



**CEDAR LAKE PLAN COMMISSION PUBLIC MEETING MINUTES**  
**CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE, INDIANA**  
**SEPTEMBER 15, 2021 at 7:00 pm**

**CALL TO ORDER:**

Mr. John Kiepura called the Plan Commission Public Meeting to order at 7:02 PM on Wednesday, September, 15, 2021, with its members attending on-site. The Pledge of Allegiance was recited by all.

**ROLL CALL:**

**Members Present:** Robert Carnahan; Richard Sharpe; Heather Dessauer; Chuck Becker; and John Kiepura, Vice-President. A quorum was attained. **Also present:** Don Oliphant, Town Engineer; David Austgen, Town Attorney; Jill Murr, Planning Director; Rick Eberly, Town Manager (via Zoom); Ashley Abernathy, Recording Secretary. **Absent:** John Foreman and Jerry Wilkening, President (arrived at 7:17 PM).

**MINUTES:**

Mr. Kiepura stated that the first order of business was the approval of the August 17, 2021, Special Town Council, Redevelopment Commission, and Plan Commission Joint Public Meeting and the September 1, 2021, Work Session Minutes and asked if anyone would like to make a motion. Mr. Sharpe made a motion to approve both sets of minutes. Ms. Dessauer seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye

Mr. Sharpe – Aye

Ms. Dessauer – Aye

Mr. Becker – Aye

Mr. Kiepura – Aye

**New Business:**

**1. Rose Garden Estates – Plat of Correction – Units 1 & 2**

Mr. Kiepura stated that the first order of New Business is the Plat of Correction for addresses in Unit 1 and 2 of Rose Garden Estates. Mr. Kiepura asked if there was a Petitioner present for this item. Ms. Murr responded in the negative. Ms. Murr explained that during discussions with Mr. Eberly, it was determined that they did not need to be here. This item was reviewed with Mr. Oliphant and staff. The corrections of addresses for lots in Unit 1 and Unit 2 are in their meeting packet. The addresses needed to be updated

in the 142<sup>nd</sup>, 143<sup>rd</sup>, and 144<sup>th</sup> blocks of the subdivision. The Plat of Correction is presented to the Commissioners.

Mr. Eberly added that the Police Chief was the one to notice the incorrect addressing and asked for it to be corrected. Emergency services were responding to an event in the 14100 block, and the event was three (3) blocks south. Chief Fisher told him that this could cause valuable time to be lost in an emergency, and asked that the corrections be made as soon as possible. The Petitioner could correct the Plat tomorrow and correct the addresses.

Mr. Kiepura entertained any discussion. Mr. Austgen stated that he wished the Petitioner was present for this item. A Plat of Correction is a proper, legal matter and action step. Mr. Austgen noted that this was talked about at a Town Council meeting. Discussion ensued regarding the incorrect addresses.

Mr. Kiepura asked if the town engineer had anything. Mr. Oliphant responded in the negative. Mr. Kiepura asked if the Building Department had anything. Ms. Murr responded in the negative. Mr. Kiepura asked if the commissioners had any comments. They responded in the negative.

Mr. Kiepura asked for any additional comments. Mr. Eberly advised that the staff of the Building Department would keep a closer eye on addressing submitted with Plat Plans moving forward to avoid any further issues like this. Mr. Kiepura entertained a motion.

Mr. Becker made a motion to accept the Plat of Corrections for addresses for Units 1 and 2 of the Rose Garden Estates, as discussed. Ms. Dessauer seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye

Mr. Sharpe – Aye

Ms. Dessauer – Aye

Mr. Becker – Aye

Mr. Kiepura – Aye

## **2. Rose Garden Estates – Unit 1 – Performance Letter of Credit Extension**

Mr. Kiepura stated the next order of business was for the approval the Performance Letter of Credit for Rose Garden Estates, Unit 1, extending the expiration to October 14, 2022. Mr. Kiepura asked if the Building Department had anything for this item. Ms. Murr stated she received a Letter of Credit extending the expiration to October 14, 2022, in anticipation of the expiration on October 14, 2021. The Letter of Credit extension is the same amount as originally issued.

Mr. Kiepura asked if Ms. Murr received a letter requesting the extension. Ms. Murr responded that she received an actual Letter of Credit. Mr. Kiepura asked to confirm that Ms. Murr received an actual Letter of Credit prior to the Plan Commission approving the extension. Ms. Murr clarified that it was prior to it expiring. This item would have appeared on the October agenda; however, since it was received it does not need to be pulled for the October agenda. A discussion ensued regarding reducing the Letter of Credit in the future. Ms. Murr stated that it was recommended extending the Letter of Credit.

Mr. Kiepura asked if the Commissioners had anything for this item. Ms. Dessauer asked if the water crossover issue was squared away. Mr. Kiepura stated he believed so. Discussion ensued regarding the water crossover.

