

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

MONTHLY MEETING of the VILLAGE OF FONTANA PLAN COMMISSION  
**Monday, August 30, 2010**

Chairman George 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, George Spadoni, Mike Poivey, Derek D'Auria, Harry Nelson

**Plan Commissioner absent:** Sarah Lobdell

**Also present:** Steve Beers, Brandee Brown, Lee Eakright, Administrator/Treasurer Kelly Hayden, Jim Howe, Rob Ireland, Bruce Jensen, Library Director Nancy Krei, Laurie Larson, Village Clerk Dennis Martin, Assistant Zoning Administrator Bridget McCarthy, Joseph McHugh, Jerry Mortier, Jeff Neal, Zoning Administrator/Building Inspector Ron Nyman, Sharon O'Brien, Larry Pierce, Phyllis Pierce, Ted Peters, Margaret Reuland, Mike Slavney, Village Attorney Dale Thorpe, Jill Wegner, Carol Whowell, Trustee Cindy Wilson, Public Works Director Craig Workman

**Visitors Heard**

None

**Announcements**

1. Lakefront and Harbor Subcommittee Meeting – **Tuesday, August 31, 2010, 4:30 pm**
2. CDA Monthly Meeting – **Wednesday, September 1 or 8, 2010, 6:00 pm (To be Determined)**
3. Last Day Village Hall Open for Saturday Morning Customer Service Until Tax Collection Season – **Saturday, September 4, 2010, 8:00 am to noon**
4. Pig in the Park Pig Roast Fundraiser in Reid Park – **Saturday, September 4, 2010, 4:30 pm**
5. Village Hall & Public Library Closed for Labor Day – **Monday, September 6, 2010**
6. Village Board Monthly Meeting – **Tuesday, September 7, 2010, 6:00 pm**
7. Finance Committee Budget Meetings – **Thursdays, September 9, 16, 23 & 30, 2010, 6:00 pm**
8. Big Foot Lions Club Breakfast Tent/Annual Triathlon – **Saturday, September 11, 2010**
9. 2010 Partisan Primary Election and VOF Referendum – **Tuesday, September 14, 2010, Polls Open 7:00 am to 8:00 pm**
10. Plan Commission Staff Meeting – **Wednesday, September 15, 2010, 1:00 pm**
11. Library Board Meeting – **Wednesday, September 15, 2010, 10:00 am**
12. Park Commission Meeting – **Wednesday, September 15, 2010, 6:00 pm**
13. Plan Commission Monthly Meeting – **Monday, September 27, 2010, 5:30 pm**

**Approve Minutes**

Commissioner O'Connell/President Petersen 2<sup>nd</sup> made a MOTION to approve the minutes for the meeting held July 26, 2010 as presented, and the MOTION carried without negative vote.

**General Business**

**Proposed Amendment to Village of Fontana Comprehensive Plan**

Village Planner Mike Slavney stated that the Village of Fontana Comprehensive Master Plan was updated in 2009 and a new state statute that took effect on January 1, 2010 requires that land division and rezone requests are consistent with the adopted Comprehensive Plan. Slavney stated that a

Petition to Amend the Zoning Ordinance and Zoning Map has been filed by James and Carol Whowell for their Willow Bend Road property that is located at W6267 Willow Bend Road in the Town of Walworth and in the Village of Fontana Joint ETZ District. Slavney stated that the property is currently designated on the Comprehensive Plan Future Land Use Map in the Agriculture/Vacant” land use category, which is meant to limit residential development to a maximum of one new dwelling per 35 acres. The proposal filed by James and Carol Whowell calls for two lots to be split off to accommodate single-family residences, with one lot 5.32 acres in total size and one lot 8.53 acres. Slavney stated that he reviewed an August 27, 2010 memo written by Attorney Robert Leibsle for James and Carol Whowell and it is accurate. Slavney stated that if the Village favors the proposal there are three options to amend the Comprehensive Master Plan, or the Village could simply vote to deny the rezone proposal. Slavney stated that all three of the amendment proposals will cost the same to complete the approval process. Slavney stated that the first option to amend the Comprehensive Master Plan is to simply amend the Future Land Use Map to depict the Whowell parcel in the “Single-Family Residential served by Septic System” classification by changing the color of the parcel from willow to light yellow. Slavney stated that the second option to amend the Comprehensive Master Plan is to follow the amendment procedure for the first option and make the same change for certain other parcels in the Planning Area to recognize areas appropriate for “infill residential development.” The third option to amend the Comprehensive Master Plan is to not amend the Future Land Use Map, but instead amend the text of the Comprehensive Master Plan to allow for approving rezoning and land divisions that accomplish “infill residential development” within the appropriate parts of the area generally designated as “Agriculture/Vacant.” Nelson asked if it would be possible to amend the Comprehensive Master Plan using the second and third options. Slavney stated that a combination of the second and third amendment methods would be possible. Spadoni stated that it would seem that the first option would be the most expeditious, it would allow the Village to consider similar proposals on a case-by-case basis, and it would not change the classifications of all the surrounding parcels. Slavney stated that Spadoni was correct. Slavney stated that the first option to amend the Comprehensive Master Plan would still require other property owners in the same situation to go through the same approval process that James and Carol Whowell are facing. Slavney stated that if the Plan Commission was inclined to do so, the method of amending the Comprehensive Master Plan could be selected that night and the process could commence at the next monthly meeting of the Village Board on Tuesday, September 7, 2010. Slavney also distributed drafts of the required Public Participation Plan and resolution establishing public participation procedures for amending the Comprehensive Master Plan. Carol Whowell stated that the Town of Walworth and the Walworth County Comprehensive Master Plans both call for one single-family unit per five acres in the area encompassing their property. Whowell stated that the current Village of Fontana Comprehensive Master Plan only allows for A-1 rezones in the ETZ area, and that zoning classification will not allow for anything less than 35 acres for lots for single-family home sites. Following discussion, the Plan Commission members reached a consensus that the first amendment option should be initiated so that the Village of Fontana can continue to consider similar requests in the future on a case-by-case basis.

