

PUBLIC HEARING

6:00 P.M. PG-936 Conservation Forum – Subdivision and Zoning Code
Amendments.

NEW BERLIN PLAN COMMISSION

NEW BERLIN CITY HALL COUNCIL CHAMBERS

February 14, 2005

MINUTES

The public hearing relative to the Subdivision and Zoning Code Amendments was called to order by Mayor Wysocki at 6:00 P. M.

In attendance were Mayor Wysocki, Alderman Ament, Mr. Sisson, Mr. Barnes, Mr. Gihring, and Mr. Teclaw. Mr. Felda was excused. Also present were Greg Kessler, Director of Community Development; Nikki Jones, Planning Services Manager; Olofu Agbaji, Associate Planner; Amy Bennett, Associate Planner, JP Walker City Engineer and Mr. Randall Arendt, author of “Designing Open Space Subdivisions”.

Ms. Jones read the public hearing notice and stated there was proof of publication.

Herb Eggie – 21430 Bagpipe Court – When the State Legislature receives a bill proposing an amendment to an existing statute or an administrative code amendment submitted for hearing, both of those instances show not only the new proposed revisions, but also the old provisions with the new language underlined and the old crossed out with a line through them. This helps the reader to understand more clearly the effects and meaning of the provisions by comparing it with the old. It is used for clarification and for better understanding; except for rare instances, this practice has not been followed. If you look at Chapter 235 as it was submitted, all of the provisions on every page are underlined. Nothing appears to show the old provisions. We are not in compliance with the practice of trying to help the public understand better the provisions of the proposed Code. In going through Chapter 235, Mr. Eggie stated there is much good in the provisions, but the new Chapter has errors, vagueness, generalities, and undefined terms, such that it is difficult to know what is the meaning is of provisions. If the City has one interpretation and the developer has another interpretation, unless the City gives in to the developer, the opportunity for litigation arises. There are provisions in the proposed Code that are very vague and are difficult to understand what the meaning is. The Code is so vague and hard to understand, that it doesn't meet the requirements for which the undertaking of the study was originally meant to be. The original study was meant to clarify the provisions of the Code. Some of these provisions add confusion. The original purpose of amending the Code was to simplify, and this Code makes it more complicated.

If the terms in the Code are so flexible that there are two interpretations, the City is put at a disadvantage with the developer. This Code could lead to a number of litigations. Mr. Eggie stated this is not the time to adopt a Code of this nature. It would only lead to more confusion, less clarification, and more litigation.

Mayor Wysocki asked if there was anyone else wishing to speak.

Vern Bentley – 3450 S. Johnson Rd. – Mr. Bentley referred to the Wildwood Preserve and stated they had R-3 in there and he doesn't know what has happened to that. Adjoining that, there was talk about purchasing the properties along Calhoun Rd. which are not R-3. It was explained to him that they are R-3 because they are less than five acres. The proposal is to put the property together with nine lots. How can you take the R-3 lots that were made R-3 because they do not meet the five-acre density, but now the developer could purchase them and divide them up into ½ acre lots? The answer he has gotten, is that it is existing. There are also the R-1 and R-2 land's that were divided into R-3.

Mr. Bentley referred to the R-4 property on Calhoun and National, which is being asked to be multi-family. If we have a Master Plan, why are we changing the zonings to multi-family like the R-4 and R-1/R-2, and we are not doing anything with the R-3 lots? Mr. Bentley asked if it was possible if the R-3 could have a special zoning like R-3.5? Mr. Bentley stated the Milwaukee Builder's Association is asking for smaller lots. We have the five-acre density in the west, and questioned why we would want to go smaller. The conservation subdivision is the best for the western part of New Berlin because a big portion of that land is not even buildable. Mr. Bentley referred again to Calhoun and National and stated when people came to New Berlin, most came thinking there would be single-family homes. He felt that if there were single-family homes in that area, there would not be a problem. The developers want to put up big monster multi-families; they don't care about the water or the traffic.

Mayor Wysock asked three times if there was anyone else wishing to speak?

Paul Scheuble – 19890 W. Julius Heil Dr. – A while back there was a lot of concern for the preservation of the rural west side, and it was important to maintain the five-acre density. In reading through the Code, it seems to have more density incentives than in previous times. He understands the strategy to encourage having conservation subdivisions, but by the sheer wisdom of the attractiveness of a well-designed layout to maintain the sustainability of the long range, will keep these projects very attractive. They should be encouraged without density incentives.

One of the other factors concerning density, there are some suburban developments already in the west. They are dependent upon surrounding properties to recharge their aquifers. If we continue housing and don't have respect for the natural run of water and where it will recharge naturally, we run the risk of jeopardizing the supply of the water to private wells. When this happens, sewer may have to come in. The DNR could have sewer extend beyond the current sewer service area.

Mr. Scheuble stated he is concerned about the policy that would bring about the necessity of bringing sewer in. If you bring sewer in and take private well water to export the water via sewers, what we are doing is compromising the long-range sustainability of the aquifers. If the strategy is to link the east and the west to the west of Sunny Slope, we would create a need for higher densities. The Plan Commission needs to look at how we can maintain the sustainability of local ground water and septic systems. This is why density incentives should be taken out of the Code. Is the Commission committed to sustainability or sewer in the western part of New Berlin?

