in favor of making the developer aware of the fact that's going to be a consideration of the Plan Commission when it comes to his final plat.

Mike Serpe:

Peggy, are you satisfied that the trees identified here on this outlot are going to be protected?

Peggy Herrick:

That outlot is being dedicated to the Village when they plat.

Mike Serpe:

Then it should be protected.

Peggy Herrick:

But there are some trees along tree lines that will be in easements along the rear of some of these properties that are being deed restricted, and those deed restricted areas are shown on the plat. The engineering plans probably show which trees are being removed that are not on those easements areas.

Don Hackbarth:

But, you know, John brought this thing up the last meeting or a couple meetings before that, that developers came in or whoever it was and started sawing trees down. From an initial stage they started sawing trees down. I just think the emphasis should be we want to see this stuff before you start getting out there with a hacksaw and chopping them down.

Peggy Herrick:

Correct, and this developer is not intending to--he doesn't have permits to go on site and neither did the other developer that did it without anybody's approval.

Don Hackbarth:

I'm just saying other developers will do it and then it's too late.

Mike Pollocoff:

Then I guess from a staff standpoint we'd want a recommendation to table it until the full engineering plans are completed and approved by the Village. I don't know how to give you that certainty. We can take a look at maps and plans and until I see how they're going to grade the site and see how that affects it, or when they do utility lines, you have private utilities come in completely separate from what we're doing and go through the tree areas. Until we have that in hand from staff's standpoint I can't guarantee you that's not going to happen. That's why we put it on the engineering because that's when the mischief occurs based on what we experienced in Creekside Crossing. There was good intent, and maybe there was not good intent, but there's

intent stated at the time of approval. But once you get crews out there laying lines and doing work that's when things happen. So if we have it identified on the engineering plans then we have a reasonable idea what's going to happen out there or not.

John Braig:

We could make a conditional that the tree data be provided on the final plat, and in the meantime no trees shall be removed, period, without permission.

Peggy Herrick:

They don't have permission to do any work out there and they won't until they get their engineering plans—

John Braig:

Maybe in this instance VK might not do it, but I don't have any confidence that a developer won't cut a tree down or start doing something before he should. I'm still a little bit steamed about Creekside because there was a lot of miscommunication there, and what looked like an area that would have made a nice little park or glen next to a creek as part of the developer is erased. It's a super dust bowl now. And if I knew then what I know now, I definitely would not have approved anything for that subdivision.

Wayne Koessler:

Mr. Chairman, I can't get too concerned about a few trees, because the Village has an extensive landscape plan that the developer has to follow. All you have to do is look around Pleasant Prairie and see all the subdivisions that have gone into it and the landscaping that has gone along with them along the roads and everything. I think as long as it's shown on the final plat and the engineering plan that should be adequate.

Tom Terwall:

I have a comment as well. If what happened at Creekside Crossing wasn't supposed to happen, it doesn't make any difference what we do here. If the developer is going to go in there and violate the ordinance, which is what they did, then we can slap the guy up side the head for violating the ordinance, but we can sit here until we're blue in the face trying to write new ones if they don't obey the ones we've got.

John Braig:

Not to go too far astray, but we have a lot of ordinances, we have people that violate them. And I don't mean to be critical, but it looks as though nobody does anything. Case in point this property down here on the corner the guy's cutting the grass. It's a wetland. If he keeps it up it won't be a wetland. Another one is the property out there on 75<sup>th</sup> where the river goes through. It's a five or ten acre soybean field now. You've got some darn good soybeans there, too, because it was a wetland, and in the dry season obviously the soybeans did better than they would have on some other land. What are we doing about it? What penalty is being paid?

Tom Terwall:

Correct me if I'm wrong, but given what's happened in Carol Beach I don't think we can stop a guy from mowing a wetland even though it's wet.

Mike Pollocoff:

There's two different issues. Back up. With respect to the one on Highway 50, that individual did two things. One is he filled the floodplain. I don't know if the wetlands have been determined, but what he did is altered a floodplain, filled it, graded it and then planted soybeans in it in violation of the zoning. The DNR is going after him.

