

**Please note: Minutes are unofficial until approved by the Plan Commission at the next regularly scheduled meeting**

PUBLIC HEARING

6:00 P.M. (7)GK PG-946 Sewer Service Area Amendments. – New Berlin West High School, 18695 W. Cleveland Avenue.

**NEW BERLIN PLAN COMMISSION**

**OCTOBER 5, 2009**

**MINUTES**

The public hearing relative to the request by The New Berlin School District to request that staff be directed to make a request to MMSD to adjust the Current Sewer Service Line (boundary) to include the parcel for the New Berlin West High School property located at 18695 W. Cleveland Avenue along the force main route was called to order by Mayor Chiovaturo at 6:19 P.M.

In attendance were Mayor Chiovaturo, Mr. Christel, Alderman Ament, Ms. Broge, and Mr. Felda. Also present were Greg Kessler, Director of Community Development; Nikki Jones, Planning Services Manager; Jessica Titel, Associate Planner; and Mark Blum, City Attorney. Ms. Groeschel and Mr. Sisson were excused.

Mayor Chiovaturo explained the procedure for a public hearing saying that he would ask for questions for clarification and then ask three times for anyone wishing to speak in favor of the application and then three times for anyone wishing to speak in opposition of the application.

Ms. Jones read the public hearing notice and stated there was proof of publication.

Mr. Kessler gave a brief presentation describing the request and indicated the location.

Mayor Chiovaturo asked three times for comments or questions for the purpose of clarification, seeing none.

Mayor Chiovaturo asked three times if there was anyone who wished to speak in favor of this application, seeing none.

Mayor Chiovaturo asked three times if there was anyone who wished to speak in opposition of this application, seeing none.

Mayor Chiovaturo asked for comments or questions from the Plan Commissioners.

Alderman Ament – Is the area around Poplar Creek School already in?

Mr. Kessler – The legend on the map shows Planned Sanitary Sewer Area. That is the Planned Area, so that is not within the Current Sewer Service Area at this time.

Alderman Ament – That is not included in this tonight, correct?

Mr. Kessler – Correct. I'm sorry, I take that back. This is within the Current Sewer Service Area Boundary already. This area would be added into that (Mr. Kessler referred to map).

Alderman Ament – What we are looking at adding in is strictly the school?

Mr. Kessler – Yes, we are adding in the extension that would come down the Right-Of-Way of Cleveland Avenue and encompass all of the land holdings of the New Berlin West High School.

Alderman Ament – Is that the blue hashed area? (Alderman Ament referred to map).

Mr. Kessler – Yes, it is this area. (Mr. Kessler referred to map).

Alderman Ament – Ok, thank you.

Mayor Chiovaturo asked for further questions from the Plan Commissioners, seeing none.

Mayor Chiovaturo closed the public hearing at 6:27 P.M.

**NEW BERLIN PLAN COMMISSION**

**OCTOBER 5, 2009**

**MINUTES**

The Plan Commission Meeting was called to order by Mayor Chiovaturo at 6:27 P.M.

In attendance were Mayor Chiovaturo, Mr. Christel, Alderman Ament, Ms. Broge, and Mr. Felda. Also present were Greg Kessler, Director of Community Development; Nikki Jones, Planning Services Manager; Jessica Titel, Associate Planner; and Mark Blum, City Attorney. Ms. Groeschel and Mr. Sisson were excused.

Motion by Alderman Ament to approve the Plan Commission Minutes from August 31, 2009. Seconded by Ms. Broge. Motion carried unanimously.

Motion by Alderman Ament to approve the Plan Commission Minutes from September 29, 2009. Seconded by Mr. Felda. Motion passes with Ms. Broge voting present.

**PLAN COMMISSION SECRETARY'S REPORT** - Mr. Kessler confirmed that all Plan Commissioners have received an exhibit of all of the public comment that has been received since the beginning of the Comprehensive Plan update process. Anything new that is received will be distributed to them at the Public Hearing on October 7, 2009 at 6:00 P.M. in the Council Chambers.