Mr. Scheuble stated, according to the current Code, anyone wishing to create a preliminary plat would have to have to plan how sewer would be run if it were to be available. If we were to commit to sustainability or sewer, subdivisions would be laid out differently. When Mr. Scheuble first presented the conservation subdivision proposal to the Plan Commission, he informed them that it is important to create an open space.

There should be at least two forms of protection, one could be a homeowner's group and another a conservancy group.

Mr. Scheuble stated he thought some of the density proportions got eliminated and now it would allow for greater density. We are going in the wrong direction towards higher density.

Mayor Wysocki asked if there was anyone else wishing to speak?

Matt Moroney – Executive Director of the Metropolitan Builder's Assn.– N16 W23321 Stoneridge Dr., Waukesha - Mr. Moroney would like to applaud the City of New Berlin for coming up with the Conservation Subdivision idea. It is a useful tool and seeks to balance all of the different interests involved. They also looked to Randall Arendt for advice.

One of the key concepts Mr. Moroney talked about was the 75% minimum open space requirement, and stated throughout southeastern Wisconsin that is very high. Most communities require 40-50% open space. The high requirement minimizes the flexibility that the developer would have to tackle some of the vital pieces on a parcel of land. It would be the MBA'S suggestion to move the open space requirement down to 40-50%. Another concept is regarding minimum lot sizes; the density would remain at 1 to 5 acre. There would be a change in the lot size. Right now Mr. Maroney stated he believed that the minimum is $\frac{3}{4}$ of an acre, and stated that is too large. He felt $\frac{1}{2}$ acre lots would allow for better protection of the vital areas. The market demand is not for five-acre lots.

One of the MBA's big questions is would there be a provision on density bonuses, but was unclear as to how that would work. Several of the similar ordinances throughout southeastern Wisconsin have specific examples that lay out how things will work. It was hoped these examples would be incorporated into the Conservation Subdivision Design Ordinance.

As far as the Conservancy Districts, it was Mr. Moroney's understanding that these currently count towards the overall density of the property, and now this has been stripped away. He felt that it was fair to the landowner to continue with that sort of calculation by keeping the Conservancy District calculations as they were instead of stripping that away. He agreed with the comment that if you can, you should encourage conservancy groups to partner with the Homeowner's Association to maintain these properties properly.

Mayor Wysocki asked if there was anyone else wishing to speak?

Rob Bultman – 12229 W. North Ave., Wauwatosa – Mr. Bultman felt the Conservation Subdivision idea is an excellent idea, is attractive to the development of a community, and will be attractive to potential consumers. Mr. Bultman would like to focus on the bonus density requirement and the open space requirement. He stated he has run some calculations on a 75 acre parcel in New Berlin. Under the proposed ordinance and the way it is enacted right now, in order to start looking at any kind of density bonus over the one for five acres, you would have to start with 75% open space. As you start with the 75% open space on the 75 acre parcel, under the Conservation Subdivision, he got 15 lots. Under the conventional zoning, he got 15 lots. There is no incentive to the developer to try to go through the Conservation Subdivision proposal. If you are looking at the bonus as a good idea to encourage development, the reality of starting at 75% does not result in any kind of a bonus.

Calculations were run earlier if the goal for the open space is to create open space. If you start at a 50% open space as a requirement and then add bonus lots on for additional density vs. the 75%, the open space difference at 75% is 19 lots under the bonus calculations. The total open space is 74.3%. Under the 75% open space, the total open space is 78.3%. The difference in acreage on the 75 acre parcel starting at 75% vs. starting at 50%, is an additional three acres of open space. The percentage difference is not that much, but as a developer, he would get four extra lots, which would give more incentive to go through the time, expense, and additional costs of a conservation subdivision.

Mr. Bultman stated if you look at what is proposed on the 75-acre parcel, there is a very attractive development, a very attractive layout, and a very broad common area that is laid out in a way that is attractive to a community. It would also allow for recharge of the water system. It would give incentives to the City and the developer. You would achieve the ultimate goal of an ample amount of open space.

If you would factor in the $\frac{3}{4}$ acre lot size, Randall Arendt's proposal with very small lot sizes was advocating a high level of open space. Mr. Bultman stated he was advocating that in conjunction with very small lot sizes. When you have a $\frac{3}{4}$ acre lot size with the 75% open space, that is where it falls apart. Mr. Bultman ran calculations with $\frac{1}{2}$ acre lot sizes with the 50% or 75% as a starting point on the calculation. At 50% with $\frac{1}{2}$ acre lots, the total open space is 79.3% of the land with 59.5 of the 75 acres retained as open

space. If you start at 75% at ½ acre lots, you would end up with 82.3% or 61.8 acres of open space. If the goal of New Berlin is to try to preserve as much open space as possible, having the flexibility of ½ acre minimum sized lots versus ¾ acre minimum sized lots would be attractive under the right circumstances on the right property. If you started with a 50% open space, you would end up with almost 80% open space. As a developer, he stated he would get four bonus lots for going through the Conservation Subdivision and for setting aside almost 80% for long-term conservation. This is a benefit to the developer and the City.