John Braig:

He'll probably make more money off his soybeans than any fee or fine.

Mike Pollocoff:

I guess if the request is to have the Village Board adopt an ordinance that would supercede the DNR's and be able to regulate the floodplain at a greater level. You hit it right on the head. If I was able to send Jean and Peggy and Tom out and do ordinance violation citations, I could probably keep them busy nonstop. Really we trust that people are going to abide by the ordinances, and if we catch them we catch them. In the case of the guy on Highway 50, he's been caught and we might not be the ones to get the nickel out of him, the State might, but he's going to get caught.

With respect to people mowing the wetlands, I don't believe there's a rule that prohibits people from mowing the wetlands. The things that make wetland is not just the plant species on there, it's the soils that are supporting that plant life species. So some people feel like if they crop it or they mow it they've defeated the purpose of the wetland staking. But the soils that are supporting that wetland still is the same and dig it out and replace, it's still a wetland.

John Braig:

The overriding concern that I have on this is it's really unfair to some of our better citizens. They know the rules, they know the ordinances, they adhere to them, they do their best to comply with every requirement on it, and it's unfair to them to have others that violate all the rules and proceed recklessly if they don't pay a penalty.

Mike Pollocoff:

We have cited people and they have been to court. In some cases if we can get the State to do the legal work for us we'll do that. The penalty is a lot more severe with what they'll prosecute than what we have. But if the concern is that at the preliminary plat stage that we want to have more certainty, then we need to wind the process back and change how we do it. I think it would take a significance ordinance amendment to require trees to be placed on the final plat. Right now under Wisconsin statutes that's not a--unless the tree is in an easement that's been dedicated to the Village, but to identify trees on the plat that they should be preserved isn't a requirement. Now, we require that whether there's an outlot that's being given to us, and again we require it on the engineering plans so that as the subdivision is built we have then identified. But right now our ordinance doesn't make that a platting requirement that individual trees be identified on a

subdivision plat because that's not the issue of the subdivision plat. A subdivision plat creates the lots.

Don Hackbarth:

But you know this is a nice drawing. It's a nice drawing of the subdivision plat, and then after the fact we have the engineering drawing with the trees. So what happens if we turn around now and say you've got a row of trees sitting here so now we're going to tell him to redraw this.

Mike Pollocoff:

Before he gets his final plat and we've seen the engineering which is part of the final plat, then for us to approve the final plat we've got to make those modifications.

Don Hackbarth:

I don't think that's fair to the developer. I don't have a problem with Kuttemperoor, I don't have a problem with them, but we're doing this and he's laying out the whole subdivision, and then afterwards when it comes to the engineering drawing with the trees in it what happens if we don't like it? Then he's going to have to redraw this whole thing all over again. It's backwards.

Jim Bandura:

Mike, just a question. When they come in for a preliminary plat, has there been any thought of a preliminary tree survey? I've worked with some municipalities where before you go in we go in and you have essentially a tree staking. They mark where all the trees are. I've only done it-- there's not too many municipalities that I've worked with that do it, but I've heard of it done.

Mike Pollocoff:

Some developers do it to the extent that they want to keep the trees and make them an amenity of the subdivision. Right now the ordinances do not require it as part of a preliminary plat a tree survey. When a developer lays out a subdivision and he has the lots and the developers are looking for a lot count and so are we, the things that go into creating that lot count there's going to be a dirt balance for that subdivision for grading, and that grading is going to either require the removal of trees, if they're going to want to do that, or it's going to make some changes on the topography there to handle storm water. Most developers if you're looking at the design, you'll get a conceptual design to basically show where the inverts are for storm and sanitary, where the water main is going, but the engineering is a significant tab for a developer to come up with not knowing whether or not the preliminary plat is acceptable. That's part of the final plat. That's when everything comes together and the developer has two years to get from preliminary to final because there is a lot of work that has to happen.

Jim Bandura:

I'm not so sure I want to rewrite a whole set of ordinances for this as Tom said.

