

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

PUBLIC HEARINGS

6:00 P.M. (4)JT CU-09-03 Passport Brewhaus – 4900 S. Moorland Rd. – Brewery

**NEW BERLIN PLAN COMMISSION**

**AUGUST 3, 2009**

**MINUTES**

The public hearing relative to the request by Gopi Doniparthi for a Conditional Use for a Brew Pub located at 4900 S. Moorland Road was called to order by Mayor Chiovero at 6:06 P.M.

In attendance were Mayor Chiovero, Mr. Sisson, Mr. Christel, Alderman Ament, Ms. Broge, and Ms. Groeschel. Also present were Greg Kessler, Director of Community Development; Jessica Titel, Associate Planner; Amy Bennett, Associate Planner; and Mark Blum, City Attorney. Mr. Felda was excused.

Mayor Chiovero 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. Titel read the public hearing notice and stated there was proof of publication.

Ms. Titel gave a brief presentation describing the request and indicated the location.

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

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

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

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

Alderman Ament – Is the additional two outdoor seating areas referenced in the letter from Professional Consultants a separate issue?

Ms. Titel – Yes, they filed two separate applications. One was an administrative application for outdoor seating and to paint the building. That has been approved and the Zoning Permit has been issued. They just used one letter for both applications.

Alderman Ament – Is the request to paint the building the color to match the submitted elevation going to Architectural Review?

Ms. Titel – That went to Architectural Review last month and was approved.

Alderman Ament – That is not part of this?

Ms. Titel – No, this is just for brewing of beer on the site.

Mayor Chiovero asked for further comments from the Commissioners, seeing none.

Mayor Chiovero closed the public hearing at 6:11 P.M.

6:01 P.M ( )JT PG-384 Domestic Livestock – Section 275-41(A)(2) Zoning Code Change – Limitations on Keeping of Livestock & Boarding Facilities – Keeping of Horses.

**NEW BERLIN PLAN COMMISSION**

**AUGUST 3, 2009**

**MINUTES**

The public hearing relative to the amendment of Section 275-41(A)(2) (Keeping and Raising of Animals) and Section 275-70 (Definitions) of the City's Zoning Code was called to order by Mayor Chiovaturo at 6:11 P.M.

In attendance were Mayor Chiovaturo, Mr. Sisson, Mr. Christel, Alderman Ament, Ms. Broge, and Ms. Groeschel. Also present were Greg Kessler, Director of Community Development; Jessica Titel, Associate Planner; Amy Bennett, Associate Planner; and Mark Blum, City Attorney. Mr. Felda was 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. Titel read the public hearing notice and stated there was proof of publication.

Ms. Titel explained the purpose of this public hearing is to receive comments from all interested persons with respect to revisions to Section 275-41(a)(2) (Keeping and Raising of Animals) and Section 275-70 (Definitions) of the City's Zoning Code.

Mayor Chiovaturo asked for questions or comments for the purpose of clarification.

Nancy Schmidt, 5945 S. Racine Avenue – Right now I am operating a commercial stable, and I want to know how this is going to affect me? Will I be grandfathered in, or will I be needing to have one horse per acre, or can I apply for a Conditional Use to operate as I have been?

Ms. Titel – You do not need to file a Conditional Use Application for the commercial stable portion as long as you meet the livestock limitations. If you want to exceed the limitations of one per acre, this code amendment will allow you to file a Conditional Use Application with our department to increase the number of horses. If you stay under the limit of one per acre, you can continue to operate as you have been.

Ms. Schmidt – Do you take into account land that I lease or do I have to own the land?

Ms. Titel – That is not specifically stated. When you came in with our Conditional Use Application, we would take a look at all the materials that you would supply and why you

think that your land can support more than one per acre. It would be up the Plan Commission and staff to review that information and make a recommendation.

Ms. Schmidt – Thank you.

Mary Hiebl, 20160 W. National Avenue – Could you please repeat what the reason is for this coming for a public hearing?

Ms. Titel – All Zoning Code Amendments require a public hearing before the Plan Commission.

Ms. Hiebl – Could you repeat something you said in your report about an applicant?

Ms. Titel – There was a request for a Zoning Code interpretation a few months back. Because of that request and the discussion at that meeting, we came forward with a Zoning Code amendment to clarify this section of the Code.

Ms. Hiebl – What will be the proposed language?

Ms. Titel – There is a whole section. I would be happy to provide you with a copy of it. I could read the whole thing now if you like.

Ms. Hiebl – No, it sounds lengthy, but is there a brief summary of what it says?

Ms. Titel – The brief summary is that the maximum number of livestock will not be changing. It is one per acre right now and twenty head of fowl per acre. Those numbers are not changing. It allows an applicant to file a Conditional Use application if they wish to exceed those numbers. Right now our Code does not have any flexibility as far as anyone who wishes to have more than one per acre or twenty per acre.

