

## Minutes of the Plan Commission – Town of Spring Green

April 10, 2018 - Spring Green Town Hall, E4411 Kennedy Road, Spring Green, WI 53588

**Attendees:** Rudy Feiner, Chad Feiner, Vicki Strait-Munns, Rick Munns, William Moneyppenny, Wm. Moneyppenny companion (did not sign log), Dave Radel (Town supervisor), Lisa Wilson (County Concervation, Planning & Zoning)

**1. Meeting called to order by Iausly at 7:00 pm.**

**2. Roll call** Plan Commission members present: Fred Iausly, Nate Robson, Carla Carmody, Michelle Thomas, Kolby Hirth; excused: none; absent: none

**3. Iausly attested that proper public notice had been made.**

**4. Motion to approve minutes of the March 13, 2018 meeting** by Thomas, seconded by Carmody.

**5. Motion approving agenda as posted** by Robson, seconded by Carmody. Motion carried.

**6. Public comment:** None.

**7. Updates & Communications:**

- a. Robson observed markings for the ATC line along Hwy 133 between Avoca and Muscoda, but has not further information.

**8. Business Items:**

**a. CSM & PRD: Presentation by Rudy Feiner for creation of a Planned Rural Development on his property at E5611 County Highway WC.**

Rudy Feiner distributed a Preservation Area Easement and map, both developed in conjunction with Sauk County Planning and Zoning Dept. The map showed an approximately 2-acre PRD lot off of Neuheisel Rd and a 33-acre PRD Preservation Area in the northeast corner of the Feiner farm. The PRD Preservation Area has a creek running through it, so its designation as a preservation area will prevent construction of a drive across the waterway; it also contains forest and some cropland bottomlands. Feiner said the PRD lot will be surveyed and include a perc test; Lisa Wilson noted that the CSM is needed prior to final approval. Iausly moved, Robson seconded to recommend approval of the Conditional Use Permit to establish the Feiner PRD, with PRD lot and PRD Preservation Area as presented by the Sauk County map and easement. Motion carried.

Robson stated that the Plan Commission should establish priorities for PRD Preservation Area selection. Iausly noted it should be done during our current efforts to update the Comprehensive Plan.

**b. CSM: Consultation/presentation with Victoria Strait-Munns on a CSM for parcel 032-0821-10000 on Thuli Rd.**

Victoria Strait-Munns presented a CSM combining a 2.4-acre lot (CSM 3228) with 8.31 acres purchased from a neighbor to form a 10.71-acre rectangular lot. The resultant neighboring lot still exceeds the 35-acre minimum. Strait-Munns stated that

they intend to build the accessory structure (barn) first. Iausly explained it is permissible upon filing an affidavit, of the intent to complete construction of the primary structure, with the County. Iausly further explained that those documents must be in the packet for the Town building inspector, as well as septic and driveway permits. Strait-Munss inquired about how to post the building permit. Robson explained that state law requires permits to be posted on the property - for new construction it is usually posted near the mailbox; for remodel it is typically in a window.

Robson inquired about the purpose of the 66' easement on the southwest corner of the CSM. Strait-Munns stated it was an old easement that was not used because both they and the neighbor have direct access from Thuli Rd. Strait-Munns also intends to use that area for a septic field. The Plan Commission recommended Strait-Munns contact Jewell & Assoc. for direction on what needs to be done to abandon the easement, which would avert any potential future problems. Iausly motioned, Carmody seconded, recommending approval of the CSM with contingency to resolve the access easement on the CSM and adjoining neighbor's property.

**c. Variance for William Money penny at E2720 County Highway JJ for a breezeway and garage addition within the Airport Overlay Zoning District.**

Iausly distributed a copy of Sauk County Board of Adjustment Staff Report SP-11-18 and explained that the airport has an overlay zoning district that restricts development in certain corridors, including within 500' of the runway centerline. A variance is changing of the ordinance for a specific site provided the applicant can show hardship beyond their control; a uniqueness of the property; and public interest is protected.