Mr. Bultman stated he has been to meetings and looked at minutes and realizes we have spent a lot of time and thought into the Conservation Subdivision Ordinance. He felt it was good, but he felt that developers would not want to go under that if there is no incentive to do it.

Under the new steps to get the approval process, one of the things that is being proposed is a site visit. He felt this is an excellent idea and is always better to have the Plan Commissioners walk the property because it makes for better informed decisions. One concern is that the process would slow down the approval process because of possible liability issues and accessibility issues?

Mayor Wysocki asked if there was anyone else wishing to speak?

Donna Goodwich – 3783 Shady Lane – Ms. Goodwich went on the web site to try to learn about the amendments and could not figure out the changes. She felt we should try to make things clearer for the citizens. Ms. Goodwich found it disconcerting that one minute there is one issue on the web site and when she went down to another issue, it was something else. Ms. Goodwich wanted to know if the west side of New Berlin is supposed to have five acres and she wanted to know about the conservancy lots, if they can be down to two-acre lots and have sewer and water? Where are the areas going to be that have the rural atmosphere and sewer and water? What does that have to do with the citizens who live near the areas that have septic and wells? She felt that developers and people selling their land are worried about themselves and no one else.

Mayor Wysocki asked if there was anyone else wishing to speak?

Vern Bentley – 3450 S. Johnson Rd. – Mr. Bentley referred to Mr. Bultman's 75 acre parcel and questioned if it was all buildable? Mr. Bultman responded, there are no wetlands on the property, but some land zoned Conservancy that will not be built on. This could be divided into five-acre parcels. Mr. Bentley referred to the bonus density of 19 lots versus 15 lots which means instead of a five-acre density, would we have a 3.3 acre density? Mr. Bultman stated it would be 19 lots in either ½ acre or ¾ acres. It would be 19 divided by 75. Mr. Bentley questioned how big of a home can go on a ½ acre lot. Mr. Bultman responded, it would depend on where the septic field is located.

Mr. Bentley asked what the sizes of the lots were in Wildwood. Mayor Wysocki stated he thought they were over an acre. Mr. Bentley stated what we are now having on the

west side is that people are building much bigger homes with the one to five density. Mr. Bultman stated in Brookfield there are ½ acre lots with very substantial homes on them. A lot of it depends on how you lay out the subdivision. If there is a five-acre lot and someone would want to put in an Olympic-sized swimming pool and a tennis court, they would have the room. Mr. Bentley stated if we would go with the ½ acre lot, people would be restricted on what they could build. Mr. Bultman stated he is not saying that every lot should be ½ acre; he is saying this is an ordinance that sets minimums. It has to be at least a minimum. If you set a minimum at ¾ acres, you would not have the possibility of ½ acre lots. There are times where that might be the best option.

Mayor Wysocki asked if there was anyone else wishing to speak?

Paul Scheuble – 19890 W. Julius Heil Dr. – Section 35 is currently zoned Residential Estate, which allows for two acres. When the population projections were made with the possible availability of sewer, they were done in calculation of two houses per acre. As far as the Plan Commission goes, it is important to realize not only the environmental sustainability but the economic sustainability. When you allow sewer to come in and increase the densities beyond the population projections that were given to the school district, what you mess with is the planning process of the community as a whole. The School Board was told they would have approximately 570 houses in Section 35. Mayor Wysocki corrected Mr. Scheuble in the fact that there would be one unit per two acres. Mr. Scheuble referred to an e-mail from SEWRPC, and stated that Section 35 was calculated for two houses per acre. Mayor Wysocki stated these were the old projections, but Mr. Scheuble stated this is currently being considered by MMSD per the e-mail from SEWRPC. Mr. Scheuble is not for increasing the densities from what they currently are with respect to long-range sustainability being in question.

Mr. Scheuble stated he felt it was a good thing to build into hills for walk-out basements because of energy efficiencies. He stated there were concerns about erosion on steep hills, but if the right building techniques were utilized, excavation was properly done, and the right types of foundations were utilized, we could use hill sides which would then open up more open space.

Mayor Wysocki asked if there was anyone else wishing to speak?

Mary Hiebl – 20160 W. National Ave. – Ms. Hiebl expressed concerns about the dates, scheduling, and noticing of tonight's public hearing. Scheduling this meeting on Valentine's Day seems questionable and is confirmed with the lack of people being present. These code revisions are extensive and have the potential to impact every land owner and will likely impact those with undeveloped land. Yet there was no special effort in publicly noticing this other than on the web site, and the New Berlin Citizen. The Citizen had a mis-notice on January 6, 2005. There was not an update on this matter in last week's government section on page 4 in the New Berlin Citizen, nor was there the topic of tonight's agenda foregoing the listing of this Plan Commission in last week's New Berlin Citizen. The web site had the most information, but does the City know how many hits that site has on this topic. Since this hearing is public and has the potential to

impact so many, she felt there should have been more notice. With that said, she has concerns about the documents for review, knowing full well that the body sitting before us tonight has dedicated a great deal of time and effort to the Code revisions. Her first concern is with the language in the document. It needs to be crisp, devoid of value judgments, or interpretations. There are many examples which such language intrudes, misleads, or is open to interpretation. For example, there is the frequent use of the word “encourage” regarding restoration of previously drained wetlands. How does one comply with the word “encourage”? How will the applicant know what to do to “encourage” the restoration? There is the unnecessary and excessive use of the word “help”, as in “help protect interconnected networks”. Again, “help establish substantial buffers”. How does the applicant interpret that, and what standards does the City use to enforce that?