Mayor Chiovero – We will get a copy to you, Mary. This is only the public hearing, there is no action tonight.

Ms. Hiebl – Thank you, I appreciate that. What residents were given notice of this public hearing? Were the residents that this could affect given notice of this public hearing?

Ms. Titel – One of the challenges is that we don't have any permit requirements for boarding stables, so we don't have every boarding stable on file. I knew of three of them. I sent the public notice to those three property owners that I know currently operate commercial stables. That was based on a request from an Alderman at Common Council. This is a Citywide Zoning Code Amendment and will affect the entire City.

Ms. Hiebl – I was concerned that the people who might be affected by this had been notified.

Ms. Titel – We did the best we could to notify the affected people.

Mayor Chiovaturo asked three times for further comments or questions for clarification, seeing none.

Mayor Chiovaturo asked if there was anyone who wished to speak in favor of this application?

Jeff Marohl, 16700 W. College Avenue – I represent Countryside Stables. I am in favor of this because it gives our stable, which is operating on a shoestring because we can't have enough horses to support it, a vehicle to ask for additional horses.

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

Mayor Chiovaturo asked if there was anyone who wished to speak in opposition of this application,

Mary Hiebl, 20160 W. National Avenue – Since I haven't had a chance to read the Executive Summary, I'm going to reserve my right to speak in opposition of this because I am not familiar enough with the extent of what is being proposed tonight.

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 – I am assuming for the purpose of this Code, that horse and livestock are interchangeable?

Ms. Titel – There is a definition for livestock on Page 2 that says, domestic farm animals including, but not limited to horses, cows, swine, goats, and sheep, which are raised for sale, human consumption, or pleasure.

Alderman Ament – Is that a yes?

Ms. Titel – Yes.

City Attorney Blum – They are not interchangeable. Horses are included within the definition of livestock, but the reverse is not the case.

Alderman Ament – I want to be clear especially for the folks that are already running stables. On Page 2, under item F it talks about commercial stables existing prior to the adoption of this amendment, September 8, 2009 and meet the livestock limitations do not require Conditional Use. When it says limitations, if they are over the one per one acre, do they still need to come in even if they are already in existence?

Ms. Titel – That is correct. Right now, our Code says one per acre so that is correct.

Alderman Ament – In Section 2 under item A and B, on the original staff report under B it said for human consumption or pleasure but it did not say that under A. Now under A it says that but not under B.

Ms. Titel – It was a typo in the staff report from last month. I meant to remove “or pleasure” from the fowl, not the livestock. The one you have before you for tonight’s meeting, August 3, is how it should read.

Alderman Ament – I don’t know who else is affected, and I know this came up concerning the stable on Racine Avenue, but if they have to apply for a Conditional Use are they going to have to pay for the permit? The reason I am asking this is if you look at Page 8 from the minutes of March 5, 1981 where this issue first came up. I don’t know how this affects any existing stables that may be over. This issue has been bounced around, and I don’t know if they ever got a clear answer.

Ms. Titel – The minutes from your meeting show they had been asking to install a 30’ x 90’ barn and I included that because it just had reference to the number, based on the number of acres. For any application that is filed, there is an application fee and developer’s deposit. That is our standard.

Alderman Ament – Because they were over apparently since then, they would have to go through the whole process and pay for the permits.

Ms. Titel – Yes, if they would like to exceed the one per acre.

Alderman Ament – The way I read this, it is basically to clarify how many horses or livestock could be permitted per acre and expands it so if they want to go over, they can apply for a Conditional Use.

Ms. Titel – That is correct.

Alderman Ament – I have heard from people in my district as it relates to hobby farms. As time goes on I want to make sure we are not over restrictive because some farms may not be able to survive as a traditional farm, but may as a hobby farm. Would they still fall under this? I want to be sure we are not too restrictive for that, that we loose that as an unintended consequence. Keep that in mind as we travel through this in the next month or so. If you look at our Codes, which backs up our Master Plan, Section 275.32 Agricultural District, it says under General Purpose and Intent, “The districts contained in this Section are created to provide appropriately located areas consistent with New Berlin Master Plan for full range of agricultural uses needed by New Berlin residents, businesses, and workers.” I assume that is directed primarily at A-1, but under A-1 it also says, “A-1 Agricultural District is intended to maintain, enhance, and preserve agricultural lands utilized for crop production in the raising of livestock.” I would like all of us to keep that in mind that the intent of the Master Plan and the Code is to try to preserve these and we don’t do anything that would overly restrict that.

Mayor Chiovaturo asked for further comments or questions from the Plan

Commissioners, seeing none.