Mr. Kessler reminded the Plan Commissioners of The Community Development Symposium sponsored by the MBA on November 12, 2009, 8:00 A.M. – 12:00 P.M. at Brookfield Suites on Moorland Road. He encouraged their attendance because of the timely topics and useful information that is typically presented.

**CONTINUED BUSINESS**

1. ( )GK PG-516 Comprehensive Plan Update -

No Update.

Public Hearing to be held on October 7, 2009.

**NEW BUSINESS**

2. (5)AB UA-09-43 New Berlin Eisenhower Booster Club – 4333 Sunny Slope Rd. – Concession Stand.

Motion by Alderman Ament to approve the request for Use, Site and Architecture to construct a 32' x 50' multi-use structure at 4333 S. Sunny Slope Road subject to the application, plans on file and the following conditions:

- 1) Plan of Operation:

- a) Accessory structure shall be located 30' from any wetland boundaries.
- b) Architecture Review Committee shall review and approve multi-use structure.
- 2) Building Inspections:
  - a) Building plans shall be signed and stamped by a licensed architect or professional engineer per the Wisconsin Enrolled Commercial Building Code. (Comm.61.31).
  - b) Building plans shall be approved by the State of Wisconsin Dept. of Commerce Safety and Buildings Division. (Comm. 61.70).
  - c) Apply and obtain appropriate building, electric and plumbing permits.
  - d) The building shall be fully accessible Per Comm. 63.1101 and ICC/ANSI A117.1)
  - e) Restroom fixture count Per IBC Chapter 29

Seconded by Ms. Broge. Motion carried unanimously.

3. (7)JT LD-09-06 Observatory Road West – 18200 W. Observatory Road – NW ¼ SEC 21, 4- lot land division.

Motion by Mr. Christel to recommend to the Common Council approval of a four-lot Certified Survey Map (CSM) for the property located at 18200 W. Observatory Road subject to the application, plans on file and the following conditions:

- 1) Applicant shall correct all drafting errors identified by Staff prior to signing of the final CSM.
  - a) Applicant shall insert the Conservation Easement document number of 3673459 on the face of the CSM.
  - b) Applicant shall correct the lot numbering.
  - c) Applicant shall add the title for Thomas Donovan on the signature page.
- 2) A final copy of the CSM shall be submitted and reviewed prior to City signing. All owners and surveyor must sign prior to City signing the CSM. Surveyor Stamp is required.
- 3) Applicant and/or new property owners shall apply and obtain appropriate building, plumbing and electrical permits prior to any construction on any parcel.
- 4) Applicant shall coordinate with Waukesha County and WDNR for septic and well permits.
- 5) Applicant shall dedicate the north 40' (feet) along Observatory Road and Woelfel Road for public road and drainage purposes.

- 6) Applicant has previously executed and recorded a conservation easement (Waukesha County Register of Deeds Document #3673459) over the entire C-1 area to encompass the Isolated Natural Resource Area (INRA) and the wetland area within the INRA. This will further strengthen the development requirement guidelines outlined in Section 275-37.B(3). No buildings are allowed in the conservation easement area.
  - a) If areas outside the INRA are suitable for septic systems, they should, to the maximum extent practicable, be placed in a location that will minimize the impact to the INRA and the number of trees needing to be removed. If the septic systems are to be placed within the INRA, a tree inventory shall be prepared and either the applicant or property owner shall follow the City's tree replacement schedule and/or provide the City with a landscape fee. A note shall be placed on the CSM identifying this condition.
- 7) All easements shall be shown on the face of the CSM.
- 8) All proposed lot corners shall be piped by registered land surveyor before any lots are sold or building permits are applied for.
- 9) All culverts shall be 20' to 30' long (property owner choice) with flared end sections instead of concrete endwalls. Lot 1 (most Westerly lot) will be 18340 W. Observatory Rd. with a driveway culvert 15" diameter CMP. Lot 2 is 18300 W. Observatory Rd. with a 15" culvert. For drives located at the high point of the ditch, near the East lot line of lot 2, a culvert may not be needed. Lot 3 is 18260 W. Observatory Road with an 18" diameter culvert. Lot 4 is 18200 W. Observatory Rd. with an 18" culvert.

