

**SHERBURNE COUNTY**  
**PLANNING ADVISORY COMMISSION MEETING**  
**MINUTES**  
June 21, 2018

The Sherburne County Planning Advisory Commission met at the Sherburne County Government Center in Elk River, Minnesota on June 21, 2018 to hold a public hearing for all unincorporated areas of Sherburne County in which the County has zoning and land use authority, along with the Township of Big Lake, the Township of Baldwin and the Township of Livonia, to consider the evening's agenda and other planning and zoning related topics.

Lawrence called the meeting to order and advised that the Planning Advisory Commission is a recommending body to the County Board of Commissioners which will hear the agenda items on July 17, 2018 in this same location at 9 AM. He also went over the meeting procedures and noted that the hearings are being recorded.

Roll call was taken. The following members were present: Chair Bryan Lawrence, Baldwin Township; Roger Nelson, Blue Hill Township; Lila Spencer, Livonia Township, Stephen Demeules, Palmer Township; County Board Commissioner Ewald Petersen; Bruce Aubol, Big Lake Township; Bryan Adams, Orrock Township; Terrance Vander Eyk, Clear Lake Township, Jeff Schlingmann, Haven Township; David Jehoich, Santiago Township

Staff present: Zoning Administrator Nancy Riddle, Assistant Zoning Administrator Lynn Waytashek, Planner Marc Schneider, Assistant County Attorney Tim Sime, Secretary Judy Weber.

Nelson moved and Spencer seconded to approve the agenda for the June 21, 2018 public hearing. The motion carried.

Nelson moved and Demeules seconded to approve the minutes of the May 17, 2018 Public Hearing. The motion carried unanimously.

1. 6:30 PM A public hearing was held at the request **JAMES E. AND PHYLLIS LUDWIG** for Residential Preliminary and Final Simple Plat approval of "LUDWIG ESTATES" consisting of 2 lots (1 existing residence) Property address: 28610 Elk Lake Road E, Zimmerman Legal Desc: PID # 01-030-4405 Th pt of Gov't Lot 7 and th pt of Lot 1 Blk 1 Springpoint Park (full legal on file) Sec 30, Twp 35, Rge 26 Baldwin Township 4.6 acres Shoreland Residential District and within the General Development Lakeshore District of Little Elk Lake and within the Natural Environment Lakeshore District of Unnamed 710043.

Lynn Waytashek presented the request and board packet attachments to the Commissioners and read the following comments and recommended conditions into the record:

**BOARD PACKET ATTACHMENTS:**

- A. Aerial Photo
- B. Preliminary Plat

C. Final Plat

BALDWIN TOWNSHIP COMMENTS: Recommend approval (Feb 5, 2018)

STATE AGENCY COMMENTS (DNR): No comments received from James Bedell, Area Hydrologist

COUNTY STAFF COMMENTS:

Amy Rowan Auditor's Office (Jan 4, 2018) – No issues.

PUBLIC WORKS:

1. Park dedication fees for one (1) lots at \$800.
2. Russ Heiling, County Surveyor (June 1, 2018) – All comments have been addressed.
3. Mike Lindenau – Co Ditch Inspector (Jan 4, 2018) – No issues.

PLANNING & ZONING:

1. Existing 4.6 acre parcel on Little Elk Lake being split into two (2) lots.
2. Property was rezoned to Shoreland Residential Zoning District in October 2017.
3. There is an existing house on one of the properties.

RECOMMENDED CONDITIONS IF APPROVED:

1. Park dedication fees for one (1) lot at \$800. Fees are paid to Public Works prior to them signing the final plat mylars.
2. Final plat must be recorded within one (1) year of County Board approval.

Lawrence invited the applicant to come forward.

Gene Ludwig, 28808 Elk Lake Road, came forward to answer questions. He stated that he is present on behalf of his parents.

Lawrence opened the public hearing.

There were no comments. Nelson moved and Spencer seconded to close the public hearing. The motion carried.

The public hearing was closed.

*Nelson moved and Jehoich seconded to recommend approval of the request for Residential Preliminary and Final Simple Plat approval of "LUDWIG ESTATES" consisting of 2 lots (1 existing residence) and with the following two conditions:*

1. *Park dedication fees for one (1) lot at \$800. Fees are paid to Public Works prior to them signing the final plat mylars.*
2. *Final plat must be recorded within one (1) year of County Board approval.*

*The motion carried unanimously and is recommended to the County Board for approval.*

2. A public hearing was held at the request of **JON AND POLLY SMITH:** (Property owner is Equity Trust Co Custodian) for Residential Preliminary and Final Simple Plat approval of “TWIN PONDS SECOND ADDITION” consisting of 3 lots (1 existing residence) Property address: 14505 289<sup>th</sup> Ave NW, Zimmerman, MN Legal Desc: PID 15-437-0105 Lot 1 Block 1 Twin Ponds Sec 25, Twp 35, Rge 27 Blue Hill Township 8.36 acres General Rural District

Marc Schneider presented the request and board packet attachments to the Commissioners and read the following comments and recommended conditions into the record:

**BOARD PACKET ATTACHMENTS:**

- A. Aerial Photo
- B. Preliminary Plat
- C. Final Plat
- D. Letter from Developer

**BLUE HILL TOWNSHIP COMMENTS:** Recommended approval (May 14, 2018)

**COUNTY STAFF COMMENTS:**

**AUDITOR’S OFFICE:**

Amy Rowan Auditor’s Office (April 16, 2018) – No issues.