Mr. Kiepura entertained a motion. Mr. Becker made a motion to approve the extension of the Performance Letter of Credit to expire October 14, 2022, of the full amount with no reduction. Mr. Sharpe seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Aye

### **3. Rose Garden Estates – Unit 2 – Performance Letter of Credit Extension**

Mr. Kiepura stated the next order of business was for the approval of the Performance Letter of Credit for Rose Garden Estates, Unit 2, extending the expiration to December 9, 2022. Mr. Kiepura asked if the Building Department had anything for this item. Ms. Murr stated this Letter of Credit was set to expire in December of this year. Accepting this Letter of Credit would extend the expiration to December 9, 2022. Mr. Kiepura asked the amount of this Letter of Credit was. Mr. Oliphant responded approximately \$1.685 million for this Letter of Credit. He noted for the record that the Letter of Credit for Rose Garden Estates, Unit 1 was for approximately \$6.067 million.

Ms. Murr recommended accepting and approving this extension. Mr. Kiepura entertained a motion to accept this Letter of Credit Extension.

A motion was made by Ms. Dessauer to approve the extending of the Performance Letter of Credit to due expire December 9, 2021, to December 9, 2022, in the amount originally applied for. Mr. Sharpe seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Aye

### **4. Cedar Lake Ministries PUD Amendment, Rezone, & Preliminary Plat**

**Petitioner: Cedar Lake Conference Association (Cedar Lake Ministries)**

**Vicinity: 13701 Lauerman, PO Box 665, Cedar Lake IN, 46303 & 8861 West 137<sup>th</sup> Avenue, Cedar Lake, IN 46303**

Mr. Kiepura stated that the next order of business was for three petitions: a request to rezone from R-1 and PUD to PUD, a preliminary plat for a one (1) lot subdivision, and a PUD contract amendment for the property owned by Cedar Lake Conference Association, known as Cedar Lake Ministries, 13701 Lauerman, PO Box 665 & 8861 West 137<sup>th</sup> Avenue. Mr. Austgen advised that these three items will be talked about simultaneously with each item having separate motions. The legals are in order for all three. Mr. Kiepura stated the Commission would act as counsel suggested and discuss the three items simultaneously then act on each item separately.

John Terpstra, attorney for Cedar Lake Ministries, stated that the Amended and Restated Development Agreement for the Resubdivision of Cedar Lake Ministries Planned Unit Development of Cedar Lake,

Indiana was provided. This is a two-parcel PUD. Mr. Terpstra discussed the PUD agreement at length with the Plan Commission, highlighting different sections of the proposal.

Mr. Kiepura stated for the record that Mr. Wilkening arrived at approximately 7:17 PM.

Mr. Kiepura asked Mr. Oliphant if there were any comments. Mr. Oliphant stated that no, there were only very small comments on the final draft, such as a further clarification on the uses. The rest of the items were verbiage related. Mr. Austgen stated the definition portion or the use portion was left alone and explained why this portion of the agreement was not changed.

Mr. Carnahan asked Mr. Oliphant if his comments were for items A, B, and C, on the agenda. Mr. Oliphant responded that the remainder of the comments were on the storm water management agreement, clearing up exhibit references and clarifying the easement. Mr. Austgen stated that language will be recorded and attached to the PUD.

Mr. Wilkening asked for Mr. Terpstra to explain the decision of why only some of the buildings with foundation were included, but not all of them. Mr. Terpstra stated that they are depicted on Exhibit E included in the packet. Mr. Wilkening stated that there are only two (2), when there should be four (4). Discussion ensued about where the buildings should be located on the exhibit and how it could be clarified and addressed.

Mr. Kiepura then opened the floor for public comment. Hearing none he closed the floor and asked if the Building Department had anything. Ms. Murr stated that part A is to rezone a small residential portion and a larger PUD into PUD. The contract amendment had been provided to Mr. Kubiak, Mr. Gatto, Ms. Bakker, and Ms. Bilgri for review. This item has been reviewed at a staff level, and Ms. Murr believes that all the comments have been addressed in the final copy of the amendment.

Mr. Kiepura asked if the Commissioners had any discussion. No further discussion was had. Mr. Kiepura stated that he would entertain a motion for a recommendation to the Town Council on rezoning from R-1 and PUD to PUD.

A motion was made by Ms. Dessauer to make a Favorable recommendation to the Town Council for the request to rezone from R-1 and PUD to PUD. Mr. Wilkening seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Aye  
Mr. Wilkening – Aye

Mr. Kiepura asked if the preliminary plat would be for a recommendation to the Town Council. Mr. Austgen responded in the negative, and stated he would like to make a couple of conditions. That the plat be in conformance with all the comments that are made and reported by the engineering department and that the attached storm water agreement attached be approved of as well, as a condition of approval of the primary plat.

A motion was made by Mr. Wilkening to approve the preliminary plat for a one lot subdivision for Unit 2, to include compliance with all the comments from engineering and staff, and that storm water management agreement be attached. Ms. Dessauer seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Aye  
Mr. Wilkening – Aye

Mr. Austgen stated that this final item is a recommendation to the Town Council. Mr. Kiepura asked for a favorable or unfavorable recommendation to the Town Council for the PUD Contract Amendment.

