

## **KwikTrip loses planning appeal**

Written by MARK JAEGER  
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### **Appeals Board members concerned new gas station along Highway 33 would put wetlands at risk**

Another door was slammed last week on KwikTrip's plans to build a gas station and convenience store along Saukville's busy Highway 33 corridor.

The village's Board of Zoning Appeals voted 3-1 on Thursday to uphold the Plan Commission's denial of a wetland setback variance that is needed to clear the way for the business.

The board vote followed more than two hours of testimony. Witnesses speaking on behalf of KwikTrip offered technical details on why the gas station would not pose an environmental threat, while witnesses opposed to the plan offered input on why the plan should be blocked.

KwikTrip presented plans in January to build the gas station, car wash and 5,600-square-foot convenience store on a 5.5-acre parcel northwest of the I-43 intersection with Highway 33.

The Plan Commission voted 4-2 against granting an exemption from the village's setback requirement that gas stations not be allowed closer than 600 feet from wetlands or sensitive environmental areas.

The proposed KwikTrip site is 175 feet from a mapped wetlands and 385 feet from a navigable waterway.

During the first part of the appeal hearing, the company officials outlined the measures that would be put into place to safeguard the environment from fuel spills.

Those steps would include the use of double-walled storage tanks, electronic tank sensors, storm inlet catch basins, a spill recovery sump system and rainwater spouts on the fuel pump canopy that would direct water into a drainage system.

Sheldon Schall, chief of storage regulation for the Wisconsin Department of Safety and Professional Services, said the level of protection offered by state-of-the-art fueling systems greatly reduces the risk of catastrophic spills.

The greatest risk for fuel releases comes from customers topping off their tanks, or not paying attention while at gas pumps, he said, rather than from faulty equipment or leaking underground tanks.

Conflicting information was offered on how permeable the soils at the site are, a factor that would determine how long it would take for spilled fuel to reach the wetlands.

Joseph Drapeau of Pioneer Environmental, the firm hired by KwikTrip, estimated it would take more than seven years before any spill would threaten the environmental area.

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Consultants from Sigma Group, an engineering firm hired by neighboring property owner Tom Beck, who owns Beck's Green Bay Ave. Mart, estimated a spill could reach the wetlands in as little as 17 months.

Even at that worst-case scenario, company officials said there would be adequate time to intervene before the environmental area would be at risk.

KwikTrip attorney Bruce Block contended "there is no evidence in the record on which the Plan Commission could reasonably base its determination to deny the setback modification."

Village Attorney Gerald Antoine countered that the commission denial of the zoning exemption was justified.

"There is credible evidence on the record supporting the decision, the first being simple proximity," Antoine said.

"We are not looking at a site that is on the fringe of the 600 foot setback, but 175 feet away."

He said it was also reasonable to have questions about soil conditions and the high water table.

In the appeal notice, KwikTrip officials objected that Plan Commission members did not give the reason for voting against the setback reduction.

"There is no legal requirement for those who voted against the motion to give an explanation of their votes," Antoine said.

He also said the commission had the option of granting the exception, but was under no obligation to grant it.

"The ordinance says the commission 'may' modify the setback requirement. That doesn't mean it is required to modify the setback if evidence is presented to justify it," Antoine said. "Nor does it say the applicant is entitled to that action. The exception is solely at the discretion of the Plan Commission."

Appeals Board member Irvin Lusier said the commission's denial of the setback modification was for the good of the entire community.

"Every time we modify an ordinance and fill in a floodplain area or a wetland area, the rest of us living in the Village of Saukville see that water rise in our yards if we live close to the river. That's a concern of mine," Lusier said.

Board member Don Clark said he, too, is bothered by the frequent flooding at the proposed KwikTrip site.

Trustee Dan Sauer, who is chairman of the Appeal Board, said the question involved whether being exempt from the setback rule was justified.

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“I believe that using other instances in the village of being closer than the current setback is a precedent, and I believe that the applicant has demonstrated adequate scientific evidence to modify the conditional use permit, or to modify the ordinance,” Sauer said.

He cast the lone vote against upholding the Plan Commission ruling.

Following the meeting, Sauer said he is convinced the setback modification should have been granted.

“There are inherent risks in almost everything, such as driving a car. Those risks are mitigated by things like seat belts, airbags and reinforced passenger compartments,” Sauer said.

“A gas station is similar. There will always be a risk of a leak or spill, but safety features such as sensors, double wall construction and catch basins alleviate most of those risks.

“The Plan Commission’s decision should have been reversed because I believe there was overwhelming evidence to demonstrate that any potential spill or leak would minimally impact the environmentally protected area because of the extensive safety features that were proposed.”

According to state statute, KwikTrip has 30 days to appeal the decision to the Circuit Court.