

**OTTAWA PLAN COMMISSION**  
**December 1, 2014**

Chairman Arrowood called the meeting of the Ottawa Plan Commission to order at 6:30 p.m. Roll call attendance was taken. Plan Commissioners Hausser, Hanson, Kershek, Weber and Mundschau were present as well as Supervisor Goodchild.

The first item on the agenda was for William Schultheis, S46W39028 Hwy. ZC, Dousman, WI proposed conveyance of land and necessary waivers. This item has been withdrawn and a revised request will be added to the January Plan Commission Agenda.

The next item was for Justin Kutschenreuter, Lot 3, Nature's Retreat subdivision, Dousman, WI, discussion and action on the approval of a grading plan per the previously approved Conditional Use. Planner Scherer stated that a Conditional Use (CU) was granted for three of the lots in 2008, and the owners of those lots now have the option to utilize that CU.

Planner Scherer read from her report as follows:

## Memorandum

SENT VIA
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**To:** Town of Ottawa Plan Commission

**From:** Sandy Scherer, Town Planner

**Date:** December 1, 2014

**RE:** Kutschenreuter (current owner of lot)/Bayer (original petitioner for 2008 CU),  
approval of grading plan per condition of Conditional Use (CU)

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On March 3, 2008, the Waukesha County Park and Planning Commission conditionally approved a Conditional Use (SCU-1458, petitioner-Bayer) for land altering activities for three lots in the Nature's Retreat Subdivision subject to the Town's nine conditions and the County's eight conditions as follows:

**Town of Ottawa's Conditions:**

1. The owner shall apply for and receive a Storm Water Permit (SWP) from the County Land Resources Division (LRD) prior to the issuance of the Conditional Use Permit. The erosion control methods should be properly installed and maintained until

vegetation has been established and the site is stabilized. The County LRD and the Town Engineer should also review the proposed grading plans and the original subdivision Grading and Drainage Plan to ensure this request does not adversely impact that original plan, and if it does, the owner shall take any required steps to alleviate those adverse impacts to the satisfaction of the Town Engineer and the LRD.

2. All work shall be completed in accordance with the Grading/Drainage Plans approved by the Town of Ottawa, the Waukesha County Park and Planning Commission, and the County LRD as part of the current request, which are incorporated herein by reference, as well as the original subdivision Grading and Drainage Plan.
3. The future construction and landscaping activities conducted on the subject properties shall not create adverse drainage on the adjoining properties, or the Town's road rights of way or plat easements, and shall not adversely affect any adjoining environmentally sensitive lands. Future permits may be required in the event further land altering activities are necessary.
4. Slopes shall not exceed 3 (horizontal) to 1 (vertical).
5. In accordance with Section 3.11 of the Town ordinances, all fees incurred by the Town of Ottawa for the work done by its professional staff in conjunction with this request shall be charged back to and paid by the property owner.
6. If retaining walls are needed with future construction or landscaping of the three lots, separate permits are required to be obtained prior to the installation of said walls.
7. The existing vegetation on Lot 6; the Class I and II soils on Lot 2; the utility easements on Lot 2; the Primary Environmental Corridor (PEC) on Lot 3; the roadside ditch for Lot 3; and the access and utility easements on, and adjacent to, Lot 3, shall be preserved and remain unaffected by the land altering activity.
8. Revised grading plans for all three lots shall be submitted to the Town Planner and the Waukesha County Planning and Zoning Division staff for review and approval prior to the issuance of the Conditional Use Permit for the land altering activity. The plans shall include: the changes required in Condition No. 7 above, a timetable for completion, the sources and types of fill to be used, an erosion control plan, any impacts on stormwater or drainage, and a vegetative plan including seeding mixtures and the amount of topsoil and mulch.
9. Standard Conditional Use Conditions:
  - A. Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In case of a question as to the classification of use, the question shall be

submitted to the Town Plan Commission and the Waukesha County Park and Planning Commission for determination.