**PUBLIC WORKS:**

1. Park dedication fees two (2) lots at \$1,600. There are three lots one has an existing house.
2. David Roedel Assistant Public Work Director (April 19, 2018) Public Works Engineering has no concerns with the Simple Plat, access locations are not a County Road.
3. Russ Heiling, County Surveyor (June 1, 2018) – From the survey there seems to be significant occupation encroachments involving proposed Lot 1 and the property to the west. This may want to be addressed at this time to eliminate any possible future conflicts with the sale of Lot 1.
4. Mike Lindenau – Co Ditch Inspector (April 16, 2018) – No issues.

**PLANNING & ZONING:**

1. The applicants are requesting to subdivide 8.36 acres into 3 lots. There is an existing home on Lot 1. The septic system was found to be in compliance on 04/05/2018.
2. There are four accessory buildings located on Lot 1 totaling roughly 5,800 sq. ft. The County’s Zoning Ordinance restricts the total square footage of accessory buildings on a platted lot to 3,000 sq. ft. The accessory buildings on Lot 1 is considered nonconforming and will be governed by the County and State nonconformity rules.
3. Zoning Staff has inspected the property and found it compliant with the Solid Waste Ordinance.
4. In a letter dated May 14, 2018 the developer acknowledged there is a driveway and wire fencing on the western edge of Lot 1 that will either need to be moved west to the

property line or totally removed.

RECOMMENDED CONDITIONS IF APPROVED:

1. Park dedication fees in the amount of \$1,600 will be paid to the Public Works Department when the Final plat is signed.
2. Prior to recording the developer must remove all fencing which crosses the western edge of Lot 1.
3. Final plat must be recorded within one (1) year of County Board approval.

Adams asked if the accessory building issue has been resolved.

Schneider explained they will be governed by the non-conformity laws under State Statute 394.36. This is a platted lot that is not conforming to current regulations. They can maintain, repair, restore or replace, but not expand.

Lawrence invited the applicant to come forward.

Jon Smith, 26890 107<sup>th</sup> St NW, Zimmerman, came forward to answer questions.

Nelson said the other night he spent a couple hours walking that fence line with the neighbor to the west. He said the fence belongs to that neighbor and said he would have it removed the upcoming Saturday morning. He said he does not believe that the fence will be an issue.

Smith agreed that it will be coming down.

Lawrence opened the public hearing.

There were no comments. Nelson moved and Schlingmann seconded to close the public hearing. The motion carried.

The public hearing was closed.

*Spencer moved and Nelson seconded to recommend approval of the request for Residential Preliminary and Final Simple Plat approval of "TWIN PONDS SECOND ADDITION" consisting of 3 lots (1 existing residence) with the following three recommended conditions:*

1. *Park dedication fees in the amount of \$1,600 will be paid to the Public Works Department when the Final plat is signed.*
2. *Prior to recording the developer must remove all fencing which crosses the western edge of Lot 1.*
3. *The final plat must be recorded within one (1) year of County Board approval.*

*The motion carried unanimously and is recommended to the County Board for approval.*

3. A public hearing was held at the request of **SCHMIESING FAMILY PARTNERSHIP** for Residential Preliminary Standard Plat approval of “SLEEPY OAKS” consisting of 41 lots  
Property address: 11254 57<sup>th</sup> St. SE, Clear Lake Legal Desc: PID # 40-027-1485 and 40-027-1491 All that pt of Lots 1, 2 & 3 and th E 675’ together with S475’ of W460’ of E1135’ Ex E 225’ of S485’ of Gov Lot 1 as desc (full legal on file) Sec 27, Twp 35, Rge 29 Palmer Township 100.56 acres Shoreland Residential District and within the Recreational Shoreland Districts of Rush Lake 710147 and Lake Julia 710145

Lynn Waytashek presented the request and board packet attachments to the Commissioners and read the following comments and the recommended conditions into the record:

**BOARD PACKET ATTACHMENTS:**

- A. Aerial Photo
- B. Preliminary Plat (date stamped June 4, 2018)
- C. Preliminary Drainage and Grading Plan (date stamped May 4, 2018)
- D. Letter from neighboring property owners (date stamped received June 11, 2018)

**PALMER TOWNSHIP COMMENTS:** The township and developer will need to have a developer’s agreement in place before the final plat. The Township will have no responsibility for the holding ponds or runoff diversions on the plats. (comments received May 24, 2018)

Paul Otto, Township Engineer (received May 15, 2018) – We recommend approval of the preliminary plat subject to comments in letter being addressed on the final plans.

**STATE AGENCY COMMENTS:**

DNR: No comments received for proposed plat.

MN Historical Society, State Historic Preservation Office (Sarah Beimers, Manager): (December 14, 2018) – Known archaeological site located within the proposed development area. Due to nature and location of proposed project, they recommend that a Phase 1 archaeological survey be completed. The survey must meet requirements of the Secretary of the Interior’s Standards for Identification and Evaluation, and should include an evaluation of National Register eligibility for any properties that are identified.