Ms. Hiebl stated there seemed to be some obscure language, as in the use of the word “proper”, as in “proper development of the City’s soil”. What would that entail? There seemed to be instances where the language in the document did not have teeth. In the pre-application conference it is stated it is neither formal nor mandatory, yet later in the document the importance of such a meeting is stressed. Ms. Hiebl quoted, “to impress upon the applicant the very great importance of such a meeting to insure that the layout is on the right track before costly engineering drawings are prepared”. These would be some type of language issues that should be checked into before the document is approved.

In the “Voluntary Sketch Plan and Site Visit” section, there are references to the City officials to review the entire subdivision design and review process, to work together fully to understand the site and its potential for carefully designing. Who would those City officials be? Would that be the Plan Commission or the Planning Staff. This needs to be clarified. The “Voluntary Sketch Plan Section” seems to be troublesome also. There seems to be an inconsistent urgency to this voluntary plan. This document states, “This part of the optional pre-application stage”, yet further in the same paragraph the text states that, “This is the most critical of the entire subdivision design and review process”. The question would be, is the pre-application critical or is it optional, and how will that be made clear to the applicant?

Ms. Hiebl questioned, are wildlife travel corridors, scenic view sheds, cultural resources mapped in the City Master Plan, as indicated in the Purpose and Intent of Chapter 235? Do we have a map?

Ms. Hiebl stated another troublesome area is the process an applicant is to follow. If an applicant does not follow the route of voluntary pre-application sketch, and if the Plan Commission does not require it, what process does the applicant follow? Another question is if this is to be a voluntary pre-application sketch; somewhere in the document it states that if the applicant does not follow the voluntary pre-application sketch, then the Plan Commission may require the applicant to have this sketch. If the Plan Commission does not require it, and if the applicant does not volunteer to do it, at what point or what process does the applicant follow for the preliminary sketch plan?

Ms. Hiebl stated on Page 20, there were some references to Ch. 235 (15)(K)(a). She could not find this. That would be one example of more references that are stated in the Code, that she could not find in Chapter 235. On the same page, Ms. Hiebl referred to an “adequate lot size”. She stated she did not know what that meant. Reference was made to Amendment 14 and the problems with the language. She suggested we go over this Amendment. On page 17 Ms. Hiebl referred to line 19 which refers to Step 4 about drawing in lot lines. That paragraph ends with “if so requested by the City Department of Community Development”. It does not state any criteria which should be followed. There are some inconsistencies in Randall Arendt’s book, “Growing Greener”. He talks about how sites should not be closer than 100’ from navigable waters. The Code states 75’. There also seems to be inconsistencies in Chapter 235 about the slopes. Sometimes it says you cannot build on slopes 25% and in other cases 20%. These areas need to be looked at.

Ms. Hiebl was unsure about the Map of Potential Conservation Land in the Master Plan. Is the Map of Potential Conservation Land a component of the Master Plan? Ms. Hiebl stated there should be some consistency of the terms “conservation areas” and “conservation lands”.

Ms. Hiebl stated before the Code is completed and forwarded, there are a number of critical detail items that need to be looked at. One of her questions is that she assumed that in the official notices and letters regarding the code revisions, that this was for clarity, but there were some questions brought up that need to be addressed for the public. If we are talking about reduced lot sizes because the developer would like ½ acre lots instead of one-acre lots, the developers say it would be a benefit to the City to have a reduced lot size. The public would like to know what the benefit to the City would be for such a reduced lot size, taking into account all the comments that were made by the citizens.

Mayor Wysocki asked if anyone had any comments?

The public hearing was adjourned at 7:10 P.M.

Mayor Wysocki asked for comments and responses from the Commissioners and Mr. Randall Arendt.

Mayor Wysocki asked Mr Arendt to comment on the City’s work to this point and relative to what was stated by the public.

Mr. Arendt stated the City has come a long way and is close to being at what he felt comfortable with them recommending. Anything the Council goes forward with is never engraved in granite. That is not done any more. It was recommended the Council take a look back after a while at the Code after it has been used for a while.

Mr. Arendt stated there are some problems and inconsistencies with language that can be

looked it. It is important to be consistent. Codes are always a work in progress. The City of New Berlin is much further along than most communities in terms of having the map. What is important is the detailed mapping like what is happening on site. It is not important that we don't have mapped out the Wildlife Travel Corridors or the Scenic View Sheds because those things will be mapped.