Robson inquired about the process and asked why a County Board of Adjustment (BoA) consideration was before the Town Plan Commission (PC). Iausly and Lisa Wilson from Sauk County Conservation, Zoning & Planning (CZP) explained that, similar to any Conditional Use Permit (e.g. B&B), the County asks for objections or restriction recommendations from the Town; and the Town Board has assigned the PC responsibility for reviewing proposals with respect to ordinance and comprehensive planning and for sending recommendations to the Board. Iausly further clarified that Robson's previous experience was similar to the village of Spring Green having a Zoning Board of Appeal for issues within the Extraterritorial (ET) area, whereas the Sauk County Board of Adjustment hears variance requests in the Town outside the ET.

Robson asked for verification that a variance remains with the property and asked if a homeowner could rebuild in the event of a catastrophic event, such as a tornado or fire. Lisa Wilson answered that the variance stays with the property, but a rebuild must commence within a specific timeframe. In that event, one would need to refer to current regulations for specific time limitations.

Robson asked if FAA regulations prescribe a minimum of 500' for runway zoning districts? for all size airports? The specifics of FAA regulations were not

immediately known, however it was known that regulations include provision for a legal variance.

**The PC discussed Background:**

County obtained the property through tax foreclosure.

Property was sold in Fall 2016.

Property was dilapidated, contained mold, and had been condemned by the County.

County rejected a bid of \$11,000, which included a plan to raze all existing structures for farmland, as reported by Money Penny.

County rejected a \$14,000 bid, submitted by Money Penny, as too low, which also included plans for razing structures.

County accepted a \$26,000 bid.

The house existed prior to establishment of the Airport Overlay Zoning, which was created in the early 90s when the runway was reconstructed under new management. The purpose of the Airport Zoning Ordinance is to regulate the use of property and restrict the height of structures and growth within the designated vicinity of the Tri-County Airport, to protect and promote health, safety, convenience, general welfare, and safety of the public and property in connection with the use and operation of the airport.

Zone 1 is +500' from runway centerline.

The house is 458' north of the runway centerline.

The proposed garage and breezeway is on the north of the existing house, but within the 500' Zone 1.

Without a variance, there cannot be any change in the structure's footprint.

The house and the proposed garage/porch/breezeway conform to all height restrictions.

In Aug 2017 the County issued a permit for construction of a new garage and rebuilding of the dilapidated porch.

After obtaining a permit, the owner commenced pouring concrete and began framework.

In Nov 2017 the owner decided to include an enclosed breezeway between the new garage and porch, and applied for a permit for the breezeway.

Sauk County CPZ ordered the owner to cease all further construction because no permit should have been issued without a variance.

Sauk County CPZ advised the owner of the Variance Application form and process.

The parcel has been flooded during heavy rain events and is subject to very high groundwater levels.

The owner created a small retention pond for diverted rainwater, and used its fill to build up around the house's foundation and to elevate the area for the garage and breezeway.

The owner reinforced a basement wall with a 2nd wall to prevent collapse in the event of a future flood.

The owner made many improvements to the house including a complete remodel of the interior; cleaned the basement and reinforced its walls; and improved the exterior of the house, including a new roof.

**The PC reviewed the Variance Standards:**

1. Unique property limitations
2. Unnecessary hardship
3. No harm to the Public Interest

1. Unique property limitations

The parcel has specific limitations with respect to high ground water and a history of flooding, which the owner has attempted to mitigate via a small excavation to divert water away from the foundation and using that fill to build up an adjacent area (further from the runway centerline than the house) for the garage and breezeway.

Placing a garage elsewhere on the parcel outside of zone 1 would require another buildup and likely create another area for more water retention and increased potential for waterfowl.

2. Unnecessary hardship

Despite the existence of Airport Overlay Zoning for the safety of the public and property in connection with the use and operation of the airport, the County specifically directed the tax foreclosure sale for premium bid - and rejected an offer to raze all existing structures to use the land exclusively for farmland.

The County caused the unnecessary hardship by mistakenly granting the initial building permit due to overlooking the overlay-zoning within the Resource Conservancy zoning during its review of the initial permit application.

An overlay-zoning district is not as readily apparent as the zoning, which is Resource Conservancy for this parcel. The County could have changed the actual zoning surrounding the airport.

The owner proceeded in good faith by applying for requisite permit(s) and did not begin construction until after the permit was issued.

The hardship is not self-imposed and would not exist in the absence of the zoning ordinance.

