

PLANNING DIVISION STAFF REPORT

December 14, 2020

PREPARED FOR THE PLAN COMMISSION



Project Address: 3285 Nelson Road, Town of Burke
Application Type: Certified Survey Map (CSM) in the Extraterritorial Jurisdiction
Legistar File ID # [56393](#)
Prepared By: Timothy M. Parks, Planning Division
Report includes comments from other City agencies, as noted

Summary

Applicant & Property Owner: Peter and Chelsea Sachs; 3285 Nelson Road; Sun Prairie.

Surveyor: Bryan Schilling, Birrenkott Surveying, Inc.; 1677 N Bristol Street; Sun Prairie.

Requested Action: Approval of a Certified Survey Map (CSM) to create four lots from land addressed as 3285 Nelson Road, Town of Burke, in the City of Madison's Extraterritorial Jurisdiction.

Proposal Summary: The applicant proposes to create four residential lots from the 8.06-acre subject site. The CSM will be recorded as soon as all regulatory approvals have been granted.

Applicable Regulations & Standards: The subdivision process is outlined in Section 16.23(5)(b) of the Subdivision Regulations. In particular, the Plan Commission shall determine that the proposed subdivision complies with each of the following criteria for approval in the extraterritorial plat approval jurisdiction:

1. The proposed subdivision or land division shall be compatible with adjacent development patterns and shall maintain the general land development pattern of the area in question. Measures of compatibility shall consider lot sizes, traffic generation, access, noise and visual features.
2. The proposed subdivision or land division and the resulting development shall not demonstrably adversely affect the City's ability to provide public services, install public improvements or accomplish future annexations. The Plan Commission may consider annexation agreements with the property owner in order to comply with this requirement. The Plan Commission may also consider whether the City and Town(s) have reached an agreement on necessary public improvements and public services facilities required to serve the development.

Review Required By: Plan Commission

Review Schedule: The State's subdivision statute, Wis. Stats. Ch. 236, requires that action be taken on a Certified Survey Map within 90 days of submittal unless an extension is agreed to by the subdivider. If no action is taken within 90 days and no extension granted, the CSM is deemed approved. The application was submitted to the City on June 12, 2019 without the required town and county approvals. The Town of Burke conditionally approved the land division on September 18, 2019; Dane County approved the land division on October 16, 2020. Therefore, the 90-day review period for this CSM will end circa January 16, 2021.

Summary Recommendation: The Planning Division recommends that the Plan Commission find that the criteria for extraterritorial land division are not met and **place on file without prejudice/reject** this request. If the Plan Commission finds that the criteria for approval are met, staff recommends that any approval be subject to input

at the public hearing and the comments and conditions from reviewing agencies beginning on page 6 of this report.

Background Information

Parcel Location: Approximately 10.7 acres of land located in the southwestern quadrant of Nelson Road and Sunnyburke Drive; Town of Burke.

Existing Conditions and Land Use: The subject site is developed with a one-story single-family residence and two sheds in Dane County RR-2 (Rural Residential District) zoning.

Surrounding Land Uses and Zoning (all in the Town of Burke and subject to Dane County zoning):

North: Single-family residence and agricultural land across Nelson Road, zoned AT-35 (Agricultural Transition District, 35-acre minimum);

South: Agricultural land and buildings, zoned AT-35 (Agriculture Transition District, 35-acre minimum);

West: Single-family residences along Nelson Road, zoned RR-2 (Rural Residential District) and SFR-1 (Single-Family Residential District) and agricultural land, zoned RM-16 (Rural Mixed-Use District);

East: Single-family residences along and across Sunnyburke Drive, zoned SFR-08 and SFR-1.

Environmental Corridor Status: The subject site is not located in the Central Urban Service Area; there are no mapped environmental corridors affecting the site. There are no "Resource Protection Corridors" mapped by Dane County on the subject parcels.

Public Utilities and Services:

Water: Property is not served by municipal water.

Sewer: Property is not served by public sewer.

Fire protection: Sun Prairie Fire Department.

Emergency medical services: City of Madison Fire Department.

Police services: Dane County Sheriff's Department (North-East Precinct).

School District: Sun Prairie Area School District.