MN Dept of Administration State Archeologist (Amanda Gronhovd): (January 29, 2018) - The proposed project is located near a recorded prehistoric cemetery site, and on a landscape with a high potential for unrecorded archaeological or cemetery sites. I strongly agree with SHPO’s recommendation that a qualified archaeologist conduct a survey to determine if the project could damage unrecorded archaeological or cemetery sites.

SWCD (Gina Hugo, Forest Resource Specialist) (November 13, 2017). Oak wilt infections are widespread on property. Dutch elm disease is present on the site. Throughout construction measures should be taken to protect critical root zones of desirable trees. As lots are purchased buyers need to know that the trees on their property may already have oak wilt in their root systems. They can be encouraged to request an onsite consultation with me to discuss management options and tree planting recommendations.

## COUNTY STAFF COMMENTS:

### PUBLIC WORKS:

1. Park dedication fees for 40 lots at \$800 per lot = \$32,000
2. The proposed improvements for the above subject plat will significantly increase the volume of traffic entering CSAH 16 from 57<sup>th</sup> St SE. Mitigation of the added development traffic, added connection to the existing homes along 54<sup>th</sup> St SE/114<sup>th</sup> Ave, and the associated safety issues are issues that the approval of the development creates. The County has proposed multiple alternatives to the developer to mitigate the safety issues. The Public Works Dept firmly believes the removal of 57<sup>th</sup> St SE between 54<sup>th</sup> St SE and CSAH 16 to be the best alternative, not to mention the least expensive alternative for everyone involved at effectively no cost.

Should 57<sup>th</sup> St SE remain, east of 54<sup>th</sup> St SE, we strongly recommend the developer and/or township mitigate, the deficient intersection caused by the development and the condition to the existing neighborhood, at 57<sup>th</sup> St SE and CSAH 16. Improvements potentially include 57<sup>th</sup> St SE being realigned as a T-intersection to CSAH 16, with the addition of a right turn lane and bypass lane on CSAH 16. Or as stated earlier, disconnecting 57<sup>th</sup> St SE between 54<sup>th</sup> St SE and CSAH 16.

These are just two potential alternatives suggested to the developer to mitigate the safety concerns.

If the developer has a concern with the mitigation methods, a traffic study, conducted by the developer at their expense, can provide a summary of findings and recommendations that differ from above and potential alternative solutions. This work would be conducted by a licensed Engineer in the State of MN.

3. Russ Heiling, County Surveyor (June 4, 2018) – All issues have been addressed.

### PLANNING & ZONING:

1. The Township has stated that they want no responsibility to maintain holding ponds or runoff diversions within the drainage easements on the plat. It needs to be determined who will take responsibility for that.
2. The Historical Society and Dept of Administration recommended a Phase 1 Archeological survey be done on the site to determine if the project will impact unrecorded archeological or cemetery sites. The developer should identify what steps will be taken to address those concerns.
3. Lots 1, 2 and 3 of Block 2 have significant wetland coverage in the shore impact zone of Rush Lake. The wetland, as well as floodplain is between the buildable sites and the lake, creating certain prohibitions for property owners, including:
  - a. No wetland fill is allowed.

- b. No wetland excavation, alteration of wetland vegetation which also prohibits sod grass
  - c. Ices ridges cannot be removed.
  - d. No beach sand blankets
4. Since there is significant Oak wilt infections and Dutch Elm disease on the property, new property owners should be made aware of this and provided with the University of Minnesota guide to tree preservation and contact information to the SWCD Forester, Gina Hugo.
  5. Proposed Lot 1, Block 2 has an existing home. The septic system is over the property line into proposed Lot 2, Block 2. The Developer would like to leave this as it is until the two lots are sold since there is a renter in the house at this time.
  6. There are two buildings that are required to be removed because the structures do not meet the ordinance for what is allowed on platted lots. Proposed Lot 2, Block 2 has a small garage that is sitting within the setback of the proposed road. Proposed Lot 2, Block 1 has an old chicken barn that exceeds the maximum outbuilding size allowed on a platted residential lot. The developer has asked if instead of removing the buildings before plat approval, that removal could wait until after the proposed 54<sup>th</sup> street has been built for ease of access in removing these structures

RECOMMENDED CONDITIONS IF APPROVED:

1. In response to the State Archeologist and Historic Preservation Office, at a minimum, the developer should provide all contractors with information on what to look for and requirements if archeological artifacts or human remains are found during the processes of construction of roads, stormwater pond construction, home or septic system construction. If anyone discovers an ancient cemetery or artifacts, they are required by law to immediately stop work and call local law enforcement first and the state archaeologist second.  
Information can be found at: <https://mn.gov/admin/archaeologist/the-public/resources/faqs/>
2. Park dedication fees in the amount of \$32,000 will be paid to the Public Works Department when the Final plat is signed.
3. Since wetland areas are within the Shore Impact Zone and they are also located within the floodplain of Rush Lake, no impacts to the wetlands on any lake lot are allowed which includes:
  - a. No wetland fill is allowed.
  - b. No wetland excavation.
  - c. No alteration of wetland vegetation. This will prohibits sod grass installation
  - d. Ices ridges cannot be removed
  - e. No beach sand blanket
4. Prospective buyers of Lots 1, 2 and 3 of Block 2 must be notified of the designated lake

