

**VILLAGE OF FONTANA ON GENEVA LAKE
WALWORTH COUNTY, WISCONSIN
(Official Minutes)**

MONTHLY & SPECIAL JOINT SESSION MEETING of the VILLAGE OF FONTANA PLAN
COMMISSION with the JOINT EXTRATERRITORIAL ZONING COMMITTEE

Monday, November 29, 2010

Chairman Spadoni called the monthly meeting of the Village of Fontana Plan Commission to order at 5:30 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

Plan Commissioners present: Roll call: Micki O'Connell, President Arvid Petersen, Chairman George Spadoni, Derek D'Auria, Mike Poivey, Harry Nelson

Plan Commissioners absent: Sarah Lobdell

Also present: Joe Abell, Steve Beers, Brandee and Brooke Brown, Jim Howe, Rob Ireland, Library Director Nancy Krei, Alex Koldeway, Village Clerk Dennis Martin, Assistant Zoning Administrator Bridget McCarthy, Joseph McHugh, Building Inspector/Zoning Administrator Ron Nyman, Sharon O'Brien, Tom Rohleder, Village Attorney Dale Thorpe, Carol Whowell, Trustee Cindy Wilson, Director of Public Works Craig Workman

Visitors Heard

None

Announcements

1. First Day to Circulate Nomination Papers for Spring Election – **Wednesday, December 1, 2010**
2. Lakefront and Harbor Committee Meeting – **Wednesday, December 1, 2010, 4:30 pm**
3. Village Board Monthly Meeting – **Monday, December 6, 2010, 6:00 pm**
4. GLLEA Board Monthly Meeting – **Wednesday, December 8, 2010, 10:00 am**
5. Village Hall Open for Customer Service Hours – **Saturdays, December 11 & 18, 2010, 8:00 am to noon**
6. FW/WPCC Board Meeting – **Tuesday, December 14, 2010, 7:30 pm**
7. Library Board Meeting – **Wednesday, December 15, 2010, 10:00 am**
8. Plan Commission Staff Meeting – **Wednesday, December 15, 2010, 1:00 pm**
9. Park Commission Meeting – **Wednesday, December 15, 2010, 6:00 pm**
10. VOF Quarterly Newsletter Article Deadline – **Thursday, December 23, 2010**
11. Village Hall & Public Library Closed for Christmas Holiday – **Friday to Monday, December 24-27, 2010**
12. Plan Commission Monthly Meeting – **Tuesday, December 28, 2010, 5:30 pm**
13. Village Hall & Public Library Closed for Holiday – **Friday, December 31, 2010 to Monday, January 3, 2011**

Approve Minutes

Commissioner O'Connell/Commissioner D'Auria 2nd made a MOTION to approve the minutes for the meetings held October 25, 2010 & November 1, 2010, and the MOTION carried without negative vote.

General Business

Reschedule December 2010 Monthly Meeting for Tuesday, December 28, 2010

President Petersen/Commissioner O'Connell 2nd made a MOTION to reschedule the monthly meeting for December 2010 for Tuesday, December 28, 2010 beginning at 5:30 pm, and the MOTION carried without negative vote.

Hawks Woods Condominium Plat Filed by Stephen P. Beers 1994 Revocable Trust, 454 N. Lakeshore Drive

Thorpe stated that the application previously filed for the proposed three-unit condominium plat was

withdrawn and a new application was filed with additional details that address all the requirements of Chapters 17 and 18 of the Municipal Code. Thorpe stated that it is his opinion that the application being considered that night has addressed all the previously stated concerns as well as the items outlined in a letter submitted September 7, 2010 by Attorney William O'Connor on behalf of the Geneva Lake Conservancy. Thorpe stated that there are no unresolved issues with the application as filed. Thorpe stated that the Village staff report lists five conditions for approval if the Plan Commission votes to recommend Village Board approval of the condominium plat and declarations. The five conditions suggested in the staff report are:

1. The owner/applicant shall be responsible for any and all recording fees.
2. The owner/applicant shall be responsible for recording all appropriate documents with the Walworth County Register of Deeds within 90 days from the approval date by the Village of Fontana.
3. The owner/applicant shall provide the Village of Fontana with one recorded copy of each appropriate document, within 30 days of recording such document.
4. The owner/applicant shall be responsible for payment of all Cost Recovery fees to the Village of Fontana within 30 days.
5. The owner/applicant shall complete the requirements described in the November 4, 2010, Ruckert-Mielke correspondence (Items No. 2 and No. 3), at the appropriate future time. These items are as follows:
 - Item #2: "Because the future home on Unit 3 of the development is not being developed at this time, it is critical that final plans for the home site are reviewed by the Village prior to issuance of a building permit and construction to ensure compliance with the above referenced drainage plan."
 - Item #3: "Prior to issuing of a building permit for the future home site, the property owner should enter into a developer's agreement or similar instrument with the Village to ensure that the infiltration trenches and other on-site storm water management best management practices are constructed correctly and properly maintained."