Project Description

The applicant is requesting approval of a Certified Survey Map (CSM) to divide an approximately 10.7-acre parcel located in the southwestern quadrant of Nelson Road and Sunnyburke Drive in the Town of Burke into four lots.

The subject property contains approximately 305 feet of frontage along Nelson Road and 604.5 feet of frontage along Sunnyburke Road, a partially improved town local road platted to extend approximately 1,300 feet south of Nelson Road. The platted right of way ends adjacent to the southeastern corner of the subject site; the paved road, however, ends 500 feet north of the southern end at Rising Sun Road, an east-west local road that serves nearby residential lots in the Sunnyburke Heights town subdivision. The eastern edge of the subject site extends around four parcels located on the west side of Sunnyburke Drive, each of which is developed with a single-family residence.

The subject property is developed with a one-story single-family residence and two sheds, which are located on the northernmost 400 feet of the site. Access to the property is provided by two driveways from Nelson Road. The property is characterized by moderate tree cover across most of the site, which generally falls from the roads towards the western property line and includes a considerable low-lying area south of the house. Soils with hydric inclusions are identified on the southern half of the property; however, a wetland study prepared on behalf of the applicant by a certified wetland delineator determined there were no wetlands present.

From north to south, Lot 1 of the proposed CSM will be an L-shaped 5.77-acre parcel that will contain all of the Nelson Road frontage of the overall property, the existing buildings, and the northernmost approximately 310 feet of Sunnyburke Drive frontage. Lots 2 and 3 will be roughly 2.0-acre "flag" lots connected to Sunnyburke Drive by 66-foot wide panhandles, while Lot 4 is proposed as a conventional 1.13-acre lot to be located at the southeastern corner of the property adjacent to the platted but currently unbuilt end of Sunnyburke Drive.

Approval of CSM by the Town of Burke and Dane County: Section 236.10(1)(b) of Wisconsin Statutes requires that subdivisions in the City's Extraterritorial Plat Approval Jurisdiction receive approval from the town of record and county prior to consideration of the request by the Plan Commission.

Dane County granted conditional approval of the Certified Survey Map as outlined in a letter from Dan Everson, Land Division Review, Dane County Department of Planning and Development dated October 16, 2020. To facilitate the proposed land division, the southern two-thirds of the property were rezoned from NRC (Natural Resource Conservation District) to the RR-2 (Rural Residential) zoning district following an amendment to the Town of Burke Comprehensive Plan, which changed the recommended future land use for the southern two-thirds of the subject property from "natural area" to "rural residential." The Dane County Board approved the rezoning on September 3, 2020.

In addition to amending its comprehensive plan and recommending approval of the zoning change, the Town of Burke also approved the proposed land division. Per the attached approving resolution included in "Town of Burke Approval" document attached to ID [56393](#), approval of the CSM is conditioned on the improvement of the platted but unbuilt southern end of Sunnyburke Drive. The Town approval requires that at least a gravel road serve Lots 3 and 4 prior to the sale of those lots until the road is improved by the Town. At the time the condition was imposed by the Town of Burke in September 2019, it was anticipated that Sunnyburke Drive would be improved by the Town in 2020; however, the paved road section continues to end at Rising Sun Road as of the writing of this report.

Analysis and Conclusion

City of Madison Land Use Plans: The property is located outside of the areas currently covered by an adopted City of Madison neighborhood development plan.

The Peripheral Planning Areas Map in the 2018 Comprehensive Plan identifies lands generally east of the Nelson Neighborhood Development Plan, Felland Neighborhood Development Plan, and Northeast Neighborhoods Development Plan areas as part of Planning Area B (Group 1). The western part of Planning Area B is in the Town of Burke and will be attached to the City of Madison under the Burke Cooperative Plan. The lands in Burke in Planning Area B are located within the boundaries of the forthcoming Reiner Neighborhood Development Plan. Sanitary sewer service for the planning area would likely be provided by extensions of interceptors located in the

Felland and Northeast neighborhoods. Completion of the Reiner Neighborhood Development Plan has been postponed until the City Engineering Division can complete a detailed watershed study for the area, which is scheduled to occur in 2021, after which, detailed land use, transportation, utility, and implementation recommendations will be developed and presented for Plan Commission and Common Council approval.