- access locations on each lot that are non-wetland, along with the restrictions for wetlands on those lots.
5. The developer is required to obtain a Shoreland Alteration Permit (Major) before clearing of vegetation and grading or excavation.
  6. If the septic system on proposed Lot 2, Block 2 is allowed to remain for the house next door on proposed Lot 1, no permits will be issued for either of those lots until a new septic is re-located onto Lot 1 with the house.
  7. If removal of the outbuildings on proposed Lot 2, Block 2 and Lot 2, Block 1 are allowed to remain after Final Plat approval, no permits shall be issued on those lots until the structures are removed. Structures may not be burned or buried onsite. They must be disposed of at an MPCA licensed landfill.
  8. Concrete slabs located in the proposed right-of-way shall be removed and disposed of at a licensed landfill when the road is constructed.
  9. Removal of structures will require a razing permit from Zoning along with a copy of the form "Notification of Intent to Perform Demolition" that has been submitted to the MPCA. The County also has a Pre-Determination Items of Concern Checklist" that will also be required to be completed and submitted to the Zoning Department prior to a razing permit being issued.
  10. The Registered Land Survey for this property must be recorded prior to scheduling the plat for final meeting in front of the Planning Commission.
  11. An NPDES permit must be submitted to the Zoning Department prior to being scheduled for final plat approval.
  12. A Stormwater and Erosion Control Permit is required from the Zoning Department prior to being scheduled for final plat approval.
  13. A Developers Agreement must be signed with the County Attorney's Office.
  14. Final plat must be recorded within one (1) year of County Board approval.

Lawrence asked if the Board had any questions or comments for staff.

Adams asked if the concerns of the County Public Works Department have been resolved.

Waytashek said her understanding is that those issues have not been resolved. She stated the County Public Works Director is present this evening to answer any questions the Board might have.

Schlingmann asked for clarification on what is involved in a Phase I Archaeological Survey and why has the staff recommended something less than that.

Sime replied that he did not know specifically what is involved. He said he does know that Staff tried diligently to get more specific information from SHPO, the state historical information officer, but were unable to get any details. Based upon that lack of specific information, staff felt comfortable simply saying the developer should provide all contractors information on what to look for and what the requirements are for reporting any possible findings.

Schlingmann said he was not comfortable with someone running a bulldozer and looking for human remains.

Nancy Riddle explained that they have talked to both agencies and neither of them could describe the general area they were looking at or if it was even near this property, and they could not be sure as to where this information came from.

Lawrence asked, so there was no spot that they had identified as having a strong historical potential, is that correct?

Riddle replied, there was nothing that they would share with us. She said they were very vague, and couldn't tell us that it was on this property, or within a mile or five miles, or even in this township.

Lawrence invited the applicant to come forward.

Felix Schmiesing, 5612 115<sup>th</sup> Ave., Clear Lake, addressed the Board. He noted that the address on the public notice is that of the rental property. He explained that the property has been in his family all of his life and they have never sold any part of it until now. He said it is probably one of the largest parcels that still exists in this area. Schmiesing said the intention of the family is to resolve this property issue to make sure they have everything ready for the next generation. He said he would be happy to answer any questions.

Lawrence opened the public hearing.

Mary Zelenak 11098, 57<sup>th</sup> St SE, Clear Lake, came forward. She said she is one of the members of the neighborhood that signed the letter to the Commissioners dated June 8, 2018. Zelenak also submitted to the Planning Commission new pictures which were not a part of their packets.

Zelenak summarized the June 8, 2018 letter which has been entered into the record as Packet Attachment "D". She said at the May 14<sup>th</sup> township meeting, the residents heard from an engineer that an estimated 400 additional vehicle trips per day would be produced due to this development.

She asked the Commissioners to look at the pictures she passed out and she noted that 57<sup>th</sup> Street SE is a very small township road and is barely wide enough for two vehicles. Traffic has normally been limited to the seven residences along that road with additional weekend traffic due to the lake access. She said they have safety concerns for the people, children and animals that travel that road regularly if the traffic increases. Zelenak proceeded to go thru each of the pictures with the Commissioners, and noted the four proposals listed in their letter for a safer entrance and exit from this development. While these proposals would be an additional cost to the developer, the neighborhood felt these alternatives would be safest for the residents along 57<sup>th</sup> Street SE.

Zelenak also expressed concern with the additional maintenance cost to the township and to the tax payers due to increased traffic onto 57<sup>th</sup> Street SE.

Lawrence called for more comments and reminded that this is a public hearing and it may be your last chance to make comment.

Adams asked if it would be appropriate to have the County Engineer give his view of the project.

Lawrence called Andrew Witter, County Public Works Director/Engineer, to address the Planning Commission.

