

Town of Merton  
Joint Public Hearing with Waukesha County  
Conditional Use Request of Peter & Karin Drescher  
To Conduct Land Altering Activities to Improve Site Drainage  
Minutes of June 5, 2019

Present: Chairman Klink, Commissioners Jensen, Griffin, Fleming, Morris, Siepmann, and Good, Attorney Chapman, Planner Haroldson, Waukesha County Senior Land Use Specialist Ben Greenberg, and Deputy Clerk Claas

Also Present: Sarah Resch, Chris Schmidt, Richard Eastman, Lou & Dawn Gastrow, Candace Dingmann, Jim Stefl, Joe Hanson of Hanson's Landscaping, Mark Augustine of LandMark Engineering, Dan Willems, Tony Zanon of Pinnacle Engineering Group, Peter Drescher, Ann Belter, Patricia Rosenberg, Joyce Anderson, Laura Milbrath, Kristie Miller, Linda Balthazor, Dave & Terry Van Slett, and Glenn Schmidt.

Attorney Chapman stated in 2017 Act 67 was passed which impacts conditional use permits significantly. Chapman reviewed the Act stating if the Plan Commissioners would deny a conditional use they would have to base their decision on substantial evidence. Chapman then read the definition of substantial evidence to the Commissioners and the audience.

Public Hearing Called to Order by Chairman Klink at 5:30 p.m.

Greenberg read the public hearing notice.

Greenberg stated the parcel is approximately 72,000 sq. ft. located at the end of Beaumont Lane which is a private road and has frontage on Beaver Lake. The topography is variable with the most significant grade changes occurring between the front and rear exposure of the residence. There are berms along the shore which sit higher than adjacent yard grades. Greenberg said area residents have described three distinctive drainage patterns that affect the subject property and surrounding lands. The berms on the shore on the subject property and nearby properties prevent drainage collecting near the shore from effectively reaching the lake which causes extended periods of ponding to occur after rain events. The project proposes approximately 8,300 sq. ft. of land disturbance with up to 1 ½ feet of fill across the yard. County staff did an onsite visit to investigate concerns. A preliminary soil test was inconclusive and a storm water permit will be required for the conditional use permit to ensure proper erosion control will be enforced. Neighbors to the east and west have submitted letters to the Town and the County indicating concern that the proposed project will cause adverse drainage or impede existing drainage patterns.

Drescher stated he has had this property for 12 or 13 years and they have never ever had drainage issues to the point where the backyard is unusable. Even after a period of non-rain, the yard is still saturated and there continues to be standing water. Drescher said this has happened in the last couple of years and there has been significant building on Beaumont Lane. There has been five or six new constructions, and the neighbor has built a non-approved outhouse and has elevated the outhouse which leads to additional drainage into the natural drainage pattern. In order to make the yard usable and so they can get to the lake without going into ankle deep water, something needs to be done.

Tony Zanon from Pinnacle Engineering distributed pictures of the view of Drescher's house looking out to the lake. Along the entire shoreline there is a berm they built that historically the idea of the berm was to limit the amount of water that runs into the lake. Drainage comes from the north side of the

property and goes around the front of the Drescher property then off site to the west, and then works back around and ultimately reaching the southwest corner of Beaver Lake. The top of the existing berm on their property is roughly 911.37. The ponding seems to occur at 911. Elevations in their yard were as low as 910.70. They looked at putting a couple of culvert pipes through the berm to try to keep the water directed to the culvert pipes and out to the lake. What they decided to do is look at filling from the back patio out to the lake and keep a positive slope from the back of his patio out to the lake. They don't want the elevation of the water to get to a higher elevation that it is today, so they cut into two spillways into the berm. They will see some water but it will gradually drain out to the lake.

Siepmann asked that the record reflect that he has a business relationship with Tony and with Mark Augustine. Siepmann said the berm was never constructed by man; it was just pushed up by the ice over time. When the rip rap was put up on the shore, it was all leveled off and the berm just naturally formed.

Klink questioned the culvert option. Zanon stated the culvert itself would have been set at the water elevation and it just made more sense to cut a couple of notches in the berm. They are lowering the berm eight inches on the east and the west. Griffin questioned if those two notches would take care of the water problem without bringing in fill, like the property that is two properties to the east. Zanon stated no. They would get some drainage out of it, but by bringing in the fill, everything is pitched out positively toward the lake.

The public hearing was opened for public comments and concerns.

Chris Schmidt – N62W30453 Beaumont Lane – said he is the neighbor directly to the east and he wants this problem solved too. Schmidt stated the Drescher have owner the property 13 or 14 years, but the house has only been there about seven years and this was the third wettest summer that we've had in Wisconsin on record, so that has to be considered. He said he is all for a plan that works without changing the natural flow of the water and he would like to keep the natural flow the way it is. He had Mark Augustine look at the plans. He doesn't want his property hurt and there has to be a better plan. His understanding is that the fill will dump the water on his property. He's against the fill. He thinks it will change the natural flow of the water that has been there for a long time. Schmidt said he forgot the permit for his patio and he worked with Ben Greenberg and the property is now compliant. He stated he is guilty and did not get patio permit. Everything else is fine and he is complaint with the County.