Mr. Arendt went through the benefits of reduced lot sizes. One of the benefits is to have more land that is not under asphalt or lawns; more land that remains as woods or farmland or farmland which is brought back to grassland and prairie where wild flowers and meadows are used. This is much better for recharge than lawns. This is much better for wildlife also. Smaller lots are not a convenience for developers; some developers might find it more inconvenient. Discussion with the Staff occurred previous to this meeting regarding larger lots when there is on-lot septic and lesser minimum lot size and when the septic is behind the lot just beyond the lot line.

Mr. Arendt referred to the questions regarding setbacks from navigable waterways. The State requires 75'; his book is written for 50 states as is used as an example. This setback could be reviewed again when the Code is looked at in the future. Reference was made to the word "encourage" being used in the Code. We would rather use the word "encourage" rather than saying nothing. An example was given where developers scooped out previously drained land to create wildlife areas. This looks a lot better than tile drained corn fields. Some sort of language is needed if something is not "required".

Mr. Arendt referred to the discussion regarding the pre-application process as being neither formal nor mandatory but on the other hand strongly encouraged? State law does not authorize municipalities to require this step, but this is a very critical step in land development. Mr. Arendt also referred to site visits. He feels they are very important and also feels this is one of the ways to build dialogue with the developer in the field. This is the basis of moving forward in good status.

Mr. Arendt referred to the need to protect the areas best suited for infiltration and recharge areas. This approach does that because with a high percentage of open space, there is a lot of land left for infiltration; but going beyond that, we talked about delineating the areas that are best suited for aquifer recharge and septic systems and define them through the site mapping process. We also wanted to make sure that if we were to locate private septic systems behind the lot in the common open space, that we make sure where the best soils are. Very often developers don't do a thorough soil analysis when they do a layout.

Mr. Arendt stated that he agreed with the minimum lot size idea. It is a minimum, but it does keep flexibility in placement and location of houses. Building at the smaller lot size increases the amount of land to leave in woodlands or agricultural, or to convert agriculture to a managed conservation development with aquifer recharge and habitat. He didn't think the 75% open space ratio would be a problem in a five-acre district, and felt in looking at engineering plans for septic systems, they could go on a lot that is 33,200 sq. ft. 75% open space allows 1.25 acres for house lots.

Mr. Arendt stated he likes to see conservation easements being held by at least two parties; one of the members being the local conservation district.

Mr. Arendt stated the philosophy is five-acre density in the western part of New Berlin. There can be lots of various sizes, as long as you keep to the five-acre density. If a developer does a good job and preserves more than the minimum required open space, perhaps he does a really good restoration plan, perhaps opens a trail around the primary environmental corridor for city-wide trail uses, perhaps donates five or ten acres for a municipal soccer field, it is desirable for the City to be able to encourage this.

Mr. Arendt referred to the question about wetlands being counted toward density, and stated he did not believe they were. Density is done through adjusted tracked acreage or a yield plan.

Mr. Ament stated Appendix A is not part of the Code at this time. Should this be required and part of the Code? Whatever is required in this appendix, Mr Ament would like to see in the Staff Report. Mr. Kessler stated Appendix A outlines the requirements for conventional and conservation subdivisions as the Code currently exists. It has content that is required under the State's Platting Statutes, and it also has items such as site vicinity sketch. This is now part of the Code. Mr. Ament referred to a discussion with Staff and stated after a couple of these proposals go through, maybe Staff should step back and see how they work. Also discussed was the septic layout and that being part of the process up front.

Mr. Teclaw is in agreement with making sure the language is clean. Mr. Teclaw stated he sees both sides of the lot size. He referred to the time when the GDMP Committee was going on and when the minimum lot size had been established at 1.5 acres. It was always stated that the main reason for that was so you could have primary and secondary septic sites. When we did the Master Plan revision, even with density bonuses, that the minimum lot size would still be one acre. If we do change from the one-acre, we will have an inconsistency with the Master Plan. One of the things to keep in mind is that the Master Plan is talking about continuing agricultural uses, having hobby farms, etc., and if we have that as a vision and we start shrinking the lot sizes, we will lose that. When we talked about eliminating the size requirement provision by which a person could get below the 20 acres and still not have to go with five-acre lots, a situation could occur where we would lose the five-acre estate parcels. In order to have livestock, it requires a minimum five-acre parcel. If we want to have those types of properties in New Berlin, getting to a smaller lot size would contradict that.

If you have a situation where there is a lot of conservancy lands to protect, it might make sense to get down to smaller lot sizes, but on the other hand, if a person has an agricultural expanse, then it does not seem fitting to have a person shrink down to ½-acre lot sizes. Mr. Teclaw stated he thought the Engineering Dept. stated at one time they would not like to see the septic system going off the actual lot itself.

Mr. Teclaw stated we would either have to pick the minimum lot size, or write the verbage that it would be flexible and parcel dependent, but he would be in favor of maintaining the five-acre density. If we get to clustering too many ½-acre lots, would this be a recipe for future sprawl?