Andrew Witter came forward and noted that the comments found in the Board Packets summarized the Public Works position fairly accurately. He stressed the fact that those are just a few of options that are potentially available to mitigate their safety concerns as they look out for the public safety for the entire County road system. Due to potential safety concerns as a result of this proposed development and additional traffic, he said they felt it necessary to make some recommendations to help mitigate those concerns.

Witter said that it is important to note that this development ties into an existing township road that was recently turned back to the township. It was previously 57<sup>th</sup> Avenue and the easterly intersection of 57<sup>th</sup> Avenue and the existing CSAH 16 is at a large skew and causes some safety concerns with the way that intersection is currently aligned with CSAH 16.

Demeules asked what is the County's recommendation on taking out that piece of 57<sup>th</sup> Avenue and re-directing all traffic.

Witter said one of their recommendations was to potentially disconnect that easterly access, and have them access the development and the residential properties via the westerly existing intersection of 57<sup>th</sup> St SE and CSAH 16 that already has right turn lanes and bypass lanes set up on it. He noted that they also evaluated the site distance criteria. He said that a curve to the east of that intersection does meet all stopping site distance requirements. Witter added that there may be a perceived issue with vehicles approaching and not having enough time, but it does meet engineering site distance criteria.

Adams said based upon the testimony from the residents, he is not sure they are enthusiastic about directing traffic to the west. He asked Witter if he had any comments on ways to address their concerns.

Witter reiterated, if that piece of 57<sup>th</sup> Street SE is not closed off, it puts us in a situation where we need to mitigate the safety concerns with that existing east intersection.

Adams agreed that there is no question that the access to the east side needs to either be eliminated or changed, but if you direct all of the traffic to the west and thru this residential area, wouldn't that road need to be enlarged and upgraded.

Witter explained that 57<sup>th</sup> Street SE is a township road and he didn't believe the County would be in

any position to do any widening or upgrades to it.

Adams asked if there is any merit to the neighborhood proposal to come right thru to 115<sup>th</sup> Avenue thru Lot 8.

Witter said that could be one alternative, but reminded that the roadway will also be a township road.

Lawrence asked, so the only road the County has issue with is CSAH 16, is that correct?

Witter replied that is their area of concern.

Eyk pointed out that the proposal in Item 4 from the neighborhood letter, stated that the property owners would be willing to sell a segment of land that is seated between CSAH 16 and 57<sup>th</sup> Street SE on the south end of the development. This would allow traffic to come straight out onto Co Rd 16 and would allow 57<sup>th</sup> Street SE to be closed. He asked if that is one of the recommendations that the County has.

Witter said that would be an option, however it would create an intersection with CSAH 16 and we would continue to recommend a right turn lane and bypass lane. Also, without extending this roadway, Witter said he was not sure about the site distance, and it would most likely require an engineered study to take place.

Discussion continued on possible options.

Witter stepped up to the screen and pointed out where another possible solution could occur. He said based upon the analysis by the developer's engineer, it appears that 57<sup>th</sup> Street SE can come up, turn and tie in with CSAH 16 in a "T" line configuration and still stay within the existing township right-of-way as well as the County Right-of-way.

Adams asked if that would satisfy your site distance.

Witter said they would have to take a look at that, but if he had to make a guess tonight, it probably would.

Schlingmann asked if Palmer Township is willing to accept a new portion of road.

Demeules responded by saying he believed the feeling of the Board would be not to take on any more new roads. He said the one on 57<sup>th</sup> Street SE just makes sense because of the dead end that is currently there and we would open that up all of the way.

Lawrence asked if the township will be accepting the new roadway on 54<sup>th</sup> Street.

Demeules replied yes, but that one makes sense because of the current dead end.

Schmiesing explained that their initial intention was to hook-up to the township road and they thought that they would only be dealing with the township. At their first meeting, the Highway Department had made a recommendation to obliterate the east end of the street and just have it go off

to the right thru the neighborhood. He said when they met with the township, the citizens that were in attendance were opposed to that. The township indicated that the intersection should remain and asked if we could square that up and we agreed to do that. The citizens also requested different sorts of signage that they felt would help them in terms of traffic. Schmiesing said that is a township decision, but as the developer, we have no problem with signage and will do so according to the instructions of the township.

Schlingmann asked about the drainage pond issue, and who will be taking care of drainage.

Lawrence agreed and said the Commissioners needed clarification. He said that typically the township has been the drainage authority and asked if something has changed.

Riddle said that in the past, the township has always been the drainage authority.

Demeules explained the reason Palmer turned down the drainage was because they did not have any expertise or resources to deal with it. He said no one has brought us any information as far as what our responsibilities are. As a township supervisor, he does not sign checks without an amount.

Nelson explained it is simply a drainage easement dedicated to the township.

Demeules said he has also heard that there is maintenance involved and also regulating the homeowners.

Nelson said his township has many of these easements and they are designed to hold 100yr flood waters. He said they have never had to deal with them.

Demeules said that someone will have to show him in writing exactly what they would be responsible for.

Lawrence said it was his understanding that the drainage was a Township responsibility.

Sime clarified by saying the drainage easements, including the detention ponds are being dedicated to the public. He said they are not specifically being dedicated to the township. There are only two public entities, the township or the county. Sime said some likely issues that could come up could have to do with maintenance, for instance if a pond needs to be cleaned out. Traditionally, the townships have taken on that responsibility, but there is nothing in the dedication language that says they are required to. So essentially Sime advised that we are putting off for the future a determination if something does happen, that it will be either the township or the county that takes the responsibility.

