

**CHISAGO COUNTY
PLANNING COMMISSION OFFICIAL PROCEEDINGS
February 2, 2023**

The Chisago County Planning Commission met in regular session at 7:00 p.m. on Thursday, February 2, 2023 at the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator; Kurt Schneider, Environmental Services Director; and Diane Sander, Support Specialist.

Chair Yeager called the meeting to order and led the assembly in the Pledge of Allegiance. A roll call of Board members was taken. Commission members present: Dave Whitney, Chris DuBose, Eric Leivian, Chip Yeager, John Sutcliffe, and Jolene Wille. Absent: Nathan Keech (excused). Also present: Ex Officio County Commissioner Rick Greene. A quorum was established with all members present except for N. Keech.

Approval of Agenda – Dave Whitney suggested adding discussion about cannabis shops under New Business. **Motion** by Chris DuBose to approve the agenda as amended to include agenda item 9a. Cannabis Shops; second by Jolene Wille. The motion passed 6-0. Ayes: Wille, Sutcliffe, Leivian, DuBose, Whitney, and Yeager. Nays: None.

Approval of Minutes – **Motion** by Dave Whitney to approve the January 5, 2023 Regular Meeting minutes as presented; second by Eric Leivian. The motion passed 6-0. Ayes: Wille, Sutcliffe, Leivian, DuBose, Whitney, and Yeager. Nays: None. **Motion** by Dave Whitney to approve the January 19, 2023 Work Session minutes as presented; second by Jolene Wille. The motion passed 6-0. Ayes: Wille, Sutcliffe, Leivian, DuBose, Whitney, and Yeager. Nays: None.

Receive all Materials and Submittals into Record - **Motion** by Chris DuBose to accept all materials and submittals into the record; second by John Sutcliffe. The motion passed 6-0. Ayes: Wille, Sutcliffe, Leivian, DuBose, Whitney, and Yeager. Nays: None. Materials distributed to the Planning Commission in advance of the meeting for their review included: staff reports with attachments. Copies of all correspondence and meeting materials were made available for the public.

Public Hearings – New Applications

Robert and Jessica Randall – Coordinator Gervais provided background on the request for approval of the Preliminary Plat of Carlson Lake Overlook, involving the creation of two lots from an 11.28-acre tract (Outlot A, Carlson's Lake Estates). The property is zoned Agricultural (AG) District / Shoreland Management District and located at 162XX 280th Street, Franconia Township, S12, T33, R20 (PID# 04.00343.06).

Property owners Robert (Tony) and Jessica Randall were represented by applicant / surveyor Kelly Jordan to create two parcels from the 11.28-acre tract of land previously platted as Outlot A, Carlson's Lake Estates located on the south side of 280th Street, west of Quarry Road, and east of Quinlan Avenue. The property is undeveloped and situated immediately north of an unnamed natural environment lake (Lake ID#13-8). Carlson's Lake Estates was platted in 2006 as a cluster development consisting of five developable lots and two outlots. The property owners are seeking approval for a conventional subdivision of an open space outlot existing within a platted cluster development.

Gervais explained that the Preliminary Plat drawing on file for Carlson's Lake Estates shows that Outlot A was intended to be dedicated as common open space, as is required for cluster developments. The 2004 Planning

Commission meeting minutes explain and the Preliminary Plat drawing shows that, as part of the Carlson's Lake Estates cluster development, a walking path would be developed along the south side of Lots 1 – 5, Block 1 and terminating on what is now Outlot A (the subject site) along with a common area (gazebo, picnic tables, fire pit, dock and canoes) on the south side of Lot 4, Block 1 for use by the residents of the subdivision. The Preliminary Plat was recommended for approval by the Planning Commission on January 8, 2004 and approved by the County Board on January 21, 2004. The Final Plat was approved by the County Board on January 3, 2006 and the Final Plat drawing was shown to be substantially consistent with the approved Preliminary Plat, with the exceptions that the designations for Outlots A and B were swapped and the drawing no longer included notation that Outlot A which was specifically intended to be dedicated as common open space. However, this subdivision was processed as a cluster development and open space dedication was a required element for such developments in that timeframe. Staff is unsure of the original intent of Outlot B; however, it is privately owned and has no road access or other direct access from Lots 1 – 5 of Carlson's Lake Estates. Based on property records, four of the five platted lots and Outlot A went into foreclosure and were subsequently sold at a public auction in November 2009. The properties were purchased by the mortgage originator and later sold to private parties. Outlot A was purchased by Tony & Jessica Randall in October 2010. An aerial view of Carlson's Lake Estates shows that neither the walking path nor other common area elements appear to have been established as intended by the original developer, as illustrated in the 2004 Preliminary Plat drawing, and approved by the County Board.