Attorney Jim Howe, representing the applicant, stated that everybody was familiar with the proposed condominium plat and declarations, and the staff conditions suggested for approval are acceptable to his client. Spadoni asked Thorpe to outline a motion for Plan Commission consideration that is in favor of the proposal as filed. Thorpe stated that if the Plan Commission was so inclined, an appropriate motion would be for the Plan Commission to make findings in favor of the condominium plat and declarations as filed by the Stephen P. Beers 1994 Revocable Trust, 454 N. Lakeshore Drive, as the proposal abides by all the applicable terms of the Municipal Code; and to recommend Village Board approval of the condominium plat and declarations per the terms of the staff review. Commissioner Nelson then made the motion as stated and it was seconded by Commissioner Poivey. Martin read into the record an emailed message from Todd Lentz, owner of a lot on Stearns Road, that favors the proposal and requests approval by the Village. Spadoni stated that because of the recent ordinance amendment to the Zoning Code, similar proposal for the pyramiding of lakefront rights will no longer be allowed. Geneva Lake Conservancy Executive Director Joseph McHugh submitted a letter that states that "the village staff and officials may be overlooking the clear and simple fact that Section 18-99 of the village's Municipal Code, which was 'on the books' at the time of the submittal, specifically prohibits the transfer of riparian rights." Wilson asked Thorpe to provide his opinion of Section 18-99 and if the Lakeshore Overlay District provision prohibits the proposal. Thorpe stated that is his opinion that the proposed condominium plat does not violate the Section 18-99, and the section does not even apply to condominium platting. Thorpe stated that Section 18-99 was not intended to regulate the platting of condominium associations. Howe stated that Attorney Robert Leibsle, the former village attorney, also has submitted his opinion to the Village that states Section 18-99 was drafted and approved to prohibit the granting of riparian rights by flag lots, easements, long-term leases or other devices to distant non-riparian lots. Howe stated that it is Leibsle's opinion that the ordinance could have added

condominium ownership as a prohibited means of granting riparian rights, but it did not, despite the existence at the time of approval of the Section 18-99 ordinance of condominium associations located within the Village that granted such riparian rights to off-lake units. Thorpe stated that if the Plan Commission and Village Board were to cite Section 18-99 as the basis for denial of the application, he could not defend the decision if it were appealed.

Commissioner Nelson/Commissioner Poivey 2nd made a MOTION to make findings in favor of the condominium plat and declarations as filed by the Stephen P. Beers 1994 Revocable Trust, 454 N. Lakeshore Drive, as the proposal abides by all the applicable terms of the Municipal Code; and to recommend Village Board approval of the condominium plat and declarations with the following five conditions for approval as listed in the Village staff report dated November 22, 2010:

1. The owner/applicant shall be responsible for any and all recording fees.
2. The owner/applicant shall be responsible for recording all appropriate documents with the Walworth County Register of Deeds within 90 days from the approval date by the Village of Fontana.
3. The owner/applicant shall provide the Village of Fontana with one recorded copy each appropriate document, within 30 days of recording such document.
4. The owner/applicant shall be responsible for payment of all Cost Recovery fees to the Village of Fontana within 30 days.
5. The owner/applicant shall complete the requirements described in the November 4, 2010, Ruckert-Mielke correspondence (Items No. 2 and No. 3), at the appropriate future time. These items are as follows: Item #2: "Because the future home on Unit 3 of the development is not being developed at this time, it is critical that final plans for the home site are reviewed by the Village prior to issuance of a building permit and construction to ensure compliance with the above referenced drainage plan." Item #3: "Prior to issuing of a building permit for the future home site, the property owner should enter into a developer's agreement or similar instrument with the Village to ensure that the infiltration trenches and other on-site storm water management best management practices are constructed correctly and properly maintained." The Roll Call vote followed:

President Petersen – Aye

Chairman Spadoni – Aye

Commissioner Poivey – Aye

Commissioner D'Auria – Aye

Commissioner Nelson – Aye

Commissioner O'Connell – No

The MOTION carried on a 5-1 vote, with Commissioner Lobdell absent.