Town of Burke Cooperative Plan: The proposed division of the subject site in the Town of Burke requires Plan Commission approval as both a land division in the City's extraterritorial jurisdiction, and as "development" as defined in the 2007 Town of Burke, Village of Deforest, City of Sun Prairie and City of Madison Cooperative Plan. Under the cooperative plan, the terms "develop" or "development" refer to the division of land, or construction of more than one principal structure on a parcel of land, or rezoning a parcel from a residential or agricultural classification to a non-residential classification. The cooperative plan includes an exception that allows for the one-time division of a five-acre or larger parcel into two lots for the purposes of constructing a single-family residence on each parcel without being considered development.

The subject site is not located within a Protected Area as defined by the cooperative plan (lands in the Sunnyburke Heights subdivision and environs to the east of the site are in a Protected Area). Pursuant to the terms of the cooperative plan, the development of lands outside of the Protected Areas identified in the plan may require the development to provide a full range of urban services, including public water and sewer service, and to attach to the City of Madison, in the sole discretion of the City. In the case of the proposed land division, City water and sewer service are not currently proximate to the site or surrounding area, and the nearest property in the City is approximately three-quarters of a mile west of the site along Nelson Road near Felland Road. As a result, City staff does not recommend that the property be attached to the City as a condition of this CSM approval.

Land Division Criteria: Any subdivision or land division in the extraterritorial jurisdiction shall be compatible with adjacent development patterns and shall maintain the general land development pattern of the area in question. Measures of compatibility shall consider lot sizes, traffic generation, access, noise and visual features. Also, the proposed subdivision or land division and the resulting development shall not demonstrably adversely affect the City's ability to provide public services, install public improvements or accomplish future annexations.

In reviewing the proposed land division, the Planning Division does not believe that the proposed lots reflect the general land development pattern of the surrounding area, which is predominantly developed with conventionally shaped residential lots with frontage on improved public roads. (The configuration of the lots west of the subject site in the "Windswept" subdivision reflect the preexistence of three residences and other accessory buildings on the land comprising that plat at the time it was approved.) Staff believes that maintaining "the general land development pattern of the area in question" relies on the pre-existence of lots of a similar character to the ones proposed by the subdivision or land division, rather than the creation of a pattern. While staff acknowledges that there is residential development present adjacent to the site to the east, it does not feel that the proposed lots reflect a continuation of that lot pattern. In particular, staff is most greatly concerned with the proposal to create two "flag" lots, which will have most of their land area removed from the Sunnyburke Drive right of way. City staff is also concerned about the potential approval of Lots 3 and 4, which lack public road access if and until the portion of Sunnyburke Drive south of Rising Sun Road is improved to a town road standard beyond gravel.

Additionally, staff believes that the creation of smaller lots from larger parcels such as the subject site could adversely affect the City's ability to provide public services, install public improvements, and accomplish future attachments (annexations) counter to extraterritorial approval criteria 2. As noted above, the subject site is located within the boundaries of the forthcoming Reiner Neighborhood Development Plan, which will include

detailed recommendations for the future street network, utility extensions, and land uses for the area surrounding the property. Staff is concerned that the division of the subject parcel could impede the ability to create the connections and utility corridors typically recommended in neighborhood development plans, which are necessary to support the fine-grained urban development pattern typically desired by the City. While staff acknowledges that urban development of the subject site and Sunnyburke Heights area in the City on City water and sewer may be an indeterminate number of years into the future given that utilities to serve such development are still located well west of the site, we feel that it is important to preserve larger developable parcels whenever possible and allow land divisions only if they reflect an existing development pattern and will not demonstrably impact future development.

However, in the event that the Plan Commission believes that the proposed land division can meet the criteria for approval, staff recommends that the CSM be revised to establish 66-foot wide reservations across the site for the future extension of public street rights of way for the two local streets located across Sunnyburke Drive from the site, Camy Circle and Rising Sun Road. While the forthcoming Reiner planning effort will recommend a detailed street network to guide the future development of the area, staff often uses an existing street network as the framework for the street network to serve a larger planning area. By reserving space for future streets across Lot 1 for an extension of Camy Circle and through the panhandle of Lot 2 for an extension of Rising Sun Road, staff feels that the impact of the proposed land division on future planning for and implementation of the finer-grained development pattern likely to be recommended once the Reiner Neighborhood Development Plan proceeds will be lessened. In addition to reserving land that could be dedicated/ acquired and improved in the future as public streets if called for in the forthcoming plan, the reservations will also provide corridors for future utility extensions that may be needed to facilitate urban development of the subject site and surrounding properties. Similar to a reservation on the City's Official Map, the construction of principal or accessory buildings in the proposed reservations is purposefully limited and will require approval by the Director of the Planning Division or his/her designee to ensure that any such improvements do not interfere with future plan implementation.