- B. No use is hereby authorized unless the use is conducted in a lawful, orderly and peaceful manner. Nothing in this approval shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption or exception to any law, ordinance, order or rule of either the municipal governing body, the County of Waukesha, the State of Wisconsin, the United States of America, or other duly constituted authority, except only to the extent that it authorizes the use of the subject property above described in any specific respects described herein. This approval shall not be deemed to constitute a zoning or building permit, nor shall this approval constitute any other license or permit required by Town ordinance or other law.
- C. This conditional use hereby authorized shall be confined to the subject property described, without extension or expansion other than as noted herein, and shall not vary from the purposes herein mentioned unless expressly authorized in writing by the Town Plan Commission and the Waukesha County Park and Planning Commission as being in compliance with all pertinent ordinances.
- D. Should the permitted conditional use be abandoned in any manner, or discontinued in use for twelve (12) months, or continued other than in strict conformity with the conditions of the original approval, or should the petitioner be delinquent in payment of any monies due and owing to municipality, or should a change in the character of the surrounding area or the use itself cause it to be no longer compatible with the surrounding area or for similar cause based upon consideration of public health, safety or welfare, the conditional use may be terminated by action of the Town Plan Commission and the Waukesha County Park and Planning Commission, pursuant to the enforcement provisions of the Waukesha County Zoning Code and/or Shoreland and Floodland Protection Ordinance.
- E. Any change, addition, modification, alteration and/or amendment of any aspect of this conditional use, including but not limited to an addition, modification, alteration, and/or amendment to the use, premises, structures, lands or owners, other than as specifically authorized herein, shall require a revised permit and all procedures in place at that time must be followed.
- F. Unless this conditional use permit expressly states otherwise, plans that are specifically required by this conditional use approval may be amended upon the prior approval of the Town Plan Commission and the Waukesha County Park and Planning Commission, if the Town Plan Commission and the Waukesha County Park and Planning Commission find the plan revision to be

minor and consistent with the conditional use permit. Any change in any plan that the Town Plan Commission and the Waukesha County Park and Planning Commission feel, in their sole discretion, to be substantial, shall require a revised permit, and all procedures in place at that time must be followed.

- G. Should any paragraph or phrase of the conditional use approval be determined by a Court to be unlawful, illegal or unconstitutional, said determination as to the particular phrase or paragraph shall not void the rest of the conditional use approval and the remainder of the approval shall continue in full force and effect.
- H. If any aspect of this conditional use approval, or any aspect of any plan contemplated and approved under this conditional use, is in conflict with any other aspect of the conditional use, or any aspect of any plan of the conditional use, the more restrictive provision shall be controlling as determined by the Town Plan Commission and the Waukesha County Park and Planning Commission.

**Waukesha County Park and Planning Commission's Conditions:**

1. *The Fill and Grading Plan shall be prepared and relate to a specific proposal for a residence and garage at the time a future property owner proposes to build. The detailed plans for fill and grading and landscape plans for areas of disturbances including a time line for completion including final vegetation provisions and planting shall be submitted for approval by the Town of Ottawa Plan Commission and staff of the Waukesha County Department of Parks and Land Use. The plans shall also be submitted for review and approval by the Town of Ottawa Engineer and the Land Conservation Division of the Waukesha County Department of Parks and Land Use, in accordance with the Waukesha County Storm Water Management and Erosion Control Ordinance.*
2. *Conceptual approval is granted to fill and grade on the three subject lots to create building sites on envelopes for one new residence and attached garage only on each of the three aforementioned lots for the purpose of allowing basements on said lots (either exposed or unexposed).*
3. *Fill material shall consist of clean fill earthen material, sand, gravel or dirt material and may not include, any organic materials such as wood, wood chips, concrete, asphalt materials, metal, glass, plastics, paper, ash or such similar material.*
4. *The specific areas of fill and/or grading and earth altering activities (disturbance area) shall comply with No. 7 of the Town's conditions of approval noted above, shall not exceed 20,000 square feet of area, and shall not occur outside of the designated building envelopes as indicated on the Plat of Nature's Retreat Subdivision, except*