Mr. Wilkening made a motion to make a favorable recommendation to the Town Council for the Planned Unit Development (PUD) Contract Amendment. Mr. Becker seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Aye  
Mr. Wilkening – Aye

Mr. Austgen stated that a motion was needed to recommend the storm water management agreement. Mr. Kiepura stated that that was not on the agenda. Mr. Austgen stated that it was not. Mr. Wilkening made a motion to make a favorable recommendation to the Town Council regarding the stormwater management agreement, contingent on all engineering comments. Ms. Dessauer seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Aye  
Mr. Wilkening – Aye

Mr. Kiepura passed the gavel to Mr. Wilkening.

**5. Cedar Lake Storage LLC – Site Plan & Final Plat**  
**Petitioner: Tim Porter, Cedar Lake Storage LLC,**  
**Vicinity: 9011 - 9019 West 133rd Avenue, Cedar Lake, IN 46303**

Mr. Wilkening stated that the next order of business was a request for a site plan and final plat for Cedar Lake Storage, LLC in the vicinity of 9011 - 9019 W. 133rd Avenue, Cedar Lake, IN 46303. The Petitioner and Owner is Tim Porter, Cedar Lake Storage LLC, 9019 W. 133rd Avenue, Cedar Lake, IN 46303.



Mr. Chris Porter, Mr. Ryan Marovich, DVG Team, and Ms. Dawn Crawford were present.

Mr. Wilkening noted that many things had been discussed for this property, Mr. Oliphant had a lot of comments, that a total for a proposed Performance Letter of Credit was \$18,854. Mr. Oliphant stated that was correct. Mr. Wilkening asked if the Performance Letter of Credit in the amount of \$18,854 was just for the public improvement part. Mr. Oliphant responded that a majority was related to sidewalk installation. Ms. Crawford handed out a document to the Plan Commissioners.

Mr. Porter stated they are requesting final approval for a site plan and final plat. They are proposing a two-phase plan to be completed over three years. The first phase will include asphalt from the north end of the property to the north side of the east building, across the property from east to west, including under the lean-to of the east building. This phase will begin upon approval of the request and will be completed by June 30, 2022. Phase Two will have the asphalt going from the north side of the east building to the south end of the property and across the property from east to west. This phase will begin within three years and be completed by September 15, 2024. They secured a Letter of Credit from People's Bank for the sum of \$209,057 which is in agreement with the proposal from Site Services to asphalt the entire lot in Phases One and Two. They are requesting use of the west building on the left side of the property, the open building on the east side of the property, and all hard-surface parking areas outside of the buildings as they become available.

Mr. Wilkening stated that the exhibits with the phases were nicely done. The Letter of Credit is half of what they were originally told, and asked how they got to that price. Mr. Porter stated they received multiple bids for blacktop and they were able to get a better price.

Mr. Wilkening asked Mr. Oliphant if he estimated this amount to get the job done. Mr. Oliphant clarified the discussion was to provide a surety for the work to be done in the future. Mr. Wilkening stated that was correct. Mr. Oliphant stated that was what was handed out, and that it was a little over. Mr. Oliphant proceeded to explain the typical Letters of Credit that are received. Discussion ensued about the grading for the property being ten (10) inches versus eight (8) inches.

Ms. Crawford stated from what was discussed last meeting, is that they wanted a surety that they could finish the blacktopping through the phases. They had narrowed the project down to two. They provided a quote for the total cost and a Letter of Credit showing that they have the funds to complete it. Ms. Crawford continued if they did not complete it in three years, they (the Plan Commission) call the bank and get the check. Mr. Oliphant stated she was correct, but typically they receive it earlier and there is time to review it to make sure the quantities check out. This is what typically drives this cost, and that Letters of Credit are usually for 110 percent of the cost.

Mr. Oliphant continued that he believed the intention of the Plan Commission was the Letter of Credit was only for future phases and that they were higher than they needed to be. The intent was for surety to be posted for future work, not what they were going to build in the first phase. Discussion ensued.

Mr. Wilkening stated that what needed to be discussed was the phases. Were they going to do two phases, "not going to do phases", if they did phases would the unimproved phase be able to be utilized at all? Ms. Crawford and Mr. Porter both stated that they were not asking to use unimproved phases. Mr. Porter added that they are asking to use the paved surfaces and the buildings. Mr. Wilkening asked if they were

going to be able to get Phase One paved this year. Mr. Porter stated that would be dependent upon the paving contractor's schedule.

Mr. Wilkening asked what they are going to use to run their business until Phase One is blacktopped. Mr. Porter stated that they are requesting the use of the enclosed building on the left side of the property, the open building on the east side of the property, and all hard surfaces parking areas as they become available. There is concrete on the south end of the east building. Mr. Wilkening stated they had the accuracy of that to deal with. Mr. Oliphant stated if they (the Petitioner) were including Phase One in it and they (the Plan Commission) only wanted for Phase Two it is more than covered. Mr. Wilkening stated that this is the meeting and Mr. Oliphant had not been able to review the Letter of Credit.

Mr. Wilkening stated that the pond has to be done. Mr. Oliphant responded that the pond was included in Phase One.

Ms. Crawford asked if they had to get approval before they can start, which is why they have been continuously coming. It seems that the goal post keeps moving. As of the last Work Session, they wanted a site plan, the plan laid out, the dates, and the Letter of Credit. Mr. Wilkening stated that the thing that has been hanging has been the phase. This is an unusual situation, and to set a precedent like this could cause unforeseen issues. The surety is exactly what it is, a surety. Discussion ensued about the phases, issues about completions, and a Letter of Credit being given.