Seconded by Mr. Felda.

Alderman Ament felt this was a way to circumvent our conservation subdivision ordinances and subdivision ordinances in general and was not in favor of this land division. Alderman Ament said a good deal of the codes and ordinances we have for subdivisions are designed to have bigger parcels to address potential issues. This is not doing that. We have stormwater drainage issues in that area to begin with. There has been some ditching done on Observatory Road, but we don't know how that will work. This area has problems already and drains to the west, eventually going into Poplar Creek. If you go back to the minutes from April 7, 2008 regarding the other parcel, it specifically talks about dealing with those problems at this stage. I also have some potential issues with the drain tiles. Once there is more impervious surface, there will be additional stormwater issues that are eventually going to potentially affect the Observatory Heights Subdivision, which already has issues with people getting added into the Floodplain over the years. The drain tiles are also part of that. We don't know exactly where they are. We have an idea where they should be or could be. As the individual lots are developed, there is no Homeowners Association that we can make accountable for how this plays out. As the drain tiles are destroyed or deteriorate over time or they get cut off, who knows what kinds of issues that will create.

Those are some of the bigger problems that I see, especially on the south side and how it could affect Observatory Heights Subdivision. Some years ago when we tried to address the problems in Observatory Heights Subdivision, there were some culvert issues on Coffee Road, on Old Farm Road, and on Cleveland Avenue. At that time I was told that we can't address those issues because it will create problems for the people down stream. I think that is potentially what we are doing here. I have a problem with that.

Alderman Ament went on to say that the other thing is the number of driveways. There will be six additional driveways coming out on Observatory Road and at least one on Woelfel Road. One of the things we have tried to do over the years with transportation issues is to try to limit the amount of driveways going out onto arterials. These are the things I predicted would happen a year ago. The staff report mentions that at the time of another future land division, stormwater issues will be addressed. Just digging out the ditch, isn't the answer. There are other issues downstream. Although there is some good potential, I am not going to be able to support this.

Mr. Felda referred to No. 8 on the Staff Report under Findings that says if the drain tiles are damaged and the area takes on wetland characteristics, the owner shall contact the City and adhere to all local, state and federal wetland protection requirements. Does that mean that the homeowner who buys that property, puts a home there and somehow causes damage to the tiles that create issues with water that normally would have been taken care of by the drain tile, the City is not responsible?

City Attorney Blum said his understanding is if the property takes on wetland characteristics, at that point the homeowner should report it and further requirements might be imposed at that time.

Ms. Titel said that condition was added on the previous land division for this parcel based on concerns we were hearing at that time. We don't know the exact location of the drain tiles, but placed them on the CSM at the location where the property owner had indicated. This condition puts out an alert to anyone who purchases the property that there are drain tiles there and they do need to be maintained. If they crack or break or fail or are not maintained and the site takes on wetland characteristics, they will need to follow all the wetland requirements as regulated by the DNR and the City.

Ms. Broge referred to No. 7 on the Staff Report under Findings which says the drain tiles have been in effect for well over 30 years. Drain tile can be damaged while building a home. What brings the owner to notify the City, if in fact there will be restrictions that they will have to adhere to? What is the potential outcome of the drainage tile?

Ms. Titel said the first purpose of that statement is to say that they do need to maintain the drain tiles. If they choose not to maintain the drain tile and it is damaged, it could become a wetland area and it could limit their ability to put up a shed, ect., so there would be consequences. The City is not going to search for broken drain tiles. It is just alerting anyone who purchases the property that there is a little something extra that they need to pay attention to when they are building their home.

Mayor Chiovero felt it would advantageous to the homeowner to maintain the drain tiles. At the same time, we have something that says any damage to them needs to be reported to us.