Mr. Arendt stated the way to insure that rural character and that we are using the best soil for septic systems would be to go to ½ acre as a minimum lot size. What was discussed earlier in the day was having two types of minimum lot sizes; one, if you are having the septic system on the lot and one if you are not having your septic on your lot. A developer could chose to make them large, but they would not have to be. You could put the lots with the septic systems in the areas of the best soil. You grab the best soils that you can, because only the minority of soils are going to be above average on your typical site. The rural character five-acre lot or even a 10-acre or 15-acre lot as a conservancy lot owned by a professional person that has a hobby farm would be located along the road frontage, and then the smaller lots would be further back in perhaps between the hobby farm and the woodlands and primary environmental corridor. Having smaller lots would give the flexibility to tuck them back where they are not going to be visible, but feature up front the larger properties. A ten-acre lot would look a lot more rural than a three, four, or five-acre lot.

Mr. Teclaw asked what Mr. Arendt's thoughts would be if we have the ½-acre requirement and then perhaps jump to a 10-acre lot. The way the Code reads now is we are not recommending to put lots into conservancy areas. What we have now is that open space is open space and not made up of private residential lots. Mr Arendt stated requiring a 10-acre lot would be a healthy shift, because it does not put as much of a burden on the homeowner's association to maintain all of that acreage. Suppose there is 15 acres of open space and one or two 10-acre conservancy lots? You are going to get one or two high-end homes on those lots, which will be great for property values, property taxes, the scenic view shed, and it reduces the amount of acreage the homeowner's association has to take care of. The house would go into the 10-acre conservancy property. If the City's goals of rural land use are obtained, and the scenic view shed goals are obtained, the tax assessor is really happy, the realtor is happy, and the developer has this extra incentive.

Mr. Teclaw asked Mr. Arendt if his recommendation was that a limited number of the conservancy lots were proposed, would we be following that recommendation and if we would go ahead with the conservancy lots, would a use table be created? Mr. Arendt stated either a use table or list the uses after the term "country property and conservancy lot". The conservancy lot uses should not have a negative impact on the neighborhood; i.e, pig farms, etc.

Mr. Sisson stated he was caught up with the idea that the language is confusing, vague, and sounds like it would need clarification. We have invested over 100 hours over the last year debating and discussing each one of these amendments individually. If there is a problem with language clarification, we will have to do it.

Mayor Wysocki thanked Mr. Arendt for his expertise. Mayor Wysocki brought forth several of his points, one of them being inconsistencies. He did not see inconsistencies in the Code with structure as potential inconsistencies with some of Mr. Arendt's recommendations in his writings. Discussion occurred as to where the septic systems would be located on or off the property and where the markings would be placed, along with the lot line markings.

Mr. Barnes stated the lot size questions were addressed and also the septic field location questions were addressed.

Mr. Ament referred to "active recreation" and the limitations to that in the open space. How do we limit the "active recreation". Mr. Ament referred to a lighted ball park in a neighborhood park as an example and asked where this would be defined? This could be defined in the conservation easement that goes on the property. This should be passed through the City Attorney for his review and the conservation easement document should contain, as an example, these items, i.e., there shall be no motorized recreation, there shall be no outdoor lighting of ball fields, etc. The homeowner's association could then be made aware of these limitations.

Mr. Ament questioned, at some time in the process at the beginning, would there be a way of requiring a developer up front to get involved with someone who can help them learn the process? Is there a way that we can identify open space, identify the septic fields, and also require the developer to meet with someone with knowledge of creating conservation subdivisions? Mr. Arendt responded that much better results come from working together as a team. He felt the engineers can help identify the soils that are good for recharge to the aquifer and storm water, soils that are good for the location of septic systems, areas with less sight distances to get in and out of the property. The landscape architect should work with the engineer on designing subdivisions in the first stages. Mr. Arendt stated that there could be a requirement that the concept plan should be at the hand of an architect or physical planner. The engineer plays the greatest role at the beginning doing the inventory work.

Mr. Ament referred to the idea that was mentioned regarding the fact that C-2 should not be counted towards the density. Mr. Arendt stated that is correct except in terms of the yield plan; you can use as much of the wetlands that you want to to fill up the five-acre lot and the five-acre zone and the two-acre lot and the two-acre zone, as long as you have a certain amount of the usable land for the house and the yard and the septic system. The yield plan is used in case the adjusted track acreage formula is not adjusted the right way to give the land owner and developer a fair shake. Mr. Ament questioned where would C-1, uplands, other conservancy areas, environmental corridors fall? Would they be set aside as conservation land? Mr. Arendt responded, he would count them towards density because the woodlands are buildable, but they have such an environmental value that we would want to conserve them as part of the conservancy lands, so they would become part of the preserved area. Every acre of dry upland would be counted towards density.