Loss of profit was the motivation of the County, not the owner, when the option to raze the existing buildings was rejected for a higher offer that included retaining structures within Zone 1 of the Airport Overlay District.

The owner has already poured concrete on the elevated ground and begun framework - all performed with a permit. The owner ceased construction activity when ordered by the County CPZ.

### 3. No harm to the Public Interest

There is no anticipated harm to the Public Interest, and should have no cumulative impact because this is the only house within Zone 1 of the Airport Overlay Zoning district.

The owners have homeowner's insurance on the property.

### **Discussion:**

The Plan Commission noted that compliance with the overlay-zoning ordinance would not deny all use of the property. Thomas also noted that a garage could be built 48' away from the house, which would put it outside the 500' zone 1 overlay area. The Plan Commission also discussed the meaning and degree to which 'reasonableness' should be considered. It was also noted that 'general' guidance is not intended to be absolute direction.

The Plan Commission reviewed the stated objectives of the overlay-zoning ordinance: *protect and promote the health, safety, convenience, general welfare, and safety of the public and property in connection with the use and operation of the Airport;* and concluded that the County failed to meet the objective when it rejected the offer to purchase and raze the home in want of a higher bid and when it issued the initial building permit, albeit by inadvertent oversight of the overlay-zoning.

The Plan Commission noted that concrete was poured and construction commenced after following the proper course of permit application. It would not be in the public interest to revoke a permit for in-progress construction started after proper adherence to procedure.

The Plan Commission discussed whether granting a variance would establish a precedent contrary to public interest, and concluded no precedent would be established because it is the only residence within Zone 1 of the Airport Overlay Zoning area. The Plan Commission explicitly noted the very unique circumstances of this variance request.

Robson moved, Carmody seconded, to recommend approval of a variance for a garage and breezeway addition to the home at E2720 County Highway JJ. Motion carried.

Hirth remarked that this was the first variance request for most members of the Plan Commission and asked Lisa Wilson (Sauk County Conservation, Planning and Zoning) if the discussion was in line with her perspective and expectations given her experience. Lisa responded that the discussion was open and detailed, with thorough consideration of the issue.

**d. Ordinance: Review/clarify/update Chapter 1-General provisions, 1.03 Plan Commission and add section for JEZC.**

The Plan Commission discussed a draft revision of section 1.03 of Chapter 1-General Provisions provided by Iausly. Thomas remarked that a Board member of the Plan Commission should not be the Town Chairperson. Robson concurred, and said that it would also be much cleaner if the Board member was not the Plan Commission Chair.

Staggered terms for the Plan Commission was discussed and decided that Thomas, being the most recently appointed member, would have the 3-year term; Hirth, as an appointee filling in for a resigned position, would finish the 1-year term and be open for consideration next month; Robson would have the 2-year term. Iausly's Chair position is a 2-year term and open for consideration in years opposite the election of the Town Board.

A new section pertaining to the Joint Extraterritorial Joining Committee (JEZC) was discussed, with 3 appointed members to serve staggered 3-year terms, all of which are due for appointment at the upcoming May Board meeting.

The appointment of a Town Board member as an alternate was discussed. Hirth said that the alternate should explicitly be afforded voting privileges in the ordinance because the Town should not lose representation on the JEZC only because a regular member has occasional conflicting obligations. Hirth noted that last Fall the village objected to the Town alternate voting when Iausly was on work travel. Hirth requested opinion from Town counsel – specifically, if there is anything statutorily prohibiting the Board from adopting an ordinance that specifically conveys voting privilege to the alternate JEZC member.

Hirth also commented that the village has conventionally voted on approving Town JEZC members. Hirth said that she found nothing in Wis. Stats. that encumbers Town appointments to the JEZC to village approval and requested opinion from Town counsel.

Iausly offered to amend the draft with the discussed revisions. Robson and Thomas asked that the amended draft be distributed via e-mail for another review prior to the upcoming May Board meeting.

**9. Next Meeting Date:** May 8, 2018 at 7:00 pm

**10. Adjournment:** Motion to adjourn by Carmody, seconded by Thomas at 9:34 pm.  
Motion carried.

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(Kolby Hirth, Secretary)

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(Fred Iausly, Chairperson)