Mr. Wilkening clarified that Phase One was anticipated to be done June 30, 2022, and asked if only the concrete and buildings under roof would be used for storage until Phase One is completed. Mr. Porter responded in the affirmative. Mr. Wilkening asked Ms. Murr if she had anything. Ms. Murr stated that if they are going to provide a surety for more than the anticipated amount, that was one of the things they were looking for. Another thing, they may not be able to get the asphalt in this year, so discussing how they would phase that and what they would use. Being clear on the record of what they wanted to use. It was discussed doing the asphalt in March with the June deadline sounds good, that it appeared everything the Plan Commission was looking for had been covered. Further discussion ensued on the Letter of Credit, what is typically included, and what Mr. Oliphant reviews in a Letter of Credit.

Mr. Kiepura stated that he likes the two phases. They have been coming for a while and have really been working on attempting to appease the Commissioners with what is asked of them. Mr. Kiepura commented that the dollar amount asked for was for future builds, since they were going to do the first portion right away, so they could get to work. If the amount is too small for a utility bond, he does not think matters, as they were really only interested in Phase Two. Multiple conversations occurred simultaneously. Discussion also continued regarding the amount of the surety and the legal issue of going in and paving if they don't finish in the three years.

Ms. Dessauer asked Mr. Oliphant what he would need. Mr. Oliphant stated that the information on the contract should reflect what is on the plans. They need to revise their contract to match what is on the site plan. Mr. Wilkening stated it is not a contract, it's a quote. Ms. Dessauer asked if it needed to be a contract. Mr. Oliphant stated a quote is okay as long as it does not have an expiration date and it is held. He is generally okay with it. Discussion ensued on what was needed to fix the Letter of Credit and if the Letter of Credit could be reduced.

Mr. Oliphant asked if they were wanting the surety for the entirety of the project or just Phase Two. Mr. Wilkening stated for the entirety of the project. Mr. Oliphant asked if he wanted the typical one hundred and ten (110) percent attached to it or to attach a contingency on it, that this is what the Subdivision Control Ordinance has. Mr. Austgen stated every time they stray from the ordinance, they have issues. Mr. Oliphant stated the number was going to change then.

Ms. Crawford asked if they want to be higher than the \$209,000 that the asphalter is going to charge them. Mr. Oliphant stated that it is specified as 1 ½ inches, 3 inches, and 8 inches, and it needs to be 1 ½ inches, 3 inches, and 10 inches. This will automatically add cost to it. Ms. Crawford stated that they would revise the site plan. Mr. Oliphant continued there is a 10 percent fee automatically added to all Letters of Credits to cover unforeseen circumstances. Mr. Oliphant advised that he is generally okay with it being a lump sum in this case because it's pretty straight forward and Site Services is a reputable company.

Mr. Wilkening asked if there would need to be a special public meeting in two weeks for this item and if this was where Ms. Dessauer was going. Ms. Dessauer stated she just wants them to be able to start work. Ms. Dessauer stated she knew there would be no way to get it done tonight without a contingency. If it needs to be done in two weeks, then they need to be given the exact direction that they need to get it done in two weeks. Mr. Wilkening asked if anyone had a problem with a special public meeting in two weeks.

Mr. Sharpe asked what was the amount they were looking for. He thought it was just Phase Two. Ms. Crawford stated that was what they originally wanted. Then they gave them Phase One and Two. Discussion continued regarding the surety amount and what is needed.

Mr. Marovich asked if they were starting Phase One upon approval would they need the Letter of Credit at that time. Mr. Wilkening stated that it is not complete and they would be voting on something that is not complete. Mr. Marovich stated he was just wondering with the amount. Mr. Wilkening further stated that the Letter of Credit needed to be for the whole thing so it will be completed.

Mr. Wilkening asked again if anyone would have an issue with having a special public meeting on this item in two weeks. Mr. Kiepura asked what the date would be. There were multiple answers of individuals not being there and if the things needed were minor. Mr. Austgen stated that he would call them detail clean ups. Mr. Kiepura asked if they accepted the Letter of Credit as is, when they finish Phase One, they can come in for a reduction, with enough money left to cover the ten (10) percent to finish Phase Two. He would like to see it approved or voted on tonight with the contingency that they are here within two weeks or bring in the necessary items Mr. Austgen and Mr. Oliphant are asking for. Once they bring those to the Building Department, they can start.

Mr. Oliphant asked if just the site plan could be approved tonight, and hold final plat until next month, because the surety follows the final plat. Mr. Sharpe asked if they can start anything with the Commissioners doing that. Mr. Oliphant responded in the affirmative. Preliminary plat gives them right to do engineering, and they already have that. Mr. Wilkening stated that was a great idea.

Ms. Murr asked if they could make their contingency updating the Site Services agreement to the ten (10) inches that was discussed, and the Letter of Credit amount and being updated to reflect that increase of 110 percent of the cost. Mr. Wilkening stated that what Mr. Oliphant said coattails on what Mr. Kiepura said. They could get started on a preliminary plat. Mr. Oliphant stated they could hold the final plat for



another month. Discussion ensued on when the Petitioner would need to be back for final plat and if the Petitioners understood what was discussed if the site plan is approved.