Commissioner O’Connell/Commissioner Nelson 2<sup>nd</sup> made a MOTION to direct Village staff to initiate the amendment process for the Village of Fontana Comprehensive Master Plan to depict the James and Carol Whowell parcel at W6267 Willow Bend Road in the “Single-Family Residential served by Septic System” classification by changing the color of the parcel from willow to light yellow on the Future Land Use Map exhibit, and to recommend Village Board approval of the Public Participation Plan and the Resolution establishing the public participation procedures for amending the Comprehensive Master Plan as presented. The MOTION carried without negative vote.

**Condominium Plat Filed by Stephen Beers, 454 North Lakeshore Drive, for Hawks Woods Condominium Association – Tabled 7/26/10**

Attorney Jim Howe, representing Steve Beers, stated that he addressed all the comments made at last month’s Plan Commission meeting and at the last Village staff meeting. Howe stated that the

declarations were amended to clearly define the three units and the current guest house that is located on Unit 1 with the existing single-family residence. Thorpe suggested additional language that would restrict the condominium association from ever having land or lots added to it or taken away from it, or from increasing density without approval from the Village of Fontana. Thorpe stated that the additional language would limit approval to a condominium association with three total units, with no opportunity for expansion or reduction. Howe stated that his client would be happy to add any wording to provide the limitations suggested by Thorpe. Thorpe stated that the proposal is not seeking any additional building rights or an increase in density for the land or the lakefront. Thorpe stated that the property is currently allowed the three total slips that are already installed on the lakefront, and that is the maximum number of slips allowed by the Wisconsin DNR. Workman stated that there are some utility easements issues on the plat that he has discussed with Peter Gordon, the surveyor. Howe stated that the 20-foot easement and a legal description of the area will be added to the plat. Hayden stated that if Thorpe is comfortable with the modifications made to the condominium association declarations and the utility easement is added to the plat, then all of the staff concerns have been addressed. Geneva Lake Conservancy Executive Director Joseph McHugh stated that he was not going to read the letter he submitted to the Village on August 24, 2010, but he wanted to reiterate that the conservancy is opposed to the use of condominium association platting as a way to transfer riparian rights to properties that are not located on the lakefront. McHugh stated that the conservancy is not opposed to the platting of a condominium association as long as the two proposed units that are located across North Lakeshore Drive on the west side of the road are not granted riparian rights in the common area on the east side of North Lakeshore Drive. McHugh stated that the Plan Commission members made a commitment to protect and preserve the character of the lakefront. McHugh stated that the proposal filed by Steve Beers will lead the Village of Fontana down a slippery slope and if approved, it will set a precedent and open the door to similar condominium association developments. McHugh stated that riparian rights should not be granted for back lots and the Village of Fontana zoning code's lakeshore overlay district and state statutes prohibit the proposal, which should be denied. Jeff Neal, 333 North Lakeshore Drive, asked why staff was recommending approval of the proposal. Spadoni stated that he would take all the comments from members of the audience prior to having all the questions answered. Geneva Lake Environmental Agency Director Ted Peters stated that the proposal reminds him of the 1980s, when flagpole lots and condominium plats were used to grant property owners riparian rights for properties not located on the lakefront. Peters stated that the Geneva Lake shoreline can only hold so many people and he is nervous if the Hawks Woods proposal is approved, it will open the door for more condominium association proposals filed to pass the riparian rights back from the lakefront. Larry Pierce, 465V North Lakeshore Drive, stated that he is dismayed over the condominium developments, variances and conditional use permits that are handed out by the Village. Larry Pierce stated that the Village should not approve an increase in boat density and the proposal should be turned down. Sharon O'Brien, 465I N. Lakeshore Drive, asked if the applicant could obtain approval for the condominium plat and declarations, but not for the riparian rights assigned to Units 2 and 3. O'Brien asked if it was a divine right of the zoning code to provide riparian rights with condominium association platting proposals. An unidentified woman then asked how many boats the association would be allowed if approved. O'Connell explained that the Wisconsin DNR limits the total number of slips to two for the first 50 feet of shoreline property, and one additional slip for each additional 50 feet of shoreline property. The parcel located on the east side of North Lakeshore Drive has about 105 feet of shoreline frontage, so the three slips that are currently installed are the maximum number of slips that the property can have. O'Connell stated that it doesn't matter what types of watercraft are moored at the slips, there can only be a total of three no matter if they are motorboats, sailboats, wave runners, jet skis, canoes, kayaks or any type of watercraft. In response to the previous questions, Thorpe stated that his legal review of the proposal determined that all the applicable regulations of the Zoning Code are all adhered to, and that the common area with slips assigned to Units 2 and 3 are part of the proposal as submitted. Thorpe stated that the Plan Commission can only consider the proposed condominium association plat and