Conclusion

The Planning Division does not believe that the proposed land division meets the criteria for approval. The proposed lots are inconsistent with the general land development pattern along and east of Sunnyburke Drive, particularly the two flag-shaped lots proposed. Staff is also concerned that the proposed land division will negatively impact the City of Madison's ability to extend services to this area in the future and accomplish future attachments in direct contradiction to the extraterritorial approval criteria.

However, in the event that the Plan Commission believes that the extraterritorial approval criteria can be met, it recommends that the Certified Survey Map include 66-foot wide reservations for the potential future extensions of Camy Circle and Rising Sun Road west of Sunnyburke Drive across the site to ensure that opportunities for connectivity and utility corridors are preserved despite the proposed division.

Recommendation

The Planning Division recommends that the Plan Commission find that the criteria for extraterritorial land division are not met and **place on file without prejudice/reject** the proposed Certified Survey Map of land located at 3285 Nelson Road, Town of Burke.

If the Plan Commission finds that the criteria for approval are met, staff recommends that any approval be subject to input at the public hearing and the following conditions:

Recommended Conditions of Approval Major/Non-Standard Conditions are Shaded

Planning Division

1. All lots on the proposed Certified Survey Map shall front onto an improved public street/road. The applicant shall improve Sunnyburke Drive south of Rising Sun Road to the southern right of way limits according to plans approved by the Town of Burke following review by the City of Madison Engineering Division and Planning Division. If the improvements to Sunnyburke Drive are to be made by the Town, the applicant shall execute all documents required by the Town prior to City signing the Certified Survey Map for recording, with copies of said agreements to be provided to the City for its records.
2. The Certified Survey Map shall be revised prior to final City approval to establish 66-foot wide reservations for future public street right of way for the extensions of Camy Circle and Rising Sun Road across the subject site. No permits for principal or accessory buildings shall be granted within these reservations unless approved by the Director of the City of Madison Planning Division or his/her designee. The final alignment of the reservations and governing text shall be approved by the Planning Division prior to final approval and recording of the CSM. The reservations may only be released or waived in writing by the City of Madison Planning Division or Plan Commission.

City Engineering Division (Contact Brenda Stanley, 261-9127)

3. Portions of Lots 1-3 include a major draw/drainageway. A minimum of 50-foot wide drainage easement shall be dedicated to the public on either side of the centerline of the channel. A field meeting may be required to define the location of the channel. The surveyor is welcome to submit a proposal to City Engineering for review.
4. A Phase 1 environmental site assessment (Phase 1 ESA), compliant with ASTM E1527-13, is required for land dedicated to the public (future City of Madison). The applicant shall provide one (1) digital copy for review. Staff review of this Phase 1 ESA will determine if a Phase 2 ESA is also required. Please submit report(s) to Brynn Bemis (267-1986, bbemis@cityofmadison.com) for review.

City Engineering Division – Mapping Section (Contact Jeff Quamme, 266-4097)

5. Add the recorded as distances to the three boundary lines around Lot 3 of CSM 1183.
6. Modify the legal description under the Surveyor's Certificate to include the volume, page and document number of CSM 1183. Including the volume and page are minimal requirements for describing CSM lots per statutes.
7. Correct the Secretary of the Plan Commission to Matthew Wachter.
8. Place Nelson Road within the area being dedicated on Page 2.
9. Add a Consent of Mortgagee Certificate to the Certified Survey Map.