Mr. Teclaw questioned, in regard to the septics, is the off-site suggestion an option for a

developer with the smaller lots? Mr. Arendt responded, we are suggesting two sets of lot sizes, one with the septic system on the lot and a different lot size when you do not have the septic system on the lot. Mr. Teclaw stated there is verbage in the Code under Site Development Standards that suggests that you would not put a lot in C-2, and there is verbage that suggests now that you shall allow C-1 and C-2 to be platted into individual lots. Mr. Arendt responded he would like to see C-1 and C-2 in conservation areas, but maybe it could be part of a 10-acre country property or conservancy lot. Mr. Teclaw questioned Mr. Arendt when he would suggest these elements be allowed on a lot? It sounds like it ties in with the yield plan. Mr. Arendt responded, that is just for a land division, that is not a conservation subdivision. When we have a land division or minor split, there is not a huge impact and there are only a limited number of design options also. Mr. Teclaw asked where the point would be where you would call something a conservation subdivision or not? Mr. Teclaw also referred to the Code and stated he thought the Code stated the developer would have the option with the CSM's if they wanted it to be considered conventional or conservation. Would we lose the five-acre estate lot in the western part of the city? Mr. Kessler responded, what we follow is the definition of the subdivision of land. As an example, if the property in total is 25 acres, the gross density on the west side of the city is five acres; if we were to divide that by five, you would get five lots, that would thrust that into the platting process. If the property was 20 acres and you would divide by five, you would get four lots, which would not constitute a subdivision platting process, that would be a CSM. Mr. Kessler referred to the areas that are C-1 or C-2. Can you create new lots with conservancy features on them? This was discussed with Mr. Arendt earlier. Mr. Kessler further stated, when you are in the platting process, we would want to exclude lots out of those areas. If you are just dividing land and not subdividing land into a subdivision, you should be able to count the C-1 and C-2 in those areas.

Mr. Teclaw questioned Mr. Arendt where do we change our percentages regarding conservancy areas? At this time, we are not letting people plat lots into the conservancy areas. Mr. Arendt responded, in the CSM's. You could write sentences defining design guidelines that say you can divide in a CSM wetlands, forests, C-1/C-2, but the houses are going to be outside those areas if at all possible.

Mr. Sisson stated one of the expectations that we had was that we could find a way to eliminate this endless debate about what can be counted and what cannot be counted by still maintaining the integrity of five acres on the western part of the City. Have we achieved that? Mr. Arendt stated he felt that we have, and we also have the yield plan as a backup plan.

Mayor Wysocki questioned Mr. Arendt if there would be a problem in re-prioritizing #5 to #2. Mr. Arendt responded the model is meant to be tailored. It is an issue that is more appreciated in 2005 than 1998 or 1999. Mayor Wysocki referred to conservation easements and the idea that private lots could have within it a particular feature of land or a buffer area that does not fall into category of C-1 or C-2. He questioned Mr. Arendt if it is his idea that on these kinds of lots with the conservation easement on it that we do protect that area from any further intrusion or development, so that the concept of the

contour line of a conservation easement looks like it's within a subdivision you can go through individual lots, as long it is delineated and identified and has the easement on it, it is protected. Mr. Arendt responded, it is. On the large conservancy lots, it is almost certain they would contain some of these special features. It should be delineated in some way where the easement starts on these large lots; this could be done with fencing, tennis courts, swimming pools, horticulture, etc.

Mayor Wysocki referred to confusion in talking about lot sizes and the variability. It needs to be understood that once you calculate density which allows the number of lots in the developed area, the number of lot is that number no matter what the size of the lots are. The first decision is the density calculation.

Mr. Ament questioned the timing regarding the moratorium. He did not feel comfortable moving forward if there were some feelings from Mr. Arendt or the City Attorney that were otherwise. Mr. Arendt stated he felt we should move forward. There are a few changes that can be made, which were discussed with staff and the City Attorney.

Mr. Teclaw stated he would rather extend the approval of the Code out a month or two to eliminate the inconsistencies.

Mr. Teclaw talked about the conservation easement indicating now there is a little different tone. If we are going to let people abutting lots in the areas where there will be a conservation easement, what is the recommendation involving them? Mr. Arendt responded, the landowner is a valuable resource because they know the property better than the developer. This is a good way for the landowner to have communication with the developer and staff.

Mr. Teclaw stated one of Mr. Arendt's frequently asked questions is that no land is taken for public use unless the developer wants it to be, etc. How important is this verbage? Mr. Teclaw wanted to know if this was part of Mr. Arendt's philosophy that the developer decides whether or not they want to get rid of their land. Mr. Arendt responded, that it is part of his philosophy, but he stated the City has the right of eminent domain. Generally, city officials are adverse to condemnation. Mr. Arendt further stated this is where the density bonus comes in as an incentive. The City would need to work with the developer if the City would like to see something in a conservation subdivision; he cited some examples.

Mayor Wysocki questioned Mr. Arendt if he felt comfortable with a 75% being a realistic threshold for the City of New Berlin? Mr. Arendt responded, with a five-acre density, absolutely. The 50% is the trade-off in a higher density district. In a two-acre density with water and sewer, you would also be able to get 75%; in a two-acre density without water and sewer, you would be stuck with 50%. The 50% open space is a real nice suburban area. If you want rural, you would have to get up to 75%; some communities do 80% open space. An 80% open space would be one acre on the lot and four acres in the open space.

Mayor Wysocki stated that the City has a lot of maps that identify conservation features; we have put them all together and now we do have potential conservation areas to be looked at. They would need on-site delineations because they are not accurate. For the first time, we can say that we have a map and a code to enforce our ideas as to how we want the City to be developed. Mr. Arendt felt the City of New Berlin will have the best conservation design ordinance in the State of Wisconsin.