Mayor Chiovatero closed the public hearing at 6:28 P.M.

**NEW BERLIN PLAN COMMISSION**

**AUGUST 3, 2009**

**MINUTES**

**PRIVILEGE OF THE FLOOR**

The Plan Commission Meeting was called to order by Mayor Chiovaturo at 6:29 P.M.

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

Motion by Mr. Christel to approve the Plan Commission Minutes from July 6, 2009. Seconded by Ms. Groeschel. Motion carried unanimously.

**PLAN COMMISSION SECRETARY'S REPORT - None**

**REFERRAL FROM UTILITY COMMITTEE**

1. (4)JT PG-946 – Sewer Service Area Amendments – 4986 Small Road.

Motion by Alderman Ament to confirm that a potential 3-lot land division for the property located at 4986 S. Small Road is consistent with the Land Use Map and Master Plan and should not be construed as an approval of water or sewer extension to the property.

Seconded by Mr. Christel. Motion carried unanimously.

**CONTINUED BUSINESS**

2. ( )GK PG-516 Comprehensive Plan Update

The open house dates for the Comprehensive Plan is scheduled for September 9 and 10, 2009 in the Council Chambers from 5:00 – 8:00 P.M. Tentative dates for the Plan Commission Public Hearing for the Comprehensive Plan is either October 6, or 7, 2009. All of the draft chapters and completed chapters are presented on the website, [www.newberlinplan.com](http://www.newberlinplan.com). If you have a request for a hard copy, please contact Mr. Kessler.

A Code Committee Meeting was held on July 16, 2009. Updates were made to the Sign Code. The next Code Meeting is scheduled for September 2, 2009 from 1:00 – 4:00 P.M. in the Badger Conference Room at City Hall.

The next Comprehensive Planning Steering Sub-Committee Meeting will be August 5, 2009 in the Council Chambers at 4:00 P.M. Topics to be covered at that meeting are the results of the Industrial Park Survey, Housing Chapter, Economic Development Chapter, Agriculture and Natural Resources Chapter, Neighborhood J Chapter (Quarries), Tax Analysis Study, Environmental Chapter, and Community Facilities Chapter.

## NEW BUSINESS

3. (5)NJ LD-09-04 Joseph T. Grascch – 14901 W. Library Ln. – Sw ¼ Sec. 14 – Four-Lot Land Division.

Motion by Mr. Sisson to recommend to the Common Council approval of the Four- Lot Certified Survey Map for the properties located at 14901 W. Library Lane subject to the application, plans on file and the following conditions:

- 1) General:
  - a) Applicant shall correct all drafting errors and requested changes identified by Staff on the final CSM prior to the City signing.
    - 1) Change language in legal description of property on page number 2:
      - i) On line 4, substitute “Commencing” for “Begin”.
      - ii) On line 6, substitute “the Southwest ¼ of Section 14” for said “southwest ¼”.
      - iii) Skip a line between the legal description for Lot number 1 and Outlot #1.
      - iv) On last line, substitute “the Southwest ¼ of Section 14” for “said ¼”.
      - v) Show acreage of parcels at end of each description.
    - 2) On page 9 of 11, line 1 substitute “&” for “7”.
    - 3) Applicant shall correct any lot closure issues.
  - b) 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.
  - c) CSM #10129 noted that Outlot #1, Library Lane, and Deer Creek Parkway right-of-way were dedicated to the City. Applicant shall verify if Outlots #1 and #2 will be owned by the developers or the City. The City may be required to sign the CSM as an existing owner.
  - d) Former CSM #10129 noted “the property owner of Lot #1 was to maintain Outlot #1.” Ownership of Outlot #1 and Outlot #2 shall be resolved and properly described on the face of the CSM.
- 2) All easements shall be shown on the face of the CSM.
  - a) The existing 100’ wide drainage easement for Deer Creek shall be shown on the face of the CSM.

- 3) All condominium documents, including the Plat and Declarations, shall be modified to reflect relevant changes to the declaration and condominium plat. All unit owners and their lenders shall sign off when modifying the declaration and condominium plat.
- 4) There is insufficient right-of-way proposed at the western connection to the existing west Library Lane. West Library Lane is platted as 60' wide on this CSM and shall be shown as 66' right-of-way dedicated to the City of New Berlin. Currently the City has 66' right-of-way just west of this site (in front of Medical Clinic).
- 5) The previous CSM's # 9653 and #10129 had an 8' jog in the North right-of-way line of W. Library Lane. Applicant shall correct this jog and dedicate additional right-of-way to the City of New Berlin.

Seconded by Alderman Ament. Motion carried unanimously.

4. (4)AB LD-09-03 Ernst Junior – 6050 S. Linnie Lac – SE ¼ Sec. 32 – One-Lot Land Division.