Tom Terwall:

If, as Peggy says, he can't legally move any earth or cut down any trees, then I don't care what ordinance you write. It's already against the law. So if he's going in there and whacking trees down now, he's in violation of the law, don't add more laws but nail him for the ones that he's already violated.

Jim Bandura:

The one that John was talking about the developer came out there on a holiday weekend and within a few days he had it all gone.

Mike Serpe:

Question, Mike. Can a municipality stop a developer from developing if--let me rephrase this. If a developer purchases a couple acres of land and wants to develop single family homes, and in order to do so he has to remove a significant amount of trees. If we denied him that right--can we deny him that right to cut those trees down?

Mike Pollocoff:

We can deny the plat. I want to make sure, somebody made a statement--they can't cut trees down. If there's a tree on the property and they want to cut it, that tree can be removed. Anybody can remove a tree on their property right now in Pleasant Prairie. There's nothing that prohibits you from removing trees unless it's in a C-2. If it's in an upland woodland conservancy, you're able to remove trees. Anything else we'd be taking the property. So if somebody does want to cut trees, right now the way the ordinances are structured we can't stop them unless they're in an upland conservancy. So if you want to stop that we need a tree ordinance that says that no trees will be cut anywhere, and you're going to have to be willing to put that across every property in the Village, not just developers, but everybody is going to have to hold to that. That's a bigger issue.

Mike Serpe:

To Don's credit he pushed this tree thing and I give him credit for that. I don't disagree with what he's doing, and I think he's made the staff and everybody else well aware of preserving as many trees as we possibly can on every development. And I know that they have this in their mind when they come to this Plan Commission because if they don't identify it they're going to get exactly what's happening tonight. I'm satisfied that staff has done their homework on this. I don't know how much more we can improve upon what we're already doing other than making staff and everybody well aware of what this Plan Commission and the Board is going to require from them. Developers know that going in and I'm satisfied they're doing a job and I think it's going to come out okay.

Tom Terwall:

What Don is trying to do when 104<sup>th</sup> Street gets widened he wants to make sure those trees stay there. He doesn't mind the road widening, he just doesn't want to see those trees removed.

Don Hackbarth:

I don't.

Tom Terwall:

I don't want to see the road widened either. Anything further?

Mike Serpe:

Mr. Chairman, I'd move approval of the preliminary plat.

Jim Bandura:

I second.

Tom Terwall:

**THE FIRST MOTION IS FOR THE PRELIMINARY PLAT, A MOTION BY MIKE SERPE AND A SECOND BY JIM BANDURA TO SEND A FAVORABLE RECOMMENDATION TO APPROVE THE PRELIMINARY PLAT SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM. ALL IN FAVOR SIGNIFY BY SAYING AYE.**

Voices:

Aye.

Tom Terwall:

Opposed? So ordered. The second item then is consideration of the zoning map amendment. What's your pleasure?

Jim Bandura:

I move for approval.

Mike Serpe:

Second. Does she have to read anything in?

Tom Terwall:

**NO. MOTION BY JIM BANDURA AND A SECOND BY MIKE SERPE TO SEND A FAVORABLE RECOMMENDATION TO THE VILLAGE BOARD TO APPROVE THE ZONING MAP AMENDMENT SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM. ALL IN FAVOR SIGNIFY BY SAYING AYE.**

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

**C. Consider the request of Bill Kern for approval of Certified Survey Map to re-divide 11301 Lakeshore Drive into two lots.**

Peggy Herrick:

The petitioner is requesting to re-divide the property located at 11301 Lakeshore Drive back into two lots. The properties were combined in 1986 by the current property owner.

The property is currently zoned R-5, Urban Single Family Residential District, and is located within the LUSA, Limited Urban Service Area Overlay District. The property abuts Lake Michigan. Parcel 1 is proposed to be 16,727.8 square feet with 100 feet of frontage on Lakeshore Drive, and Parcel 2 is proposed to be 10,132.8 square feet with a frontage of 80 feet on Lakeshore Drive. The R-5 District requires that all new lots be a minimum of 10,000 square feet with a minimum frontage of 75 feet on a public road. The lots meet and exceed these requirements.