10. Wisconsin Administrative Code A-E 7.08 identifies when Public Land System (PLS) tie sheets must be filed with the Dane County Surveyor's office. The developer's surveyor and/or applicant must submit copies of required tie sheets or monument condition reports for all monuments, including center of sections of record, used in this survey, to Jeff Quamme, City Engineering (jrquamme@cityofmadison.com). If a new tie sheet is not required under A-E 7.08, Engineering requests a copy of the latest tie sheet on record with Dane County Surveyor's office and shall be attached to a signed and sealed monument condition report.
11. Prior to City Engineering final sign-off by main office for Certified Survey Maps (CSM), the final CSM must be submitted to Engineering Division Surveyor/ Land Records Coordinator for final technical review and approval. This submittal must occur a minimum of two working days prior to final Engineering Division sign-off. E-mail submittal of the **final** CSM in PDF form is preferred. Transmit to jrquamme@cityofmadison.com.
12. The applicant shall submit to Jeff Quamme, prior to final Engineering sign-off of the subject CSM, one (1) digital CADD drawing in a format compatible with AutoCAD. The digital CADD file(s) shall be referenced to the Dane County Coordinate System and shall contain, at minimum, the list of items stated below, each on a separate layer/level name. The line work shall be void of gaps and overlaps and match the final recorded CSM: right of way lines (public and private); lot lines; lot numbers; lot/plat dimensions; street names, and; easement lines (including wetland and floodplain boundaries).

*This transmittal is a separate requirement than the required submittals to Engineering Streets Section for design purposes. The Developer/Surveyor shall submit new updated final plat, electronic data and a written notification to Engineering Mapping for any changes to the plat which occur subsequent to any submittal.

Traffic Engineering Division (Contact Sean Malloy (266-5987))

This agency submitted a response with no comments or conditions for this request.

Zoning Administrator (Contact Jenny Kirchgatter, 266-4429)

This agency submitted a response with no comments or conditions for this request.

Fire Department (Contact Bill Sullivan, 261-9658)

This agency submitted a response with no comments or conditions for this request.

Water Utility (Contact Jeff Belshaw, 261-9835)

This agency submitted a response with no comments or conditions for this request.

Office of Real Estate Services (Heidi Radlinger, 266-6558)

13. Signature block certifications shall be executed by all parties of interest having the legal authority to do so, pursuant to Wis. Stats. 236.21(2)(a). The title of each certificate shall be consistent with the ownership interest reported in the most recent title report. The executed original hard stock recordable CSM shall be presented at the time of sign-off.
14. A certificate of consent for Summit Credit Union shall be included following the Owner's Certificate and executed prior to CSM approval sign-off. If the mortgage has been satisfied or no longer encumbers the lands

or ownership within the CSM boundary, a copy of a recorded satisfaction or release document for said instrument shall be provided prior to CSM approval sign-off.

15. If any portion of the lands within the CSM boundary are subject to an Option to Purchase or other Option interest include a Certificate of Consent for the option holder.
16. A Consent of Lessee certificate shall be included on the CSM for all tenant interests in excess of one year, recorded or unrecorded, and executed prior to CSM sign-off.
17. Pursuant to Madison City Ordinance Section 16.23(7)(d)3 and Wis. Stats. 236.21(2) (a), all CSMs that are subject to the review and approval of the City of Madison shall contain the following certificate of approval:

Approved for recording per the Secretary of the City of Madison Plan Commission.

By: _____ Date: _____

Matthew Wachter, Secretary of the Plan Commission

18. Per 236.21(3) Wis. Stats. the property owner shall pay all real estate taxes and special assessments that are accrued or delinquent for the subject property prior to CSM recording. This includes property tax bills for the prior year that are distributed at the beginning of the year.
19. Pursuant to MGO Section 16.23(5)(g)(4), the owner shall furnish an updated title report to Heidi Radlinger in City's Office of Real Estate Services (hradlinger@cityofmadison.com), as well as the survey firm preparing the proposed CSM. The report shall search the period subsequent to the date of the initial title report (April 8, 2019) submitted with the CSM application and include all associated documents that have been recorded since the initial title report. A title commitment may be provided, but will be considered only as supplementary information to the title report update. The surveyor shall update the CSM with the most recent information reported in the title update. ORES reserves the right to impose additional conditions of approval in the event the title update contains changes that warrant revisions to the CSM.
20. The owner shall email the document number of the recorded CSM to Heidi Radlinger in the City's Office of Real Estate Services as soon as the recording information is available.