Motion by Mr. Sisson to recommend to the Common Council approval of the One-lot Certified Survey Map, including a 24' right-of-way on Linnie Lac Drive and 15' right-of-way on Miller Lane, for the properties located at 6050 – 6090 S. Linnie Lac Dr. subject to the application, plans on file and the following conditions:

- 1) General:
  - a) Applicant shall correct all drafting errors and requested changes identified by Staff on the final CSM prior to the City signing.
  - b) CSM shall be signed by current property owner.
  - c) 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.
  - d) The new address shall be 6080 S. Linnie Lac Drive.
  - e) There shall be a 40' building setback from Linnie Lac Drive and Miller Lane.

Seconded by Alderman Ament. Motion carried unanimously.

5. (4)JT UA-09-35 Darrell & Michelle Fynaardt – 13540 W. College Ave. – Detached Garage in Front Yard.

Motion by Mr. Sisson to approve the construction of an accessory building within the front yard of the property located at 13540 W. College Avenue subject to the application, plans on file and the following conditions:

- 1) Accessory building shall be constructed as depicted in the submitted plans.
- 2) Maintain all existing grading & drainage patterns throughout both the rear yard & side yard areas.
- 3) Match the existing yard grade, elevation, around the base of the addition +/- 6".

- 4) Slopes shall not exceed 4:1.
- 5) Blend the driveway extension into the existing driveway before reaching the road right-of-way.
- 6) Waukesha County Preliminary Site Evaluation required prior to building permit issuance.
- 7) Apply and obtain appropriate building and electric permits.
- 8) Building shall meet all requirements of the State of Wisconsin Uniform Dwelling Code Comm. 21 thru 23 and the Southeastern Building Inspectors Code requirements
- 9) Applicant shall apply for an erosion control permit and install erosion control measures if deemed necessary by Inspection Services Division.

Seconded by Ms. Broge. Motion carried unanimously.

6. (6)AB UA -09-39 – Jeffrey & Pamela Knurr - 13450 W. Coldspring Rd. - Detached Garage in the front yard.

Motion by Mr. Christel to approve the construction of an accessory building within the front yard of the property located at 13450 W. Cold Spring Rd. subject to the application, plans on file and the following conditions:

- 1) Accessory building shall be constructed as depicted in the submitted plans.
- 2) Maintain all existing grading and drainage patterns throughout both the rear yard and side yard areas.
- 3) Match the existing yard grade, elevation, around the base of the addition +/- 6".
- 4) Slopes shall not exceed 4:1.
- 5) If either the driveway or the culvert are to be relocated in the right-of-way, a permit shall be required for work within the right-of-way.
- 6) Apply and obtain appropriate building and electric permits.
- 7) Building shall meet all requirements of the State of Wisconsin Uniform Dwelling Code Comm. 21 thru 23 and the Southeastern Building Inspectors Code requirements
- 8) Applicant shall apply for an erosion control permit and install erosion control measures if deemed necessary by Inspection Services Division.
- 9) Applicant shall add landscaping along west property line to screen accessory structure.

Seconded by Ms. Broge.

Friendly amendment by Mr. Christel to have Condition #9 read as follows:

- 9) Applicant shall add landscaping of sufficient height, density, and appropriate species along west property line to substantially screen accessory structure.

Friendly amendment accepted by Ms. Broge.

Upon voting motion as amended carried unanimously.

## **CORRESPONDENCE**

7. Communication To: Plan Commission  
Communication From: Nikki Jones, Planning Services Manager  
RE: The Business Journal, July 9, 2009

Plan Commissioners acknowledged receipt of this communication.

8. Communication To: Plan Commission  
Communication From: Nikki Jones, Planning Services Manager  
RE: BizTimes Daily, July 6, 2009, General Rubber Company moves to New Berlin.

Plan Commissioners acknowledged receipt of this communication.

## **PENDING**

It was the consensus of the Plan Commissioners to communicate with Alderman Harenda for his consent to remove PG-293 Alternative Transportation from the Pending List.

Mayor Chiovero commented on the length of time that the remaining items have been on the list. City Attorney Blum said he saw no problem with seeing them all being terminated from the agenda without prejudice. Mr. Kessler asked if the applicants would need to be informed before Plan Commission acted. City Attorney Blum said that as a matter of courtesy, the applicants should be told that their item will be on the agenda for removal without prejudice. The rationale in removing these items is that the point of an agenda is to alert the public as to things that will be acted upon, and to have something on the agenda that long defeats that communication element of the agenda process.

## **ADJOURN**

Motion by Mr. Sisson to adjourn the Plan Commission Meeting at 7:17 P.M. Seconded by Ms. Broge. Motion carried unanimously.