Gervais explained that no record was found of a developer's agreement or other form of development contract that described the proposed / required improvements or any form of conservation easement or restrictive deed for Outlot A. The record would have established the intended and approved purpose and prohibit future residential development. A review of legal descriptions for other properties within Carlson's Lake Estates showed there was no common ownership of Outlot A as would be expected for "common" open space. This lack of recorded documentation is key to the discussion about whether Outlot A can be developed for residential purposes or any purpose other than common open space. Due to the severe elevations on both proposed lots, applicant / surveyor Kelly Jordan provided details that demonstrated the elevations do not constitute as a bluff. However, the elevations do likely constitute "steep slope" conditions on both proposed lots. Gervais stated that the property owners are aware of the development challenges related to the topography of the site and are aware that appropriate design and construction techniques will be required, including strategic Type 1 subsurface sewage treatment system (SSTS) placement and construction.

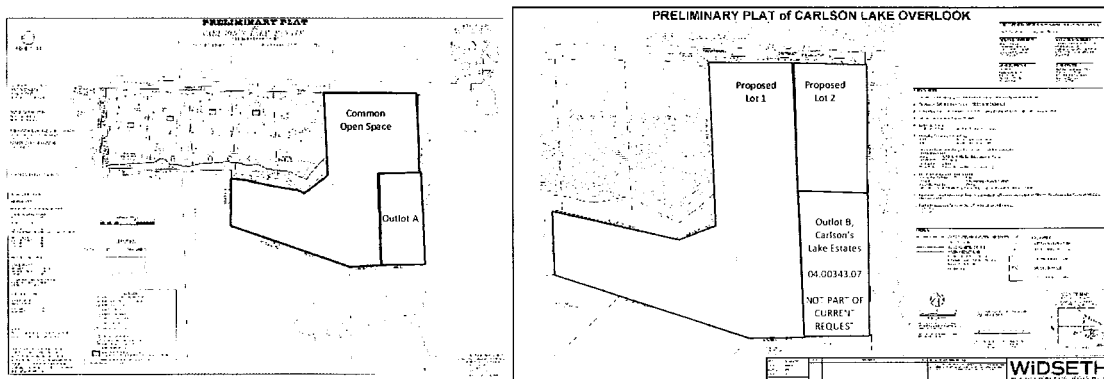
Due to the complexity of the request, staff sought legal opinion from the Chisago County Attorney's Office to assist in determining whether or not the County has the ability to approve a request to replat Outlot A, Carlson's Lake Estates. The legal opinion prepared and provided by Assistant County Attorney Fuge states that ".... the existing subdivision of Carlson's Lake Estates is a cluster development plat and the County will need to consider and analyze how to reconcile that Outlot A is a non-buildable open space under the current cluster development plat and the replat application seeks to change Outlot A to a buildable lot, which would not be otherwise permitted under a platted cluster development subdivision." Further, ".... the County [will] have to consider in the review process how approval of the replat application may adversely limit or prohibit development of Lots 1-5 because Lots 1-5 of Carlson's Lake Estates would no longer enjoy the relaxed development standards as allowed under a cluster development plat."

The Technical Review Committee met on January 11, 2023 with the applicant and property owner and the following items were discussed: County was analyzing the property owners' ability to develop an outlot originally intended to be dedicated as open space as part of a cluster development, bluff determination, issues related to septic design and septic location, and verification of soils and wetland delineation will occur when ground conditions allow and must be complete prior to submission of request for Final Plat.

The Franconia Town Board reviewed the proposed Preliminary Plat on January 17, 2023 and recommended approval “on condition [that] the “open area” from the building cluster is figured out on the County level”.

Gervais explained that the purpose of cluster developments is to allow flexibility in the subdivision of land, and, in exchange for that flexibility, developers are required to dedicate a minimum of 30% of the total land area of the parent parcel as common open space for the benefit of property owners within that development. In the case of Carlson’s Lake Estates, that common open space was shown on the Preliminary Plat drawing to include Outlot A (the subject site). The Zoning Ordinance states that the principal tool for protecting open space areas shall be a conservation easement; and, further, that the conservation easement shall be recorded against the open space. Staff found no evidence of a recorded document identifying Outlot A as common open space or prohibiting residential development. If Outlot A is allowed to be replatted, the other property owners within Carlson’s Lake Estates would have no common open space. However, the Randalls have owned the subject site since 2010 and the property has not been available to other property owners as common open space. Gervais noted that it could be assumed that other property owners in the Carlson’s Lake Estates subdivision have not suffered and will not suffer adverse impacts from development of the subject site. Gervais summarized that, based on historical information, the Carlson’s Lake Estates subdivision was processed as a cluster development; the subject site was approved as an outlot; and, the Carlson’s Lake Estates Preliminary Plat drawing and 2004 Planning Commission meeting minutes suggest that the purpose of Outlot A, Carlson’s Lake Estates was common open space as required as part of the cluster development process. Despite what staff believes was intended and approved in 2006 at the time of Final Plat approval for Carlson’s Lake Estates, staff has found no recorded evidence demonstrating that Outlot A, Carlson’s Lake Estates was memorialized or restricted as common open space. Further, staff has found no recorded evidence demonstrating that future development of Outlot A, Carlson’s Lake Estates is strictly prohibited. Therefore, staff reluctantly recommended approval of the request to replat Outlot A, Carlson’s Lake Estates with conditions. Gervais added that staff’s recommendation was subject to change upon discovery or submission of any documentation memorializing Outlot A as common open space, or any direct public hearing testimony from owners of Lots 1 – 5, Block 1, Carlson’s Lake Estates or evidence of adverse impacts to said properties.