*that the disturbance area on Lot 6 shall not encroach closer than 120' from the west lot line. All other areas of disturbance including topsoil stockpiles shall be confined to the building envelopes as shown on the plat and no fill or grading shall occur on any on-site waste disposal area.*

5. *The amount of fill and grading on the parcels shall not exceed a depth as measured from the natural ground surface (which are the grades shown on the original grading plans submitted for the lots) greater than eight (8) feet on Lot 2 and six (6) feet on Lots 3 and 6, and all areas of disturbance shall include the removal of the natural topsoil from the disturbance area to be stockpiled within the envelope outlined in Condition No. 3 above and shall not be sold or removed from the property. Said topsoil shall be used to finish and top dress the site and no topsoil stockpile shall remain on the site upon completion of the fill and grading activities.*
6. *No final grading or fill shall create a slope greater than three (3) horizontal to one (1) vertical and no slopes may extend closer to the lot lines than as set forth in Condition No. 4 of the County's conditions above. Fill and grading material may extend closer to the road setback lines to create a driveway for the residences/garages but shall not extend closer to the side or rear lot lines than as noted in Condition No. 4 of the County's conditions above. Retaining walls may be used to minimize areas of disturbance, but no single wall shall exceed four (4) feet in height (also reference the Town's conditions No. 6). Regarding filling the lots to the road setback lines, care should be taken to not disturb roadside ditches or easements as noted in the Town's condition No. 7. Further, the proper permits (including a culvert permit, if required by the Town) should be obtained from the Town prior to filling for driveway construction.*
7. *Each area of disturbance shall be seeded or sodded and planted with permanent vegetation within eighteen (18) months of the commencement of construction under such time as extended by the Town of Ottawa Plan Commission and County staff for due cause (i.e. weather or other natural causes). Driveways shall be located within the envelopes as enumerated in Condition No. 4 above and as allowed to be altered in Condition No. 6 above.*
8. *Any deviation from any of the above noted requirements shall first be subject to review and approval of the Town of Ottawa Plan Commission and the Waukesha County Park and Planning Commission upon recommendation by the staff.*

Since no one has proposed a house on any of the three lots that were the subject of the CU, the CU conditions have not been satisfied, and a CUP has not yet been issued. However, the current owner of Lot 3 (Kutschenreuter) has submitted a grading and erosion control plan for Town and County review per Conditions No. 1 and 8 of the County's CU conditions above. I have forwarded the same to the Town Engineer as well as the County LRD for review and comment. They must do so in accordance with the approved CU Grading Plan and the Master Grading Plan for the Subdivision.

The County LRD will also have to issue a Storm Water Permit. The Waukesha County Park and Planning Commission will also have to review the grading plan submitted per Conditions No. 1 and 8 of the County's CU conditions above and due to the fact that there is work proposed outside of the approved building envelope. In addition, the Town Building Inspector will have to issue a culvert permit, and the County PZD will have to issue a Zoning Permit and the Conditional Use Permit upon satisfaction of all of the conditions of approval of SCU-1458.

In reviewing the plan, several **changes** should be noted:

- The new 100 year floodplain elevation is 864.1' NAVD88 or 864.3' NGVD29. The recorded plat shows the previous elevation at 863.6' NGVD29. Thus, the floodplain has lessened on the property.
- The wetland and floodplain 75' setback line is no longer the same line – they are two separate lines due to the change in the floodplain elevation.
- The deck shown on the plan is now a proposed patio.

In addition, the following **items** should be noted:

- Wetland delineations are generally only good for a period of 5 years. The wetlands in this subdivision were delineated in 2002. Therefore, to have an accurate representation of the wetlands in the field, they should be delineated again so the 75' wetland setback can be re-established in the correct location.
- Outlot 2 is part of Lot 3 as well but they are divided by the creek. They cannot be sold separately as Lot 3 by itself does not meet the Town's CDP density requirement of 3 acres at 2.4 acres.
- A 1' groundwater separation distance must be observed from the bottom of the basement floor.