Mark Augustine – Land Mark Engineering – stated he was retained by Mr. Schmidt to take a look at the proposed plans to see if they would have a positive or negative impact on his property. The natural flow in this area does flow south, southwesterly from up to Mr. Drescher's property and southerly, southeasterly from the two properties on the western side of Mr. Drescher's property. Mr. Drescher's property is the low spot in this micro watershed area and because of the berming that naturally occurred along the shoreline, it pools. The area where it's pooling right now is one or two tenths above the ordinary high water mark. This fall when the levels were above the ordinary high water mark, that helped to flood not just Mr. Drescher's property, but other properties along the line, only his was obviously affected more than the properties to the east or the west. In essence, this plan is primarily filling in Mr. Drescher's back yard to close to the top of the existing berm along the shoreline so that everything drains off into the lake. This basically works very well for Mr. Drescher, but it blocks the natural flow for the adjacent properties to either side. It's relatively flat along the shoreline, so it drains slowly, so it is going to pool before it goes through the berm cuts. Mr. Augustine believes there are

other options that could be used to take care of Mr. Drescher's wet yard issues without imposing those negative effects on the adjacent properties.

Fleming asked if there wasn't a way to get the water to go towards the lake instead of east and west. Augustine said instead of putting a foot and a half worth of fill in the low spot where it's pooling, maybe put in a half foot of fill where it pools and shave down the berm. If they didn't want to take the whole berm out, maybe doing a notch in the center of the berm creating a drainage plan that basically channels everything to the center of the lot where it's already pooling and then getting it to flow through that center notch.

Drescher said it is not about the pooling areas, it's also the entire lawn is wet. It's wet to the point that he cannot mow his lawn because the lawn mower would sink into the ground. Even getting from the house to the lake requires rubber boots. They were not able to mow the lawn because of the significant moisture that has been there throughout the entire property. It's not about shaving the berm and getting rid of the pool. Nobody has experienced it but him on a continuing basis. This has been going on for quite some time.

Jensen asked if there was some possible way of creating some type of a filtered area for plants or a rain garden. Augustine stated he's not an expert on that, but he knows there are vegetative options to help pull up waters that would work.

Greenberg stated that certainly deep rooted native vegetation would be more effective than turf grass at absorbing runoff. It's such a severe area that even turf grass doesn't grow there. Appropriate vegetation would be able to thrive in that area.

Klink stated these past few years, the water table has come up so much and the lake levels have come up so much, that not only does Mr. Drescher have a problem, but there's a lot of people on the lakes all over that have the same situation.

Greenberg questioned if a discussion has occurred between Drescher and Schmidt about a mutual solution involving both yards where perhaps it could be dealt with more effectively in a collective effort. Augustine responded it would be at least three yards to the east and at least two yards to the west to get all those drainage patterns to work together.

Zanon stated they looked at a lot of different solutions. They did have a lot of plantings that didn't grow. They didn't take. They tried that. Could there be other plants, certainly. As far as doing a cut in the middle of the berm, they brought the fill in so they could get at least a 1% positive slope from the house out to the lake. They didn't come in with the idea that they would want to bring in all of this fill to negatively impact. The fill is just to get a positive 1% drainage out off their property and in the lake. Blocking up water and making it worse on the neighboring properties is not the case.

Augustine stated that he has put together alternative plans for Mr. Schmidt that would address the same issues that are being addressed but in a different manner that would have less negative impact on neighboring properties.

Richard Eastman – W305N6186 Beaver View Road – lives two properties west of the Drescher property. He stated the berm is natural and it's basically creating an elevation which backs up everyone's water. Everyone has a wet front yard or back yard. There are six or seven beautiful new homes that have been

added on Beaumont and the water from about 150' from the lake to the north flows to the north and then quickly goes to the west. There's a lot of water that now comes down Beaumont, cuts through the Schneider property, and comes down his driveway. He's talking about a ton of water. The point being that the water flows to the west there. Maybe in the front yard, it doesn't, but the water flows to the west and it flows with a significant amount of flow rate, especially in the spring. His concern is that any time that you take the lowest property and started adding fill; it's no longer going to be the lowest. From Drescher's front door that water is all coming west and flushing water to Schneider's property onto his property, and comes down to the lake. His neighbor to the west was required, when he built his house, to add a 12' by about 150' gravel leach bed that runs along his property. That leach bed is all covered with grass. The water comes down his driveway like the Mississippi River, and the last two years it has cut through all his landscaping and wiped it out. Now it cuts to the east side of Farnham's property and it's like a river there, however, within an hour it seeps into his leach field and he has cut a big piece out of his berm. This water goes down there, and it flows into the leach bed and soaks in, and presumably ends up in the lake. That is a very effective bit of construction and it handles a ton of water. Someone a few doors down has done a similar thing with fill and the water goes to the west and there is a vacant lot there and that vacant lot is now lower than their fill and the water goes to the west. It does not go south to the lake.

Lou Gastrow – W305N6262 Beaver View Road – he is here on behalf of himself and his uncle Ron Schneider who has frontage. They also have a nice big lake on the corner of their property. It sits there most of the time. When it rains, because of the changes in topography of the neighboring properties, to the north of his house there's a river. He has two 12" and an 8" culvert under his driveway, and the water overtakes that, and a river runs down his driveway, and a river runs down their driveway. A lot of the water comes down and it pools down by the lake. It goes down and then it runs over and pools down by the southeast corner of the property. Now they're going to raise that up a foot and a half so when that water comes back to the lake it's going to stop there and create a bigger swimming pool on his property. Right on that property, there is access to the lake for a rental property that Ron Schneider has. If they turn that into a swimming pool, no one is going to want to rent the property on the lake if they have to swim to the pier. That's over a \$20,000 a year income for him, so he would be significantly impacted by this. He's totally against raising the level of the property. It's bad enough the way it is. It's just going to make it worse.

The public hearing closed at 6:08 p.m.

Respectfully submitted,

Holly R Claas  
Deputy Clerk