R. Randall and K. Jordan were present and available to address questions and concerns. Chair Yeager asked the property owner and Planning Commission members for additional questions and comments. R. Randall indicated it was a straightforward subdivision of an outlot. The area is serviced by a hard surface road, natural gas, fiber optics, and high speed internet which are great amenities for developments. Dave Whitney asked clarifying questions on labels from the 2004 Preliminary Plat of Carlson’s Lake Estates and proposed Preliminary Plat of Carlson Lake Overlook (see images below).



(L) Preliminary Plat of Carlson’s Lake Estates (2004); (R) Proposed Preliminary Plat of Carlson Lake Overlook (2023)

Dave Whitney expressed concerns with Outlot B, Carlson's Lake Estates (PID# 04.00343.07) being landlocked. K. Jordan indicated that the 2004 Preliminary Plat drawing and 2006 Final Plat were slightly different in how the outlots were labeled, but, what was ultimately platted as Outlot B, Carlson's Lake Estates, was platted as a landlocked tract of land. Dave Whitney asked who owned Outlot B, Carlson's Lake Estates (PID# 04.00343.07). R. Randall indicated the parcel was owned by the original developer, Jerrold Carlson. Coordinator Gervais indicated that there was no documentation of description of purpose of Outlot B, Carlson's Lake Estates, but again offered that the outlot was platted in a landlocked manner. Dave Whitney indicated that access to Outlot B, Carlson's Lake Estates (PID# 04.00343.07) should be addressed in the current request for Preliminary Plat and not remain landlocked.

Chair Yeager opened the public hearing and sought comment.

Jerry Murray – 16307 280th Street, Center City. I own the property to the east of the proposed development. I have an agreement and I am in the process of purchasing Outlot B, Carlson's Lake Estates from Jerrold Carlson. Once the parcel has been purchased, the property will no longer be landlocked and this will address Commissioner Whitney's concern.

Michael Brusseau – 16205 280th Street, Center City. I own Lots 4 & 5, Block 1, Carlson's Lake Estates, located on the west side of the proposed development. If approved, I request that the setbacks be increased dramatically. There is only one little spot on proposed Lot 1, Carlson Lake Overlook to build on and I could be looking into someone's bathroom approximately 50' away. We purchased our lots after our realtor told us that Outlot A, Carlson's Lake Estates was unbuildable and would remain vacant. We wanted that space and privacy. If developed, we would no longer enjoy the relaxed development standards as allowed under a cluster development plat. If this does get approved, the relaxed development standards go away and definitely impact our quality of life and impact the development. We support denial of the request.

Motion by John Sutcliffe to close the public hearing. **Motion withdrawn** as another audience member came forward to speak.

Herman (Neil) Heinecke – 16284 280th Street, Center City. I own the property to the north, across the street from the proposed subdivision. I have a permanent easement on the property (proposed Lot 2 of the Preliminary Plat). I live next to the Randalls and I'm curious how this Preliminary Plat will impact with my easement.

With no other persons wishing to speak, **motion** by John Sutcliffe to close the public hearing; second by Eric Leivian. **Motion passed** 6-0. Ayes: Wille, Sutcliffe, Leivian, DuBose, Whitney, and Yeager. Nays: None. Chair Yeager asked Planning Commission members for additional comments. John Sutcliffe asked for clarification on the location of Heinecke's easement across proposed Lot 2. K. Jordan indicated that he would need to review the terms for the easement, but R. Randall explained that the easement covered proposed Lot 2, Carlson Lake Overlook (as a southerly extension of Heinecke's property). Chris DuBose inquired how proposed Lot 2 could be developed with an easement across the whole lot. R. Randall indicated he would need to work it out with Heinecke. Chair Yeager brought forth Assistant County Attorney Fuge's question if the approval was granted for the proposed replat, would it adversely limit or prohibit development of Lots 1-5, Carlson's Lake Estates because the current subdivision would no longer enjoy the development standards under a cluster development. John Sutcliffe inquired as to the width of the proposed easement. K. Jordan indicated the proposed utility easement would be ten foot wide (five feet on each side of the lot line). John Sutcliffe questioned how the permanent easement granted to Heinecke could be removed or taken away. Coordinator Gervais indicated that the easement was an agreement between two private property owners and the matter would need to be worked out between the private property owners prior to request for Final Plat. Eric Leivian questioned if cluster