The following include the main, but maybe not the only, **requirements** for land altering activities (LAA) on Lot 3:

- All LAA must remain outside of the PEC, the roadside ditch, and the access/utility easements on or adjacent to the lot.
- Slopes cannot exceed 3:1.
- The area of disturbance cannot exceed 20,000 SF.
- LAA cannot be outside of the approved building envelope, including the topsoil stockpiles (the driveway is ok) without special approval. Note: Kutschenreuter is proposing to be outside of the building envelope with his patio and some grading which requires Town Plan Commission approval.
- LAA cannot disturb the septic sites.

- A maximum of 6' of fill is allowed.
- A residence with an attached garage and an exposed (or unexposed) basement is allowed.

Per the 2008 CU approval, the Town Plan Commission may amend the plan if they find the plan revision to be minor and consistent with the approved Conditional Use.

If the Town Plan Commission recommends approval of the plan revision to be outside of the building envelope with the patio and some of the grading, the following **conditions of approval** are recommended:

1. The silt fence shall be installed around back of house to prevent encroachment into the Primary Environmental Corridor (PEC) prior to the issuance of any permits (CU, Zoning, Building, culvert, Storm Water, etc) for the proposed construction. The edge of the PEC shall be field delineated at the drip line of the trees and include any understory and ground vegetation, at a minimum, prior to the issuance of any permits for the proposed construction.
2. A complete, detailed restoration/revegetation plan with a specific timetable for completion, seeding mixtures, amount of topsoil and mulch shall be submitted to the Town Planner and the County PZD for review and approval prior to the issuance of any permits for the proposed construction.
3. Both the proposed septic site and the alternate septic site must be cordoned off from the rest of the lot, prior to the commencement of any lot disturbance, to prevent encroachment into these areas during the land altering activities and construction of the residence.
4. All 17 Conditional Use conditions (noted above) shall be complied with, as applicable and unless modified herein, prior to the issuance of any permits for the proposed construction. Specifically, the seven **requirements** outlined as bullets above must be met.
5. The plan submitted should be revised to reflect the new 100 year floodplain boundary and 75' setback therefrom prior to the issuance of any permits for the proposed construction.
6. The Town should determine if they want the wetland re-delineated to determine if the 75' wetland setback line has changed over the past twelve years, and in any case the 75' wetland setback line shall be shown on the revised plan prior to the issuance of any permits for the proposed construction.
7. Soil tests shall be submitted with the Zoning Permit application that prove the residence can meet the 1' groundwater separation requirement for the basement.

8. The Waukesha County Park and Planning Commission must also approve of the encroachment outside of the building envelope prior to the issuance of any permits for the proposed construction.
9. The Town Engineer and the County LRD must approve of the revised plan prior to the issuance of any permits for the proposed construction.

Planner Scherer went through the information in the Town Engineers E-mail dated 12-1-14 as follows:

**Subject:** RE: Kutschenreuter grading and erosion control plan, T/Ottawa

Hi Sandy

I've reviewed the submitted grading plan and the original grading plan for the subdivision.

Some issues, questions, comments, and concerns include:

1. Does anyone know if the original contours shown (topo.) were field shot, or taken off the original plan? They appear to be different by one foot. For example, the current plan shows a "closed" loop contour of 871 just Northeast of the proposed house. However, the original plan depicts it as 870. This one foot will make a difference if they are allowed to fill outside the building envelope, and if the contour truly is 870.
2. Likewise, the 869-870 contour south of this area would be affected too.
3. The building envelope also does not match the original building envelope on the construction drawings. This should be corrected on an updated plan, or confirmed by the developers surveyor. (or is there more current information that I don't have from the original approved construction drawings? I believe it was originally set from the wetland line, which is not shown on the current drawing. Let me know. Thanks). If the rule is that it must be 75' from the wetland, we recommend re-designating the wetland, to determine an accurate line.
4. It appears the driveway/house alignment could be rotated clockwise to allow the filling-grading for the deck/patio to fit within the building envelope shown.
5. It appears a combination of the above items needs to be followed up on by the owner, builder, or owner's surveyor to determine grading and location of the various items mentioned above.
6. In addition:
  - a. Silt fence should be installed around the perimeter of the site, to contain erosion. Also, erosion protection around the upstream end of the driveway culvert will be required.
  - b. More detailed information is needed for the culvert. Proposed size (with calculations to confirm adequate size), upstream and downstream proposed inverts, grades over top of culvert (at the driveway) to determine adequate cover, existing ditch elevations to confirm drainage, and maintain a 12:1 slope, if the grades change.
  - c. We recommend silt fence be installed around the septic system area, to preserve the area and to protect erosion after its installation.