declarations as submitted and either vote to recommend that the items be approved or denied by the Village Board. Thorpe stated that having the one slip be assigned to the owners of Unit 2 and Unit 3 is what was submitted by the applicant and it is not up the Village of Fontana to approve just a portion of the application. O'Brien stated that the Village suggested and was granted amendments to the proposed condominium declarations. Thorpe stated that the amendments to the declarations did not propose any changes in the proposed use of the property, they were suggested to box the applicant into the terms of the request as currently presented. Thorpe stated that the suggested amendments were meant to ensure the limitations would remain as described in the preliminary presentations. Phyllis Pierce, 465V N. Lakeshore Drive, asked if the proposal would provide lake access to all of the homes in the association. Thorpe stated that one slip would be assigned to Unit 1, one slip would be assigned to Unit 2 and one slip would be assigned to Unit 3. Phyllis Pierce said she is concerned about the number of people who are using Geneva Lake and stated that the Village should limit the number. Phyllis Pierce stated that the lakefront zoning code amendments that were presented in 2007 but not adopted should be adopted, and that the CDA should not be proposing to construct a new lakefront building if the Village can't afford to amend the ordinance. Spadoni stated that the CDA building proposal would be financed by TIF funding if approved in the September 14, 2010 referendum. Spadoni stated that the lakefront zoning code amendments that were not approved after the review in 2007-08 would be discussed later in the meeting. Spadoni stated that he agrees that Chapters 17 and 18 should be rewritten, but it will be difficult to allocate in the 2011 budget the \$100,000 needed to fund the project. Spadoni stated that there are a lot of property owners and residents in Fontana who don't live on the lakefront but have riparian rights. O'Connell stated that she cannot vote to approve the proposal because she is opposed to transferring riparian rights to properties not located on the lakefront. President Petersen stated that he agrees with O'Connell. Nelson stated that the proposal is code-compliant and he is in favor of approval. D'Auria stated he was not comfortable with the condominium instrument being used to grant riparian rights from a lakefront parcel to a non-lakefront parcel but that he was comfortable with the changes that had been made to tighten up the restrictions on future development of this project. Poivey stated that he wanted to know what McHugh would propose for the property. McHugh stated that other properties not located on the lakefront that have riparian rights were approved through zoning, not by a condominium plat or other form of ownership. McHugh stated that he would not approve the transfer of riparian rights off the lakefront parcel to the properties located across the street. O'Connell stated that she cannot vote to approve riparian rights for lots located across the street from the lakefront. Petersen stated that he is opposed to the proposal even if it's legal and it doesn't make sense to grant lakefront rights to properties across the road from the lake. Martin stated that the Village received telephone calls from John Pierce and John McCarter, who stated that they are property owners and oppose approval of the proposal. Martin stated that the Village also received emailed messages from Tara and Tim Clark, Clark Williams and Martha Atkinson that state they oppose the proposal. Thorpe stated that he wanted to address some inaccurate statements made by McHugh. Thorpe stated that the Abbey Springs subdivision was not initially approved and developed as a Planned Development, it was approved with condominium zoning and condominium platting and was later changed to a Planned Development. Thorpe stated that effect of condominium association platting has the same effect as a zoning amendment or a Planned Development approval. Thorpe stated that it was the charge of the Plan Commission members to vote on the proposal as presented and under the auspices of the Zoning Code as published.