developments require dedication of open space in the amount of 30% of the parent parcel. Coordinator Gervais indicated that cluster developments do require a 30% open space dedication and a conservation easement recorded against the open space, adding that it does not appear that a conservation easement was recorded. Director Schneider commented that staff reluctantly recommended approval of the request; however, public hearing testimony may have some impact on and provide additional information for the Planning Commission's consideration. Schneider added that the Commission has the option of tabling the request for further consideration since property owners within Carlson's Lake Estates and surrounding areas have expressed concerns about direct impact from the proposed Carlson Lake Overlook subdivision. Schneider further added that review of information provided by adjacent property owners pertaining to their real estate transactions, specifically relating to the subject site and impacts of the proposed subdivision, should be considered. **Motion** by John Sutcliffe to table the request for Preliminary Plat of Carlson Lake Overlook for further review of additional supporting information; second by Jolene Wille. **Motion passed** 6-0. Ayes: Wille, Sutcliffe, Leivian, DuBose, Whitney, and Yeager. Nays: None. The Planning Commission discussed a specific date at which to further review the request. **Motion was amended** by John Sutcliffe to table the request for Preliminary Plat of Carlson Lake Overlook for further review of additional supporting information until the March 2, 2023 meeting; second by Jolene Wille. **Motion passed** 6-0. Ayes: Wille, Sutcliffe, Leivian, DuBose, Whitney, and Yeager. Nays: None. Dave Whitney noted his concerns related to landlocked Outlot B, Carlson's Lake Estates and the existing easement covering proposed Lot 2, Carlson Lake Overlook, and commented that these issues should be researched and reviewed for discussion at the next Planning Commission meeting.

Public Hearings – Continued Hearings - None

Old Business – None

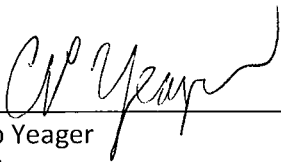
New Business – Dave Whitney reported that the legislature is working on a bill for marijuana legalization and he would like the Planning Commission to discuss potential concerns related to cannabis shops. Whitney added that this discussion could be incorporated into the current Zoning Ordinance update. Whitney described areas and towns in Michigan where cannabis shops have been established. The issue may impact cities more than townships, but unincorporated areas could have impacts related to the growing of marijuana or tasting / sampling areas similar to wineries and tasting rooms. Coordinator Gervais indicated that this issue would likely be highly regulated by the state and federal governments, similar to liquor. Also, the zoning ordinance specifically regulates Rural Retail Tourism, rather than wineries or alcohol. Gervais added that, if legalized, cannabis would likely be dealt with through a licensing process rather than a land use approval. Coordinator Gervais pointed out that marijuana is already grown in the county as an agricultural crop. Dave Whitney added his concerns for cannabis shops being established in communities like Almelund or Stark. County Commissioner Greene indicated that the state will likely regulate cannabis and the County Board will need to wait for legislative action before determining how best to proceed at the County level. Chair Yeager agreed to wait and come back to this at a later time if needed.

County Board Liaison Report / Update – County Commissioner Greene questioned if the lake in the R. Randall request (Preliminary Plat of Carlson Lake Overlook) was a private or public lake. Brief discussion was held on non-navigable and meandered lakes, and that property boundaries can extend into the bed of the lake instead of stopping at the shoreland. Commissioner Greene reported that the Auditor's Office was drafting a Consumption and Display License (a type of liquor license), explaining that it would be a license that a venue, such as a wedding venue, which does not hold an on-sale intoxicating liquor license, can apply for in order to have intoxicating liquor on the premises. Director Schneider reiterated that liquor is a licensing matter administered through the Auditor's Office and not a land use matter handled by the Planning Commission.

Miscellaneous

Chair Yeager questioned how the conservation easement for Outlot A, Carlson’s Lake Estates did not get recorded. Coordinator Gervais commented that the project predated current staff and there simply was not enough historical information explaining the circumstances related to Carlson’s Lake Estates. Coordinator Gervais indicated that procedures are in place and the processing of cluster developments will be handled differently moving forward to prevent matters like this from happening again.

Adjourn Meeting – Motion by Jolene Wille to adjourn the meeting; second by John Sutcliffe. **Motion passed** 6-0. Ayes: Wille, Sutcliffe, Leivian, DuBose, Whitney, and Yeager. Nays: None. The meeting was adjourned at 7:52 p.m.



Chip Yeager
Chair

ATTEST: 

Beth Gervais
Land Services Coordinator