Parcel 1 has an existing single family home and a detached shed. The property owners have recently removed portions of the existing home. Parcel 2 is vacant.

According to the CSM the location of the Ordinary High Water Mark of Lake Michigan was located on August 10, 2005 at an elevation of 585.0 by the Wisconsin Department of Natural Resources.

The Village Zoning Ordinance requires that all new single family homes be located 75 feet from the OHWM; however, the Ordinance provided for an exception for a single family home to be closer than 75 feet. Specifically, Section 420-139 B (2) (d) allows for the required shore setback for a principal structure located within a single-family residential district to be decreased to the average of the existing shore setback distances of the abutting principal structures on each side, but in no case shall the setback distance be reduced to less than 50 feet from the ordinary high-water mark. If one of the abutting lots to be used in averaging the setback is vacant, then to calculate the average shore setback, the shore setback on the vacant lot shall be 75 feet. Therefore, according to the Village Zoning Ordinance, a new home constructed on Parcel 2 shall meet the following minimum setbacks: street setback 30 feet; side setback 10 feet; and shore setback of 53.75 feet from the ordinary high water mark. Again, this is calculated by using that exception. The house on parcel 1 is 57.5 feet from the ordinary high water mark, and the house under construction to the south is located 50 feet from the ordinary high way mark, therefore the house if constructed on this can be a minimum of 53.75 feet.

Prior to a new home being constructed on Parcel 2, shore protection shall be installed pursuant to the requirements of the Department of Natural Resources, U.S. Army Corps of Engineers and the Village. Prior to the installation of the shore protection on parcel 2, proper permits shall be obtained from the DNR, ACOE and the Village.

The Floodplain Elevation of Lake Michigan is 584.6 pursuant to Flood Insurance Map prepared by FEMA and associated Flood Insurance Study dated December 5, 1996. Since the OHWM as



determined by the DNR on August 10, 2005 as shown on the CSM is at an elevation of 585.0, the location of the 100 year floodplain is located lakeside of the OHWM and is not needed to be shown on the CSM. Just for your information, the Village Zoning Ordinance does not allow structures to be constructed or located within the 100-year floodplain.

Village staff recommends approval of the certified survey map subject to the five conditions in the staff memo.

Don Hackbarth:

Move approval.

Mike Serpe:

Second.

Tom Terwall:

**MOTION BY DON HACKBARTH AND A SECOND BY MIKE SERPE. I HAVE A QUESTION. I WANT TO GO BACK TO THE CALCULATION FOR CALCULATING THE ORDINARY HIGH WATER MARK. IT SAYS THAT THE HOUSE UNDER CONSTRUCTION IS LOCATED 50 FEET FROM THE ORDINARY HIGH WATER MARK. SO AT THE TIME THE CALCULATION FOR THAT HOUSE WAS DONE, THE LOT NEXT DOOR WAS VACANT, BECAUSE THAT'S THE ONE WE'RE LOOKING AT BUILDING NOW, CORRECT?**

Peggy Herrick:

No, the lot next door contains an existing single family home.

Tom Terwall:

Oh, because it wasn't divided yet.

Peggy Herrick:

Because it wasn't divided yet and there were other additions onto this house, so he used the averaging and they got the minimum 50 foot setback.

Tom Terwall:

But had this already been separated or split off, then it would have been 75 feet on that side?

Peggy Herrick:

Correct.

Tom Terwall:

And the minimum is 50 on the other side, so he would have had to have been at least 62.5 feet?

Peggy Herrick:

Correct. But existing homes some of them are less than 50 because if they didn't protect their shore and it eroded away they might be less than 50 currently today. So when that new house was issued to the parcel on the south there were different circumstances that are present if and when this gets subdivided.

Tom Terwall:

Isn't one of the conditions of this splitting off that he has to obtain an on site sanitary permit? He doesn't have one now because it's all one lot, so he's got to get one, right?

Peggy Herrick:

If he wants to build on parcel 2 they will have to obtain a sanitary permit. Any new home constructed on the vacant parcel would have to get a sanitary permit, that is correct.