Schmiesing said they met with the township last night, and this discussion on drainage dedication is new to them and it is new to us. He said there is time for more discussion on this and it is not something that needs to be determined tonight.

Lawrence asked if we should be hearing from the developer's engineer on this.

Nick Anderson, Bogart Pederson and Associates, said he agreed with Mr. Sime's summary that the

easements are dedicated to the public. He said the drainage is designed to catch the 100r flood and in most cases the ponds are expected to stay dry.

Lawrence reminded that this is a preliminary plat and it is setting the ground work for the final plat. He said they do not need to rush this along, and he wants to make sure they have ample discussion and time to consider the testimony and the plat drawing before them.

Demeules agreed that there is still more work to be done on it.

Sime reminded the Commissioners in regards to the road issue, that we need to act on what is being presented before you. There has been talk about several alternatives and we all agree that there is a safety issue and there are several potential avenues to have it mitigated.

Lawrence suggested that the safety issue is on the County Road, and this plat is not attached to the County Road.

Sime said that was correct but if you approve the plat as is, without a mitigation plan, we know we are creating a safety issue and creating a potential liability, and that is what Witter is expressing. There are potential mitigation measures, but we do not have one right now.

Lawrence agreed saying that we do not have a mitigation measure to act upon.

Adams asked if they should delay the approval of this until the drainage and the roads are better defined.

Lawrence said we would have to know what the 60-day timeline is before the request were tabled.

Sime said he didn't believe that delaying the project to get a resolution on the drainage issue would be fruitful. His only point of bringing up the dedication to the public language is so that you know once it is dedicated to the public and the final plat is recorded, those easements go to the public. Whether it be county or township, one of us will have to take responsibility. Sime said the only alternative is to say that it will have to be a homeowner association that takes care of it, but based upon past experience, there are downsides to that.

Adams asked if this should be defined upfront.

Sime said that is an option, but he is not optimistic that more discussion can do any good.

Adams said he is uncomfortable moving forward until the road issue is taken care of because he does not want to create an additional safety hazard.

Sime suggested if there is a mitigation measure that can be proposed, that the applicant and everyone agrees to, you could pass it with that condition however, he didn't think they had a workable solution right now.

Lawrence asked if they could make a recommendation that this issue has to be solved to the satisfaction of the County Engineer.

Sime said essentially what you would be doing is deferring this to the County Engineer and I don't know that we can do that. When you approve a preliminary plat, you are basically saying that these conditions have to be met before final plat approval and they need to be fairly specific. I don't think that would be sufficient as a condition and it would be difficult to enforce.

Lawrence asked where we sit with the 60-day rule.

Waytashek explained the applicant would need to sign the 60-day waiver. She said she does have the form if the applicant chooses to sign it.

Adams asked if the plat is denied, what would happen.

Waytashek said that the developer would have to wait one year before he came back with a new application.

Demeules said at last night's township meeting, there were discussions regarding mitigation measures for the intersection of 57<sup>th</sup> Street SE and CSAH 16, and there were also discussions regarding the drainage easements. He said his assumption is that all of those would be addressed and brought before this Planning Commission to approve at the final plat stage. Nothing was finalized last night but he believed both sides understood what direction this needs to go. He said he was not in favor of tabling the preliminary plat this evening because he has expectations that those items will be addressed when the final plat comes back for approval.

Nelson added that some of these things can also be addressed in the development agreement.

Sime said again that this Commission needs to set specific conditions for plat approval and he is opposed to deferring to the County Attorney or to a Department Head to resolve the issue. He suggested this could be passed on with a recommendation and simply say these issues need to be resolved. The Ordinance contemplates that you will make a report to the County Board as to what those conditions should be, and you could say that these should be resolved before it goes to the County Board.

Lawrence suggested the conditions we are looking for, as recommended by the County Engineer, are a bypass lane and a right turn lane on CSAH 16 and to square off the intersection.

Sime said he didn't think Witter is making specific recommendations on exactly what should be done, he is just acknowledging the safety issue, and saying there are several options. So for example, closing off part of the township road is an option. We understand that the township is not interested in that. So he is just laying out options to help the developer mitigate the issue.

Lawrence asked, do we as a board need to set the options that we think are best?

Sime answered that those options were given more to assist the developer. For example, some of these improvements involve things that are outside of the developer's control. We can't make the developer pay for improvements that the developer prefer not to pay for and that are off-site. Sime said all you can do is act on what you have before you.

Adams asked what if we made the condition that the developer shall pay for the modifications to the intersection, of 57<sup>th</sup> Street SE and CSAH 16, to satisfy the state requirements.

Sime said he would have some concerns about requiring the developer to pay for those improvements to a County Road without the agreement of the developer.

Adams replied, then let's ask the developer.

Schmiesing asked wouldn't that be a part of the developer's agreement?

Adams agreed that could be part of the developer's agreement.

Sime said yes, if the developer is willing to say he will do this as a mitigation measure.