Mayor Wysocki stated he thought there was a group in Waukesha County that could be a participant or a party to the conservation easement to secure the idea. Initially it would involve the developer, and the City. Mayor Wysocki summed up what the staff, the developer, and the Commission should do to work with developers to get a good conservation subdivision once the Code amendments get approved.

Mr. Teclaw questioned the transfer of density situation. The way the Code read in the past, it said you could use 25% of the C-1 or the C-2. Now, existing in the Code, a multiplier divided by 5 is used. He asked Mr. Arendt, where he answered his question about does it constitute a taking and no density is taken away. He wanted to know if Mr. Arendt was suggesting that the yield plan approach is what would preserve that? Another one of Mr. Teclaw's concerns is there is so much conservation-zoned areas, and will all the people around these areas be surprised? Mr. Arendt stated, the conservation district, which is wetlands, would not have houses in it and the woodland conservation district would not have houses in it either unless there was a CSM. The woodlands are in the conservation area, and they are called secondary conservation areas. The wetlands are called primary conservation areas. If someone is living near a C-1 or a C-2, they would most likely not see a house go up. There was some discussion about putting the transfer of development mechanism referring to transfer of density back into the Code.

Mr. Teclaw stated there seems to be some inconsistency in the verbage as to when you would identify a slope as being unbuildable or when to use slopes in the building of homes. Mr. Arendt responded, you could say somewhere between 20% and 25% is buildable, but with certain caviats such as needing soil sedimentation control such as silt fencing, the building specifically requires this type of soil use, etc. The percentage of slopes to build in is a relative thing depending on the topography of the area and the type of soil. Mayor Wysocki stated there are some limitations the County has regarding building on slopes because of septic issues.

Mr. Kessler referred to staff comments and recommendations on Chapter 275 as follows:

Amendment #2: Conservation Subdivision Dimension Standards

- Line 12 - Change minimum lot size in the R-1/R-2 District under the Conservation Subdivision from 32,670 sq. ft. to 20,000 sq. ft.
- Line 13 - Change lot width from 110' to 130' in the R-1/R-2 District for Conservation Subdivisions.
- Table 275-33-2 - Change minimum lot size in the R-2E District under Conventional Subdivision from 20,000 sq. ft. to 15,000 sq. ft.
- Table 275-33-2 - Change lot width under Conventional Subdivision in R-1/R-2

- from 300' to 200'.
- Line 13 - Increase the minimum street frontage under Conservation Subdivision from 30' to 60'.
 - This would be for side car entry garages the minimum lot width shall be 130'.
 - Line 14 - Change minimum lot size in the R-2E District under Conservation Subdivision from 20,000 sq. ft. to 15,000 sq. ft.
 - Line 14 (a) - Change open space requirement in the R-2E District under Conservation Subdivision from 50% to 65%.
 - Line 15 - Change minimum street frontage requirement in the R-2E District under Conservation Subdivision from 25' to 50'.

Amendment #4: Calculation of Density

- Line 12 – Change Wetlands Density Factor requirement under R-1/R-2 and R-2E zoning districts under adjusted tract acreage approach from 100% to 95%.

Amendment #6: Density Bonuses

- Line 4 – Change Greater Open Space Percentages by adding – “Area for off-site septic and buffer shall not be included in the open space calculations for additional lots”.

Amendment #7: Conservation Area Use

- Line 16 – Change Conservation Area Use and Design Standards under easements for drainage..... by adding – “Off lot septic system easement areas shall be identified through permanent survey markers/monuments.”

Amendment #8: Conservation Land Use and Design Standards

- Line 3 - Under Permanent Conservation protection through conservation easements - Discussion regarding who holds the easement – City, Homeowners Association, and/or a 3rd party?

Amendment #15: Subdivision and the Calculation of Lot Area Requirements

- Line 14 – Change lot measurement and requirements - Section (G) by adding “for subdivisions”
Line 20 – Change lot measurement and requirements – Section (G) by adding “The Adjusted Tract Acreage shall not apply to land divisions (CSM’s). A Conservation Easement shall be used to protect the C-1/C-2 or conservation area.”

Amendment #21: Woodland, tree, and vegetation protection

- Line 2 – Add under #1 after “All existing lands greater than ten (10) acres in size that contain more than five (5) acres of contiguous forest lands....” Add “under a single ownership”
- Lines 10-13 – Discuss under #1 “(Use Approval through Administrative Permit Process?)” and also “(A “C” will need to be placed in the Use Tables as these are conditional uses)”.
- Lines 16-17 – Under 2. a. – Remove.

Mr. Kessler referred to the transfer of density provisions. He stated the Commission should look at the old Code to see if they still want to go with transfer of density.

Plan Commission will discuss these suggestions above at the February 17, 2005 PC meeting.

Motion by Mr. Sisson to adjourn the February 14, 2005 Plan Commission Meeting at 10:00 P. M. Seconded by Mr. Ament. Motion carried unanimously.