Please add the above to your report and or forward to the owner for follow up and resubmittal.

As always, if you have any questions, please don't hesitate to call.

Thanks. Gerry

**Gerald E. Powell P.E. (WI)**

*Principal / Senior Project Manager*

**Ruekert & Mielke, Inc.**

W233 N2080 Ridgeview Parkway  
Waukesha, WI 53188  
(262) 542-5733  
(262) 953-3066 (direct)  
[www.ruekertmielke.com](http://www.ruekertmielke.com)

Planner Scherer added that the grading plan also needs approval from the County Park and Planning Commission.

Chairman Arrowood stated that the building envelope was fine, but the patio area is for our discussion. Commissioner Kershek added that the deck is also within the building envelope, but the grading outside the patio is the area we are looking at. Mr. Kutschenreuter was also present. He stated that the grading extends out 3' and is a 4:1 slope. There is an exposed basement, and that is within the building envelope. Mr. Kutschenreuter added that he could adjust building plans a bit if needed. The map he used is from the GIS.

Planner Scherer stated that this is in a wetland and environmental corridor area and those are sensitive environmental areas. The septic system as well as elevations for depth to ground water may require a professionally drawn grading plan. Mr. Kutschenreuter stated that he had the ability to do that himself. Commissioner Weber stated that he would be able to save some money since he is capable. Supervisor Goodchild agreed and stated Mr. Kutschenreuter is a professional. Planner Scherer added that the topography was taken from the County's GIS system and may not be reflective of what exists in the field, and that the Town Engineers report should be considered, as well as having a Certified Wetland Delineator to re-delineate the wetland/PEC on the property. Those reports are only good for five years as the wetlands can change over time. Commissioner Kershek added that the County still has to approve this plan. The Town could waive the recommendation, but the County could require it anyway. Supervisor Goodchild stated it was more cost effective with the subdivision developer so the individual lot owners didn't need to pay for this. Planner Scherer stated that too much time has elapsed as SEWRPC did the delineation in 2004. The DNR standard is that the Wetland Delineation is only good for 5 years. Mr. Kutschenreuter asked how much the Wetland Delineation will cost? Planner Scherer stated that she could contact SEWRPC on his behalf. Commissioner Hanson stated that this area was originally subdivided to be a subdivision. The Plan Commission should allow this grading plan to move forward.

Commissioner Kershek made a motion to grant the grading permit with #6 on the Planner's suggested conditions to request that SEWRPC do the Wetland/PEC Delineations to save on cost, and to do all three lots if possible. Also, to incorporate the Town Engineers comments dated 12-1-14, and that the petitioner should have a professional engineer identify the topography and produce a revised grading plan as a condition. Supervisor Goodchild seconded and the motion carried.

The list of zoning violations was reviewed.

There was no correspondence.

There was no public comment.

There was one change to the minutes from November 3, 2014 by Planner Scherer. Commissioner Hanson made a motion to approve the minutes from the meeting held on November 3, 2014 as amended. Commissioner Weber seconded the motion and it carried.

Commissioner Kershek made a motion to adjourn. The motion was seconded by Commissioner Hausser and carried.

Respectfully submitted, Lori Geyman, Deputy Clerk, Town of Ottawa