Schmiesing came forward and said that the developer agrees that there is a safety issue and the developer agrees that the intersection should be changed and the developer agrees that there should be a turn lane and a by-pass lane. Schmiesing said he thought that should satisfy.

Adams replied he did not know if that does or does not. He said that is why he wants to get something that states that MNDOT standards are met.

Sime reminded that the issue already discussed is that the county currently does not have any plan to make improvements for that road. It is not in the capital improvement plan and it is not in the budget to do that. He said you would be passing this design on the assumption that the County would amend it's CIP and put it in the budget to do this and we do not know that would be true.

Adams said, but what if the developer offers to pay for it.

Sime said we do not know that the developer is agreeing to pay for it.

Lawrence said he didn't hear that either. He said he heard that it was the developer's consensus that there is going to be a safety issue, but he hasn't heard that the developer or the county is offering to pay for the upgrades.

Schmiesing said the developer early on agreed to turn that intersection and then it kept progressing into adding turn lanes and by pass lanes. Schmiesing said "We'll pay for it if that is what it takes to get this completed. It doesn't feel quite right, but that is not for you guys to have to worry about if that is what it has to be."

Eyk noted that with developments in the past, we have required turn lanes and by-pass lanes, and they are paid for by the developer as a part of the developer's agreement. He said he didn't think this is anything new.

Schmiesing said he thought the difference here is that we are actually connecting to a township road, not to a County road.

Lawrence agreed he thought that is where the issue starts. He suggested for instance, if this

development was one mile back in on this same road, would we still be having this conversation and would the developer still have to pay for improvements to the county road due to the increased amount of traffic coming in. Typically we look at “does it connect” to a county road, but because this is so close, we immediately take a look at it.

Mary Zelenak asked for clarification, when you are talking about turn lanes and bypass lanes, where are you looking at on this plat.

Lawrence pointed out the location and explained the purpose of the proposed upgraded lanes on CSAH 16.

Zelenak said she understands that this is a township road that we live on and the county cannot fully address their issues, but this was not resolved at the township and she is wondering if this Planning Commission can have any impact on limiting traffic down 57<sup>th</sup> Street SE.

Lawrence replied that technically that is a township issue. If the township chooses to either alter the design or provide signing to help minimize the number of vehicles going down there, that would be at their will.

Schlingmann added that the cost of that would be born by the township unless it was in the developer’s agreement that the developer would pay the costs.

Demeules stated that those issues are being addressed in the developer’s agreement and the township is minimizing their financial input into this.

Sime said it was his understanding that the draft developers agreements have already been exchanged and people are relatively good with the language.

Demeules said that was correct.

Lee Hansen, Attorney for the Developer, 1010 West St. Germain, St Cloud., expressed to the Commissioners that he has been going to all of these meetings and one of the points he did not want to lose sight of is that we are trying to balance the interests and accommodate this set of landowners along 57<sup>th</sup> Street SE. He said the easiest way for this traffic to go out is past those homes on 57<sup>th</sup> Street SE which was the original CSAH 16. He also noted, so that everyone has the facts, that 57<sup>th</sup> Street has a 24’ top on it. Hansen explained that in order to accommodate those residents they have agreed to improve the road going east and they have also agreed to bring up all of the necessary sand required to construct those lanes. This has all been a part of previous agreements.

Hansen further explained that the part that Felix has been objecting to is having to pay that full cost of those turn lanes on a highway that he is not connecting to. We have asked where this policy came from, and to date, we only know of one case where a developer has paid any amount of money on this kind of connection. That developer paid \$15,000 and that was back in 2002 and the costs have gone up. Hansen said they are trying to meet everyone halfway on this. Just so everyone understands, he said they are agreeing to try to keep traffic away from those residents, and create a new intersection and pay for the cost of building up to that intersection.

John Walker, 11098 57<sup>th</sup> St SE, St. Cloud, said that nothing is being done to accommodate their safety concerns on 57<sup>th</sup> Street.

Lawrence said the public hearing is still open and he asked for any other comments. There was no response.

Nelson moved and Adams seconded to close the public hearing. The motion carried.

Lawrence closed the public hearing.

Adams asked if he heard it right that the developer agreed to pay for the modifications to the intersection on CSAH 16 and 57<sup>th</sup> Street SE.

Lawrence said he heard they would be willing to pay for a right hand turn lane, or maybe both, he wasn't sure.

Adams added "and the realignment so it comes in perpendicular"?

Schmiesing replied "the realignment, yes".

Lawrence asked if we can make that as a recommendation.

Sime said he thought they had the conditions that address pretty much everything except the road. If you are inclined to recommend approval, with the condition to mitigate the road, you could do it on a condition that this is the mitigation measure, with the condition that the county, developer and the township agree on alignment and cost share.

Adams asked if Sime could put that condition into words that he is comfortable with.

Sime said if the Commission would allow him a five minute recess, he could sit down with Witter and come up with a proposed language.

Adams said he would feel comfortable with that.

7:15 pm Adams moved and Spencer seconded to recess for five minutes. Motion carried.

7:25 pm Schlingmann moved and Adams seconded to reconvene the meeting. Motion carried.

Lawrence asked council to share the language.