A motion was made by Mr. Kiepura to approve Site Plan for this project. Ms. Dessauer seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Aye  
Mr. Wilkening – Aye

A motion was made by Mr. Becker to defer Final Plat until October 20, 2021. Mr. Kiepura seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Aye  
Mr. Wilkening – Aye

The Site Plan approval for this item included approval of their phase schedule as presented in the materials received by the Plan Commission on September 15, 2021, demonstrated in Exhibit 2A.

**6. Starcevic – Preliminary Plat – One (1) Lot Subdivision**

**Petitioner: Tom Starcevic**

**Vicinity: 7615 West 142nd Avenue, Cedar Lake, IN 46303**

Mr. Wilkening stated that the next item of new business was for the preliminary plat of a one (1) lot subdivision in the vicinity of 7615 West 142<sup>nd</sup> Avenue by Mr. Tom Starcevic.

Mr. Starcevic stated he is here requesting a preliminary plat for a one (1) lot subdivision. Mr. Wilkening asked Ms. Murr if she had any questions about this item. Ms. Murr stated this had been advertised in anticipation of having an answer come from the BZA. The item had been deferred by the BZA, so there has been no update to the preliminary plat provided. The recommendation is to open the public hearing and see if there are any comments or defer this item to their next meeting.

Ms. Dessauer asked why was this item deferred at the BZA. Mr. Carnahan stated it was his opinion that they were not happy with the size of the building. Mr. Wilkening stated that was one of the reasons. There were some neighbors that complained about the size of the building, that did not have anything to do with his decision. Ms. Dessauer asked if this was compared to the building it was next to. Mr. Starcevic stated the building next door to it is 7,000 square foot house. Discussion ensued describing the building and plans presented to the BZA with a continuation about the size and appearance of the building.

Mr. Wilkening asked if it was a one (1) lot subdivision with two residences would that work. Mr. Austgen responded in the negative. Mr. Wilkening asked if it could be a two (2) lot subdivision with one residence on each lot. Mr. Austgen responded in the affirmative. Mr. Wilkening asked if it was a carriage house with

its own address, own utilities, et. cetera would that work. Mr. Austgen asked on a plat or a lot of record. Mr. Wilkening responded in the affirmative.

Mr. Wilkening stated the reason he was asking for a deferral is he was hoping Mr. Starcevic would do some research. Mr. Starcevic stated that the house next door is a three (3) story, forty (40) foot house off the lake. What he is proposing is a garage and is there a way for them to give a guarantee that they were not looking to use it as any sort of rental property or anything of the like. Mr. Starcevic proceeded to list the items that he was wanting to store in the proposed garage.

Mr. Starcevic stated they were willing to do whatever it is that they needed to do. Further discussion ensued on the building and if there could be a potential better way to do this. Including an addition to what was discussed in the BZA meeting in regards to the size of the building and the discussion of flooding problems.

Ms. Murr advised that the BZA deferred the matter due to some items related to the plat and other items related to the structure and that the Plan Commission does not need approval from the BZA to approve the plat. The setbacks are more of what is needed and designating a front yard versus a side yard on a corner lot. Mr. Wilkening stated that his concern was that he is going to be back and he is no closer to something than he was earlier, which is why he has been throwing ideas.

Mr. Kiepura stated that the Petitioner is here tonight for a one (1) lot subdivision, and he has no problem with a one (1) lot subdivision. The problem comes with the building with all the variances needed. That the building has no concern with them for a one (1) lot subdivision. Ms. Murr stated with a one (1) lot subdivision they would need to identify the building setback line, which ties into the BZA.

Mr. Oliphant stated the way the setbacks are shown currently is opposite of how it is addressed. It is addressed off of 142<sup>nd</sup> Avenue, and their front yard setback is off of Greenleaf. Ms. Murr stated the setback off of Greenleaf is 32 feet, which would meet setback requirements. Mr. Wilkening asked Mr. Starcevic if he was planning on using Greenleaf for the entrance to the building. Mr. Starcevic responded in the affirmative.

Mr. Starcevic stated that they would prefer to keep their address off of 142<sup>nd</sup>, which is their current address and the way their house is facing. As far as safety and delivery, their address is known and a new address would not help.

Mr. Wilkening stated this item can be deferred or they can vote on the site plan. Mr. Kiepura asked if he wanted a one lot subdivision. Ms. Murr responded in the affirmative. It is the one lot subdivision that the setback is needed for. Mr. Oliphant confirmed the same. Mr. Oliphant stated if they approve this and set the setback the house would be legal nonconforming and the new structure would be nonconforming.

Mr. Wilkening opened the floor for public comment. None was had. Mr. Wilkening invited Mr. Starcevic back up to the podium. Discussion ensued about what Mr. Starcevic needed to do and the number of variances Mr. Starcevic was requesting.

A motion was made to defer this item by Mr. Carnahan. Mr. Becker seconded this motion. Discussion ensued. Motion failed 3 Ayes to 3 Nays by roll-call vote.