Tom Terwall:

If there's no further questions there's a motion and a second to approve the CSM. All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

**D. Consider the request of Christopher and Vicky Anderson and Richard Duchrow for approval of a Lot Line Adjustment to adjust the lot lines between Lots 29 and 30 of Terra Heights Estates and the west half of the vacated 45<sup>th</sup> Avenue.**

Peggy Herrick:

The petitioners are requesting to adjust the lot lines between Lots 29 and 30 of the Terra Heights Estates Subdivision and the west half of the vacated 45<sup>th</sup> Avenue.

The properties are currently zoned R-4 (UHO), Urban Single Family Residential District, with an Urban Landholding Overlay District. The R-4 District requires that all new lots be a minimum of 15,000 square feet in area with a minimum frontage of 90 feet on a public road.

Parcel 29 of the Terra Heights Estates Subdivision and the west half of vacated 45<sup>th</sup> Avenue has an existing home and Lot 30 is vacant. The petitioners are requesting to adjust the lot line between Lots 29 and 30 by 30 feet. After the adjustment the vacant lot will have 90 feet of frontage on 120<sup>th</sup> Street and have a lot area of 30,409 square feet, and the improved lot will have 150 feet of frontage on 120<sup>th</sup> Street and a lot area of approximately 75,000 square feet. The lots meet and exceed the R-4 District requirements.

The Village staff recommends approval of the Lot Line Adjustment subject to the property owners recording the proper transfer documents with the Kenosha County Register of Deeds.

Tom Terwall:

Peggy, I forgot my magnifying glass. Prior to this lot line approval being granted, did that existing house meet the side yard setbacks?

Peggy Herrick:

I believe so.

Tom Terwall:

I can't read it.

Peggy Herrick:

Yes, it was 17.9 feet. Yes, it met the 10 foot side setback.

Wayne Koessl:

Move approval, Mr. Chairman.

Judy Juliana:

Second.

Tom Terwall:

**MOTION BY WAYNE KOESSL AND SECOND BY JUDY JULIANA TO SEND A FAVORABLE RECOMMENDATION TO THE VILLAGE BOARD TO APPROVE THE LOT LINE ADJUSTMENT. ALL IN FAVOR SIGNIFY BY SAYING AYE.**

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

**8. OTHER SUCH MATTERS AS AUTHORIZED BY LAW.**

Peggy Herrick:

Just want to remind people that there's a public informational meeting hosted by the DOT here at the Village Hall on Wednesday, October 19<sup>th</sup> from 4:30 to 7:30. They are looking to present a

plan for the 165 corridor. Again, Wednesday, October 19<sup>th</sup> from 4:30 to 7:30 right here at the Village Hall.

Tom Terwall:

And there's a meeting here tomorrow night here for the school referendum, is there not?

Mike Pollocoff:

Wednesday night.

Peggy Herrick:

Wednesday night at seven p.m.

Tom Terwall:

Who is conducting that, Steve?

Steve Kumorkiewicz:

Dr. Scott Pierce from K.U.S.D.

Don Hackbarth:

I'm kind of anal with this whole thing, but when we put on our addition we moved three pine trees about 12 feet high. We relocated them. One we relocated in the field, and then after we were done building we relocated it back into a position where we wanted it to begin with. We relocated one maple tree, so I'm not just shooting my mouth off here about trees. We only sawed one tree down when we made that addition, one tree, and we relocated four trees total, three pine trees and one maple. So it's not just a matter of spouting off about trees.

Mike Pollocoff:

I don't want you to think that we believe you're spouting off. I guess what I'm saying, though, is if the Plan Commission wants to take a real tough stand on tree removal or working around trees and having that be absolute so a developer has got some hard and concrete information so when they're doing designs that they can't touch it, the Village would need to adopt a tree preservation ordinance. That goes across the board. That affects everybody, and then we've got to be willing to administer that. But to get to where you want to be and that's what the Plan Commission wants that's what we need. Otherwise we're catching them on a case-by-case basis and everybody has extenuating circumstances or a claim they do that work against the intent of what I'm hearing people saying. That's where we need to be.