Ms. Broge commented that looking to the future Observatory Road is an area primed for development as we can see from the subdivisions opportunities coming before us. Before we go ahead and build on Observatory Road, we need to think about the road with more traffic and more driveways. There are no turn lanes, and there are a lot of areas where you can't see around corners. We have to be aware of development and look at the road itself.

Motion passes with Mayor Chiovero, Mr. Christel, Mr. Felda, Ms. Broge voting Yes and Alderman Ament voting No.

4. (4)JT SG-09-44 Kwik Trip – 15710 W. Small Rd. – Monument sign waiver request for Gas Station and Convenience Store.

Motion by Mr. Felda to approve the request, along with Waiver Request #1, for a sign face change to an existing legal non-conforming monument sign located at 15710 W. Small Road subject to the application, plans on file and the following reasons:

Waiver Request #1: Applicant is requesting a waiver from Section 275-61.E(1) which states that any alteration to a legal nonconforming sign, including changing the sign face, requires that the sign shall be brought into compliance with the current zoning code. The sign currently exceeds the maximum height of 8-feet.

- 1) The applicant is proposing a face change to an existing monument sign. A new tenant has moved into the building.
- 2) Section 275-61.I(1)(c)[2] of the zoning code states: "The monument sign shall not exceed eight feet in overall height above the mean lot grade and shall be set back entirely outside the base setback line". The existing "Mobil" sign is 12'6" tall and the proposed "Kwip Trip" sign is 12'6" tall.
- 3) Due to existing site conditions, such as the speed of traffic along Moorland Road and building orientation, staff recommends approval of the waiver. The applicant is also proposing to re-use the existing sign base, which is approximately 8'6" tall at its tallest point.
- 4) When the existing Mobil sign was originally approved, the maximum allowable height was 14-feet.

- 5) Since this is a legal non-conforming sign and the sign is not being brought into compliance with the existing code, Staff cannot administratively grant approval of the face change.
- 6) The Plan Commission has the authority to grant this waiver pursuant to Section 275-52(C), which states “The Plan Commission may waive or modify any or all of the other requirements of this article if it determines that:
  - a) The site or activity in question will have no appreciable off-site impact;
  - b) Compliance with the requirement(s) is impractical or impossible due to site conditions or other circumstances beyond the control of the applicant; or
  - c) The specific requirement is not necessary for a particular site to ensure compliance with the requirement of this chapter.

Seconded by Ms. Broge. Motion carried unanimously.

**CONSENT AGENDA** (One motion and second will deny all of the following items listed. Any item may be pulled from the list and handled separately)

5. (1)AB R-1-04 Carleton Point Condominiums – 13050 W. Cleveland Ave. Rezone from I-1 to Rm-1/PUD and C-2/PUD for a 48 Unit Condominium Complex with a Planned Unit Development Overlay and Wetland Delineation with a Planned Unit Development Overlay. (Public Hearing 1/9/06, Tabled 2/6/06, 10/2/06, 3/5/07, 5/4/09)

No Action.

6. (1)AB U-85-98 D.C. Investments – 13050 W. Cleveland Ave. – Senior Housing Development (No action 12/7/98, 11/8/99, 7/9/01, Tabled 2/4/02, 9/9/02, 10/2/06, 5/4/09)

No Action.

## **COMMUNICATIONS**

7. Communication To: Plan Commission  
Communication From: Jessica Titel, Associated Planner  
RE: “Organic Farms as Subdivision Amenities”, The New York Times, July 1, 2009, by Alec Appelbaum.

Plan Commission acknowledged receipt of this communication.

## **ADDENDUM**

8. (7)GK PG-946 Sewer Service Area Amendments. – New Berlin West High School, 18695 W. Cleveland Avenue.

Motion by Ms. Broge to recommend to Common Council adoption of a resolution that approves the amendment of the MMSD Sewer Service Area Boundary to include the property located at 18695 W. Cleveland Avenue (Tax Key: 1187-988).

Seconded by Mr. Felda. Motion carried unanimously.

**ADJOURN**

Motion by Ms. Broge to adjourn the Plan Commission Meeting at 7:00 P.M. Seconded by Mr. Felda. Motion carried unanimously.