Wisconsin, Power & Light Easements Recommendation

Thorpe stated that the Plan Commission is required to make a recommendation on easement proposals. Thorpe stated that the easements are for the already buried utility lines at the lakefront and along Third Avenue. Workman stated that all the construction work has been completed and the easements were approved verbally prior to the commencement of the construction project; however, formal adoption is required to finalize the project. Workman stated that the easements are necessary so that the utility companies can maintain the lines, and the easements are mainly in non-road areas. Commissioner Nelson/Commissioner Poivey 2nd made a MOTION to recommend Village Board approval of the utility line easements as presented, and the MOTION carried without negative vote.

Certified Survey Map Filed by James and Carol Howell, Willow Bend Properties, W6267 Willow Bend Road

Thorpe stated that the Certified Survey Map was filed in conjunction with a Petition to Amend the ETZ Zoning District to accommodate the construction of a new single-family residence. Thorpe stated that the Village has review authority on CSMs filed in the extraterritorial plat review jurisdiction area. Thorpe stated that if the Plan Commission favors approval of the CSM, it should be contingent on the approval of the Petition to Amend the ETZ Zoning District filed by

James and Carol Whowell, Willow Bend Properties, W6267 Willow Bend Road, Walworth Township. Martin stated that the proposed CSM was distributed to the appropriate utility companies and school districts and no comments were received. The staff report recommends approval of the CSM with the condition that comments detailed in the July 1, 2010 letter from Bruce Cross of the Village engineering firm, Ruekert-Mielke, be satisfactorily addressed.

President Petersen/Chairman Spadoni 2nd made a MOTION to recommend Village Board approval of the extraterritorial plat review of the Certified Survey Map filed by James and Carol Whowell, Willow Bend Properties, W6267 Willow Bend Road, Walworth Township, contingent on the successful rezoning of the subject property and with the condition that the comments detailed in the July 1, 2010 letter from Bruce Cross of the Village engineering firm, Ruekert-Mielke, be satisfactorily addressed. The MOTION carried without negative vote.

Chairman Spadoni called for a 17-minute recess of the Plan Commission meeting until 6:00 pm. Chairman Spadoni called the Plan Commission meeting back to order at 6:00 pm.

The Joint ETZ Committee meeting was called to order by Chairman Derek D'Auria at 6:00 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

ETZ Committee Members present: Roll Call vote: Chairman D'Auria and Village of Fontana representative Mike Poivey; Town of Walworth representatives Tom Rohleder, Ken Magowan and Jim van Dreser; Town of Linn representatives Jerry Polek and John Zils

ETZ Committee Members absent: Village of Fontana representative Sarah Lobdell, Town of Linn representative Larry Aasen

Joint Session General Business

Petition to Amend ETZ Zoning District Filed by James and Carol Whowell, Willow Bend Properties, W6267 Willow Bend Road, Walworth Township – Set Public Hearing

The Petition to Amend the ETZ Zoning District and Zoning Map was filed to authorize the creation of two separate lots to be zoned C-2 ETZ Upland Resource Conservation District to accommodate the construction of single-family residences. The property is currently zoned A-2 ETZ Agricultural Land District, and the rezone would create two lots located on the northern portion of the existing parcel. The applicant requested an amendment to the Village of Fontana Comprehensive Plan to allow for such a rezone and the amendment was approved following a public hearing on November 1, 2010. A public hearing is required before the Plan Commission and the ETZ Committee before a recommendation can be considered on the petition to amend the zoning district.

President Petersen/Commissioner Poivey 2nd made a MOTION to schedule a public hearing for Tuesday, December 28, 2010 beginning at 5:30 pm to consider the Petition to Amend the ETZ Zoning District and Zoning Map filed by James and Carol Whowell, Willow Bend Properties, W6267 Willow Bend Road, Walworth Township. The MOTION carried without negative vote.

Town of Walworth ETZ Committee representative van Dreser/Town of Linn ETZ Committee representative Polek 2nd made a MOTION to schedule a public hearing for Tuesday, December 28, 2010 beginning at 5:30 pm to consider the Petition to Amend the ETZ Zoning District and Zoning Map filed by James and Carol Whowell, Willow Bend Properties, W6267 Willow Bend Road, Walworth Township. The MOTION carried without negative vote.

Adjourn Plan Commission

President Petersen/Commissioner O'Connell 2nd made a MOTION to adjourn the Plan Commission meeting at 6:01 pm, and the MOTION carried without negative vote.

Adjourn Joint ETZ Committee

Town of Walworth ETZ Committee representative van Dreser/Town of Walworth ETZ Committee representative Magowan 2nd made a MOTION to adjourn the Joint ETZ Committee meeting at 6:01

pm, and the MOTION carried without negative vote.

Minutes prepared by: Dennis L. Martin, Village Clerk

Note: These minutes are subject to further editing. Once approved by the Plan Commission and Joint ETZ Committee, the official minutes will be on file at the Village Hall.

APPROVED: 12/28/10