Right now the staff pushes as hard as we can to get people away from cutting into trees because we're telling them if you're proposing tree removal we can say yes, but by the time you get to Plan Commission they're going to be too silly over it. There have been developers, and you know which ones they are, have gone out and cut the trees before they come in so it's not an issue. Without having a tree preservation ordinance I don't know how you stop people from doing it.

Don Hackbarth:

Mike, I'm not opposed to people cutting trees down if it's absolutely necessary. I'm not. What I'm saying is I would like to see--I think in looking at Jim's idea, the idea that a survey would be really nice to look at before we even go into a plat. Because it's just further information for us to say even before they plat the thing, even before they start laying out lots and stuff like that, to say, well, maybe you want to put the road ten feet this way because you're going to save five trees. I don't know. I'm just saying it would be nice to have further information to make a more intelligent decision. I'm not opposed to anybody cutting down trees. I'm just saying I would like more tools to make a better decision in this area.

Mike Pollocoff:

Again, my recommendation would be then we modify the ordinance because we've got to have something to make people legally do this and to say a tree survey is part of rezoning is required.

Tom Terwall:

I just want to remind the Commissioners that we addressed this issue back when Nitto Denko was on the table, and there were people then that wanted a hard and fast ordinance with tree police, that anybody that wanted to cut a tree down if it was more than six inches in diameter would have to get a permit from the Village. And, if I remember right, we heard loud and clear that's not what people wanted. I agree with Mike if you're going to do this, then it goes across the board. That means anybody, whether it's a new subdivision or some guy who wants to cut a tree down in his backyard because he wants to put a garage or swimming pool there would have to get a permit and the Village is going to have to approve it. Just think about that if that's what you really want.

Wayne Koessl:

Mr. Chairman, if we're going to have then do all that on a preliminary plat, then I don't think we need the preliminary. We should just make it a final plat when they come in, because the idea of a preliminary is for him to go ahead and do his engineering work and all the other studies he has to do. And a lot of times the preliminary plat changes, because when they get their engineering study done it's not the same as they brought it in here. I think the process we have now is fine.

Judy Juliana:

I'm still new to this. I've got a dumb question. When all of these lots were initially platted, was the vegetation shown on the original plats, or was it just the footage of the lot?

Mike Pollocoff:

That's where we are. The lots haven't been platted. There is no plat. A plat is a legal document that shows what the legal description is, the meets and bounds of the lot is, and that's really all a plat is meant to do. The statutes give the Plan Commission and the Village Board the authority to say--

Judy Juliana:

The thing is if we're going to put in a tree ordinance or any other kind of ordinance, how are we going to enforce it? We can say we want to put a tree ordinance in or we want to make them come to our Commission with what they're going to do, how can we enforce it? Do we have the person power to enforce a tree ordinance? Or, having them come in, as he said, with a final plat instead of a preliminary plat. How do we enforce it?

Mike Pollocoff:

Unless you staff enforcement personnel, you either take people off of planning review or we hire somebody, but typically we rely on people to tell us when someone is doing something wrong so we can go out and see them rather than going out and looking at it. Trees are tough. People are, I don't want to say like beavers, but when they want to cut a tree down they'll cut a tree down if it's on their property . . . .

Mike Serpe:

Don't forget, people were speeding on our streets when we started paving them, so we came up with ordinances to stop the speeding. And, guess what, people are still speeding.

Judy Juliana:

Exactly.

Mike Serpe:

And every now and then you throw a cop out there and he catches a speeder. And after he's gone more people speed. It's the same thing here. I agree with a number of other Commissioners. I think the staff is doing an admirable job on identifying these things when they're coming for and the pressure is on them to be careful how much they're going to cut if any. Don, we'll still support and save as many as we can. We'll continue to do that. I don't see why we should change that just yet.

Judy Juliana:

I agree.

## **9. ADJOURN**

Mike Serpe:

So move.

Judy Juliana:

Second.

Tom Terwall:

**MOTION BY MIKE SERPE AND A SECOND BY JUDY JULIANA TO ADJOURN. ALL  
IN FAVOR SIGNIFY BY SAYING AYE.**

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.