Commissioner O'Connell/President Petersen 2<sup>nd</sup> made a MOTION to recommend denial of the Hawks Woods condominium plat and declarations filed by Steven Beers, 454 N. Lakeshore Drive, and the Roll Call vote followed:

Commissioner Poivey – Aye

Commissioner D'Auria – Aye

Commissioner Nelson – No

Commissioner O'Connell – Aye

President Petersen – Aye

Chairman Spadoni – Aye

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

### **Conceptual Proposal Filed by Abbey Springs for Boat Storage Renovation Plan**

Abbey Springs Executive Director Jerry Mortier stated that part of a 2006 plan approved by the Abbey Springs homeowner's association included a proposal to improve and expand the outdoor boat storage area. Before the association moves forward with seeking approval from the Village of Fontana and the Wisconsin DNR and preparing costly plans for the boat storage renovation plan, Mortier stated that he wanted to solicit an opinion from the Plan Commission. As well as making improvements to the area, Mortier stated that the proposal calls for adding 54 more boat storage stalls over a period of several years. O'Connell stated that there is no way she could vote for an expansion of the boat storage area, which is located on the lake side of South Lakeshore Drive. Petersen stated that he agrees with O'Connell and he cannot support the proposal. Nelson stated that the storage area is already there and the plan would improve the area, so he would favor the proposal. D'Auria stated that he is not in favor of approving more boat storage stalls on the lakefront. Poivey stated that he also does not support the proposal. Spadoni stated that the boat facilities at the Abbey Springs Yacht Club are great sources for revenue for the association, but he does not support the proposal. Petersen stated that he would support a plan to store boats across the road on the Abbey Springs property. Mortier thanked the Plan Commission members for their time and stated he would report the results of the conceptual inquiry back to the association membership.

### **Lakefront Zoning Code Ordinance Amendments**

Thorpe stated that the redistributed lakefront zoning code amendments that were not adopted when initially considered in 2008 addressed residential density standards, lot width requirements and subdivision restrictions in the RS-1 Zoning District. Thorpe stated that one suggestion by staff was to increase the minimum lot size for subdivisions to 1.5 acres. Thorpe stated that staff found in its review of the lakefront zoning codes in Williams Bay, Lake Geneva and Fontana, that Fontana has the most liberal standards of the three. Spadoni stated that he wanted to make the same suggestion that he did when the amendments were first discussed in 2007; that all the lakefront property owners be notified with a letter. Spadoni stated that some of the lakefront properties have been owned by the same families for decades, and the amendments could adversely affect their property rights. Spadoni stated that the Village has to poll the community before it considers the amendments. O'Connell stated that the Village received a lot of input from the community when it updated the Village of Fontana Comprehensive Master Plan in 2009. O'Connell stated that the majority of the comments were with regard to concerns about the lakefront. Spadoni asked what amendments the Plan Commission would like to see reintroduced. Thorpe stated that the initially drafted amendments and memos on the lakefront zoning code are not really adequate for reconsideration, and he suggested that the Plan Commission members provide goals on what they would like to see addressed. Thorpe stated that if Village staff is given a list of priorities, then proposed amendments could be drafted. O'Connell stated that she is most concerned about the assigning of riparian rights to properties located across the road from the lake. Petersen stated that tear-downs and the development of "McMansions" on the lakefront are also a concern all around the lake. O'Brien stated that if the Village is going to be looking at amendments to the lakefront zoning code, could a moratorium be placed on development proposals. Spadoni stated that the proposed adoption of a moratorium during the proposed rewriting of Chapters 17 and 18 of the Municipal Code was discussed at a special joint meeting on July 6, 2010; and until the Village commences with the rewriting project for the entire chapters, a blanket moratorium cannot be adopted. Thorpe stated that a moratorium can be adopted for specific items or if a complete rewrite of the zoning code and land division chapters is undertaken. Thorpe stated that if part of a specific zoning district is being amended, a moratorium could be placed on applications filed for properties in that district. Thorpe stated that no matter the intent, the enactment of a moratorium was not on the agenda for the meeting so no action could be taken. Spadoni stated that the Plan Commission would take up the

proposed amendments one concern at a time.

Chairman Spadoni/Commissioner Nelson 2<sup>nd</sup> made a MOTION to direct Village Attorney Dale Thorpe to draft an ordinance amendment to prohibit the assigning of riparian rights to properties located across the street from the lake, and the MOTION carried without negative vote.

**Adjournment**

Chairman Spadoni/President Petersen 2<sup>nd</sup> made a MOTION to adjourn the meeting at 6:49 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, the official minutes will be on file at the Village Hall.

APPROVED: 9/27/10