Mr. Carnahan – Aye

Mr. Sharpe – Nay

Ms. Dessauer – Nay  
Mr. Becker – Aye  
Mr. Kiepura – Nay  
Mr. Wilkening – Aye

Mr. Austgen stated there were more questions now than there were originally. Mr. Austgen asked if they wanted to let staff sort it out a little bit. Mr. Wilkening responded that he thinks that Mr. Starcevic needs to spend more time with staff. Ms. Dessauer asked if she could propose one idea. Mr. Wilkening responded in the affirmative. Ms. Dessauer stated that Ms. Murr's idea of clearing up the side yard and front yard today, that would be one thing cleared up. She feels it makes complete sense to make 142<sup>nd</sup> the side yard and Greenleaf the front. Ms. Murr added with public safety or the post office determining which to have the address off of. Mr. Kiepura asked if they make it a one (1) lot subdivision if they would end up with two front yards. Mr. Oliphant responded in the negative. They would designate that as part of the preliminary plat.

Mr. Oliphant stated they would be setting the setbacks. Mr. Wilkening asked how many variances would disappear with designating Greenleaf as the front yard. Ms. Murr responded all of the setbacks. Mr. Wilkening asked that if the motion of designating Greenleaf as the front yard would remove four of the variance requests. Ms. Murr responded in the affirmative. Mr. Austgen advised the Commissioners that they had full authority under Indiana code to designate the front yard. Mr. Wilkening asked if anyone would like to make a motion to designate Greenleaf as the front yard. Further discussion was had about designating Greenleaf as the front yard and if it was legal to have a different address from the front yard. This also included a discussion of other houses that are addressed as 142<sup>nd</sup> and Lake Shore Drive.

A motion was made by Ms. Dessauer to designate Greenleaf as a front yard, 142<sup>nd</sup> Avenue as a side yard, and the address to be designated by Public Safety, Post Office, and/or Town Staff. The motion was seconded by Mr. Sharpe. The motion passed 4 Ayes to 2 Nays by roll-call vote.

Mr. Carnahan – Nay  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Nay  
Mr. Wilkening – Aye

Mr. Wilkening asked if there was a motion to defer the preliminary plat. Motion to defer this item was made by Mr. Becker. Ms. Dessauer seconded the motion. The motion passed 5 Ayes to 1 Nay by roll-call vote.

Mr. Carnahan – Aye  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Nay  
Mr. Wilkening – Aye

## **7. Fee in Lieu of Sidewalk Ordinance**

Mr. Wilkening stated that the next new order of business was for the Fee in Lieu of Sidewalk Ordinance. Mr. Wilkening asked if there were three options for this. Mr. Eberly responded in the affirmative there are three different options, grant waiver where there is no fee, grant a waiver with a fee, or deny the waiver request. Mr. Wilkening asked grant a waiver with a fee where would that money go, into the general fund. Ms. Murr responded in the negative. Mr. Eberly stated there would be a detail in the ordinance that the money would go into a non-reverting account. Mr. Austgen stated that the funds could only be spent in one of those kinds of funds and do not revert back into the general fund.

Mr. Wilkening asked where would the funds be spent. Mr. Eberly stated for example Bob's fee for a sidewalk would get spent over at Hanover. Mr. Carnahan stated the waiver ordinance is written so that the fee can be spent somewhere other than the location that the fee generated from. Mr. Wilkening asked if a sidewalk was required someday in the original location, would it would be on the taxpayer's dime. Ms. Murr responded in the affirmative.

Ms. Dessauer asked Mr. Oliphant what the approximate cost of a sidewalk would be in front of a house. Mr. Oliphant responded about \$35 a foot, so approximately \$3,500. Ms. Murr stated that Section Five of the ordinance designates where the funds would be used.

Ms. Dessauer stated one more thing, is the \$3,500 would be reviewed yearly. Mr. Oliphant responded in the affirmative. There is a clause to where they can change this. Mr. Oliphant asked if the fee be enforced on for pre-platted subdivisions that do not come before the Plan Commission, that do not have sidewalks and only go to the Building Department. Mr. Austgen stated it could be a condition of the building permit application process. Discussion ensued about lots and using the ordinance at the Building Department level.

Mr. Oliphant asked if the ordinance can be enforced outside of the Plan Commission. Mr. Austgen responded in the affirmative. Mr. Wilkening asked if all lots of record is the way the language needs to reads. Mr. Austgen stated it does. Mr. Wilkening asked if they Building Department had any comments. Ms. Murr responded in the negative. Mr. Wilkening asked if Mr. Oliphant had any more comments. Mr. Oliphant stated he had some comments in regards to this in regards to the language. Mr. Austgen stated there could be some language changes.

Ms. Dessauer asked if this could be approved with some changes in the language. Mr. Austgen asked the Commissioners to review this and mark their questions and comments down. A discussion was had by Mr. Austgen about the sidewalk ordinance.

Mr. Wilkening asked Mr. Austgen what they could do with making it a legal mechanism. Mr. Austgen stated if you are comfortable with it, this can go to the Town Council. This is ultimately a Town Council decision. Mr. Wilkening stated he was trying to determine what the legality of it is. Mr. Austgen rendered advice for this item and discussed it at length. Further discussion ensued about when a sidewalk would be waived, what the ordinance is, and how the fees gathered would be spent, including what language would be appropriate.