Sime said they have also run it by the council for the developer with the understanding that they are in agreement, but I will let them speak to that.

Lee Hansen, attorney representing the developer said he was okay with the wording.

Sime said in regards to the other conditions, Waytashek pointed out that the Commissioners will

need to make a decision on Condition # 6 and # 7, and what route they would like to go with the language.

Sime proceeded to give the proposed language for the addition of condition # 15.

*“15. To mitigate the traffic safety issues created by the plat, the developer, County and Township must first agree on an realignment of 57th Street SE to a “T” intersection, which shall include a right turn lane and bypass lane on CSAH 16, and must agree on the timing and cost-responsibility for the project, which shall be included in the development agreement.”*

Adams commented that the cost is still up in the air.

Sime said this is with the understanding that the developer has agreed to pay if necessary. Sime said he doesn't know what the County Board will do but, ultimately, as being opposed to referring to the County Attorney or the County Engineer, he said the County Board will have to tell us how we want that cost responsibility shifted and there will either be an agreement on that or there will not. If there is not, the condition will not have been met. Sime said we will have to take direction from the County Board on that.

Adams answered that the developer has already agreed to it.

Sime said it his understanding that they agree to it if necessary, but I think they would like the County Board to make a different decision.

Lawrence said he feels that we have been in the dark because Palmer Township and the developer have had meetings and they have a draft developer's agreement in place, which we do not know much about. The county will also have a developers agreement that we will not know much about, so there are certain things that we just do not know.

Lee Hansen said that the County will also be a part of that developer's agreement because they also sign off on it.

*Schlingmann moved and Nelson seconded, to recommend approval of the Preliminary Plat of “Sleepy Oaks” consisting of 41 lots and with the language developed by the County Attorney and the County Public Works Director added as condition # 15, and also changing the wording on condition # 6 by striking “If” and on condition # 7 by striking “If”. The recommended conditions are as follows:*

- 1. In response to the State Archeologist and Historic Preservation Office, at a minimum, the Developer should provide all contractors with information on what to look for and requirements if archeological artifacts or human remains are found during the processes of construction of roads, stormwater pond construction, home or septic system construction. If anyone discovers an ancient cemetery or artifacts, they are required by law to immediately stop work and call local law enforcement first and the state archaeologist second.*

*Information can be found at: <https://mn.gov/admin/archaeologist/the-public/resources/faqs/>*

- 2. Park dedication fees in the amount of \$32,000 will be paid to the Public Works Department when*

*the Final plat is signed.*

3. *Since wetland areas are within the Shore Impact Zone and they are also located within the Floodplain of Rush Lake, no impacts to the wetlands on any lake lot are allowed which includes:
  - a. *No wetland fill is allowed.*
  - b. *No wetland excavation.*
  - c. *No alteration of wetland vegetation. This will prohibits sod grass installation*
  - d. *Ices ridges cannot be removed*
  - e. *No beach sand blanket**
4. *Prospective buyers of Lots 1, 2 and 3 of Block 2 must be notified of the designated lake access locations on each lot that are non-wetland, along with the restrictions for wetlands on those lots.*
5. *The developer is required to obtain a Shoreland Alteration Permit (Major) before clearing of vegetation and grading or excavation.*
6. ~~*The septic system on proposed Lot 2, Block 2 is allowed to remain for the house next door on proposed Lot 1, provided that no permits will be issued for either of those lots until a new septic is re-located onto Lot 1 with the house.*~~
7. ~~*The outbuildings on proposed Lot 2, Block 2 and Lot 2, Block 1 are allowed to remain after Final Plat approval, provided that no permits shall be issued on those lots until the structures are removed. Structures may not be burned or buried onsite. They must be disposed of at an MPCA licensed landfill.*~~
8. *Concrete slabs located in the proposed right-of-way shall be removed and disposed of at a Licensed landfill when the road is constructed.*
9. *Removal of structures will require a razing permit from Zoning along with a copy of the form "Notification of Intent to Perform Demolition" that has been submitted to the MPCA. The County also has a "Pre-Determination Items of Concern Checklist" that will also be required to be completed and submitted to the Zoning Department prior to a razing permit being issued.*
10. *The Registered Land Survey for this property must be recorded prior to scheduling the plat for Final meeting in front of the Planning Commission.*
11. *An NPDES permit must be submitted to the Zoning Department prior to being scheduled for final plat approval.*
12. *A Stormwater and Erosion Control Permit is required from the Zoning Department prior to being scheduled for final plat approval.*
13. *A Developers Agreement must be signed with the County Attorney's Office.*
14. *Final plat must be recorded within one (1) year of County Board approval.*
15. *To mitigate the traffic safety issues created by the plat, the Developer, County and Township*

must first agree on a realignment of 57th Street SE to a “T” intersection, which shall include a right turn lane and bypass lane on CSAH 16, and must agree on the timing and cost-responsibility for the project, which shall be included in the development agreement.

*The motion carried unanimously and is recommended to the County Board for approval.*

*Nelson moved and Adams seconded to adjourn.*

*Motion carried.*

7:30 PM Meeting Adjourned.

Respectfully Submitted by:

Judy Weber, Secretary