Ms. Murr asked what if an application is created for why someone is wanting the waiver. Mr. Wilkening stated waivers are done at the BZA. Mr. Austgen advised he foresees a whole different procedure with format for waivers. Waivers should have more formality so the record is clean. Multiple conversations occurred simultaneously.



Mr. Austgen stated waivers were part of the process for a subdivision plat and before the plat is acted upon, they can act on the waiver as a precondition on whether the plat is approved or not. Mr. Kiepura asked how sidewalk waivers are handled currently. Mr. Austgen answered informally. Ms. Murr responded in a generic manner.

Ms. Dessauer stated she thought that most times waivers occurred for ADA purposes. Mr. Wilkening suggested railroad tracks. Ms. Dessauer agreed. Mr. Kiepura stated that was his point: if they don't waive very many and use this ordinance, use the same criteria. The only difference is they have to give money for the waiver. Ms. Murr stated where she thinks they run into an issue with the legacy lots or the one (1) lot subdivisions. They don't put in the sidewalks as part of the platting process of the subdivision. There is no Letter of Credit for that sidewalk. They do not put in a sidewalk when they are developing the subdivision. They put it in as part of the building permit. So, if they waive the sidewalks for the one (1) lot subdivisions, it is a gray area.

Ms. Dessauer asked why this has been being discussed if it cannot be utilized. Ms. Murr stated this is where it has a bit of gray. As they are going through the Zoning Ordinance and Subdivision Control Ordinance, an application should be created to tie with the ordinance.

Ms. Dessauer asked if they should wait on this until they are more comfortable legally. Mr. Wilkening stated he doesn't know what some of the other stuff is. Mr. Austgen stated he wanted to be closer to the Subdivision Control Ordinance. Some of that process will provide further dialogue about application and details. Mr. Wilkening asked when they would get to that part of the subdivision control ordinance. Discussion occurred about creating an application and getting everything in order for the application of this item. Discussion also occurred about asking for a waiver and where the waiver would be presented at.

Mr. Wilkening asked Mr. Austgen his suggestions. Mr. Austgen recommended with continuing the discussion and coming back to it in a month. Mr. Wilkening stated he alluded to the fact this is going down a road of legal issues. Mr. Austgen states he is concerned about the backside of the money. Mr. Austgen asked if concrete standards are applied to sidewalks on a parcel plan, why are we taking money. Mr. Austgen proceeded to explain his legal advice.

Ms. Dessauer stated she appreciates following Mr. Austgen's lead, that he feels comfortable with the Town's protection. She just wants to get to a date to get this moving. Mr. Austgen stated to leave it on the agenda. Mr. Oliphant asked Mr. Austgen if this is legally challengeable. Mr. Austgen responded in the affirmative. Mr. Austgen spent time explaining how it was legally challengeable, the changes in the town, and discussed various contracts the Town has done that are unrefutable.

Mr. Kiepura asked if this is necessary and what was the purpose of doing this. It appears to be creating more problems than what was existing. Mr. Austgen said policy makers make those calls. Mr. Wilkening stated that they deemed it necessary enough to talk about it for a length of time. Mr. Oliphant mentioned one (1) lot subdivisions and discussed the issues with continually waiving sidewalks for one (1) lot subdivisions. Mr. Austgen stated there has a few one (1) lot subdivisions brought before the Plan Commission within the past few months. Which increased the need for the discussion of the ordinance.

Mr. Wilkening asked if it changed legally with Ms. Murr's idea of asking for a waiver. Mr. Austgen discussed Title 36 the Home Rule Statute, which states that all fees, rates, and charges to citizens must be cost

based. Mr. Austgen explained fees and charges that are fair and directly linked to the cost base with examples discussed by members of the Commission. Discussion continued about sidewalk existing on some lots and not others and one (1) lot subdivisions waiving the sidewalk.

Mr. Oliphant asked how this was any different than park fee in lieu of. Mr. Austgen stated that it is not. It is the same kind of thing. Ms. Murr asked if the Commissioners would like to defer this item to the October 20, 2021, meeting with a hopeful favorable recommendation to the Town Council after the October public meeting. Comments from the next Work Session could be provided to Mr. Austgen, Mr. Eberly, and other members who will not be present at the next work session.

Mr. Wilkening stated he did not think it was done being discussed. If a park fee is already being done, then this one needs to be different. Mr. Austgen stated fee in lieu of park dedication is because of illogical results of planning parks, it is important they are proportion to a scope. Mr. Oliphant stated he thinks it should be a policy and planning decision to be driven by policy makers to save money and put sidewalks in a planned manner.

Mr. Becker asked if someone does not want to have a sidewalk in front of their house, how does it work if there is a sidewalk going up to the property. That a can of worms will be opened up by allowing someone to waive their sidewalk and pay money to the fund. Discussion continued about looking at deferring and reviewing and what could and could not be allowed with this ordinance.

A motion was made by Mr. Becker to continue this item. Mr. Kiepura seconded the motion. The motion passed unanimously by roll-call vote.

Mr. Carnahan – Aye  
Mr. Sharpe – Aye  
Ms. Dessauer – Aye  
Mr. Becker – Aye  
Mr. Kiepura – Aye  
Mr. Wilkening – Aye

#### **Update Items:**

##### **1. Resolution No. 2021-02 – Plan Commission Rules & Regulations**

Mr. Wilkening stated the first item of business for update items was Resolution No. 2021-02 – Plan Commission Rules and Regulations. Mr. Wilkening asked if this was not being discussed in two weeks. It was noted that multiple members and Mr. Eberly would be at a conference. Ms. Murr stated that they are going to have all approvals at the end of the year, between Plan Commission and BZA, in order for them to take effect in the New Year. Mr. Wilkening asked if Mr. Eberly could put together information for both the Commissioners or BZA to read and discuss.

##### **2. Subdivision Control Ordinance**

Mr. Wilkening stated the second item of updated business is the Subdivision Control Ordinance, which will not be discussed in two weeks. Ms. Murr confirmed the same.

##### **3. Letters of Credit:**

- a. Beacon Pointe – Unit 1 – Maintenance LOC expires November 2, 2021
- b. Lakeside – Unit 1, Block 1 – Maintenance LOC expires November 14, 2021
- c. Beacon Pointe – Unit 4 – Performance LOC expires December 11, 2021
- d. Summer Winds – Unit 2 – Performance LOC expires December 20, 2021
- e. Summer Winds – Unit 3 – Performance LOC expires December 23, 2021

Mr. Wilkening stated the final order of business was Letters of Credit. Mr. Wilkening asked if all the Letters of Credit listed on the agenda were all good. Ms. Murr responded that they are reminders and that Mr. Oliphant is currently reviewing the two maintenance Letter of Credits. Beacon Pointe has reached out for Unit 4 and are creating a response letter. Summer Winds is anticipating rolling all the Summer Winds Letters of Credit into 1 Maintenance Letter of Credit.

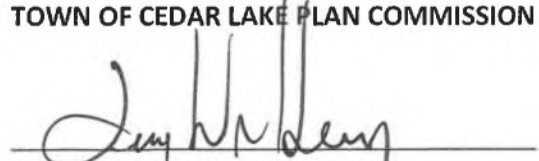
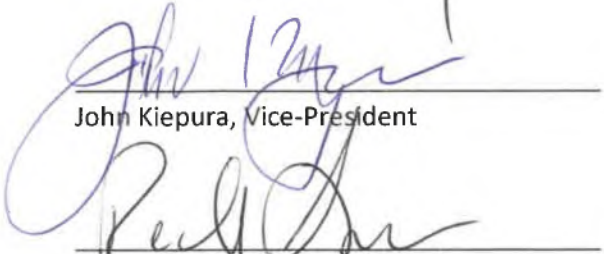


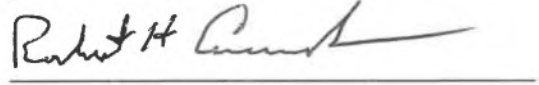

**PUBLIC COMMENT:**

Mr. Becker asked what was going on with the extension of Lakeside water and how are things coming along. Will they be seeing them soon. Mr. Austgen stated there was a lot in that question. Mr. Austgen proceeded to ask Mr. Becker what it was that he was wanting to know. Mr. Becker stated he was just wanting to know because of Lakeside's Letter of Credit. Mr. Wilkening asked what the best-case scenario for excavating. Mr. Becker asked what excavating. Mr. Wilkening stated for water lines. Mr. Austgen stated the line will be available approximately in March. Design is in process. Re-permitting of the water tower is in process. Routing decision will be made at the next Town Council Meeting. Mr. Wilkening asked if best case scenario for excavating to start is March or April 2022. Mr. Austgen responded in the affirmative.

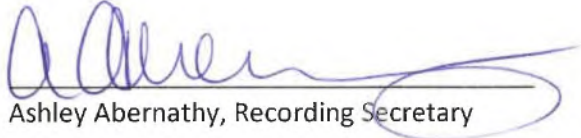
Mr. Carnahan discussed that he was at the Chamber and someone came in and was upset that a landscaping company could come and pumping water out of the lake. Discussion ensued.

**ADJOURNMENT:** Meeting was adjourned at 9:47 PM

**TOWN OF CEDAR LAKE PLAN COMMISSION**

  
Jerry Wilkening, President  
John Kiepura, Vice-President  
Richard Sharpe, Member  
John Foreman, Member  
Robert Carnahan, Member  
Heather Dessauer, Member  
Chuck Becker, Member

ATTEST:

  
Ashley Abernathy, Recording Secretary

*The Minutes of the Cedar Lake Plan Commission Meeting are transcribed pursuant to IC 5-14-15-4(b) which states:*

*(b) As the meeting progresses, the following memoranda shall be kept:*

*(1) The date, time, and place of the meeting.*

*(2) The members of the governing body recorded as either present or absent.*

*(3) The general substance of all matters proposed, discussed, or decided.*

*(4) A record of all votes taken by individual members if there is a roll call.*

*(5) Any additional information required under section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.*

Cedar Lake Plan Commission: Minutes of the Public Session September 15, 2021