

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

PUBLIC HEARINGS

6:00 P.M. (3)AB CU-7-07 AT&T – 20855 W. Downie Rd. – Cabinet and Power Pedestal.
(Public Hearing Tabled 8/13/07)

NEW BERLIN PLAN COMMISSION

NOVEMBER 5, 2007

MINUTES

The public hearing relative to the request by David Wellerritter, c/o AT&T located at 20855 W. Downie Road for a conditional use for placement of a utility cabinet within the C-1 zoning district was called to order by Mayor Chiovero at 6:00 P.M.

In attendance were Mayor Chiovero, Mr. Sisson, Mr. Felda, Alderman Ament, Ms. Groeschel, and Mr. Gihring. Also present were Greg Kessler, Director of Community Development; Nikki Jones, Planning Services Manager; Jessica Titel, Associate Planner; and Mark Blum, City Attorney. Ms. Broge 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. Jones read the public hearing notice and stated there was proof of publication.

Ms. Jones gave a brief presentation describing the request and showed maps indicating the location.

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

Mayor Chiovero asked three times if anyone wished to speak in favor of the project, seeing none.

Mayor Chiovero asked three times if anyone wished to speak in opposition of the project, seeing none.

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

Mayor Chiovero closed the public hearing at 6:07 P.M.

6:01 P.M. ()NJ PG-574(2 of 2) – Revision of non-metallic mining ordinance to reflect changes in the State Ch. NR135 Administrative Code requirements.

NEW BERLIN PLAN COMMISSION

NOVEMBER 5, 2007

MINUTES

The public hearing relative to the revision of the non-metallic mining ordinance to reflect changes in the State Ch. NR135 Administrative Code requirements was called to order by Mayor Chiovatero at 6:07 P.M.

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

Mayor Chiovatero 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 revision of the non-metallic mining ordinance.

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

Mayor Chiovatero asked three times if anyone wished to speak in favor of this item, seeing none.

Mayor Chiovatero asked three times if anyone wished to speak in opposition of this item, seeing none.

Mayor Chiovatero asked for comments or questions from the Commissioners.

Alderman Ament – I would like to thank staff for the way they presented the changes in the Staff Report. It made it very simple to note the changes. On page 18 of the Staff Report under Topsoil Management, what is topsoil substitute material?

Mr. Kessler – First of all, we need to give credit to the City Attorney and his office for the amendments.

Attorney Blum – It was a collaborative effort.

Mr. Kessler – Topsoil substitute material is defined within the new ordinance as soil or other unconsolidated material either used alone or mixed with other beneficial materials and which can provide the plant growth, site stability and other attributes necessary to meet the success standards approved in the Reclamation Plan. I would relate it to tackifier that we use for storm water management to hold barren soils in place. I would refer to top soil substitutes as peat, milorganite or things you would mix in with the soil to help re-vegetate a site.

Alderman Ament – On Page 20 of the Staff Report in the red section under Letter (G), what is field test plot demonstrations?

Mr. Kessler – The way I have read that here is instead of doing a large scale reclamation grading in a specific area, they would just do a small portion and apply the topsoil substitute creating the slopes. In other words, instead of reclaiming an acre, reclaim 20,000 sq. ft. to see how it stabilizes.

Alderman Ament – On Page 22 of the Staff Report under 275.65.1 Reclamation Plan, are we retaining the language regarding CR06-024? I assume we are and it was just added.

City Attorney Blum - Some of these are editorial comments just for purposes of explanation. If

you look at the actual ordinance draft that is also included with the packet, that is what is actually being changed. The recommendation that we made was to leave that language in there because we don't know what other materials might be out there and that the overall plan may benefit from the incorporation of those.

Alderman Ament – So if we approve this the way it is, that is included?

City Attorney Blum – Yes.

Alderman Ament – I understand this but maybe it will help anyone who is listening, On Page 25 of the Staff Report under C in red print it refers to not distinguishing between existing and new mines. Can you explain that for us?

Mr. Kessler – I was here when the City first chose to take over the NR135 Program. The way I understand the comments from the City Attorney's office is that at the time the ordinance was crafted, it allowed for automatic permit renewals for existing mines. The premise behind that is between 2001 when the law went into effect vs. now when these amendments came through, there shouldn't be any more existing mines still needing to go through the process to get that automatic permit.

City Attorney Blum – That is correct. Either they went through the process and became full fledged or they ceased operations. Otherwise, anything new would have to start from scratch, which is the language that is in here.

Alderman Ament – Anything existing just continues?

City Attorney Blum – It would keep operating under its existing permit. The point was that if you looked at the ordinance the way it was originally set up, the existing mines could basically start from scratch and were recognized as existing operations as opposed to new mines which would have more requirements.

Alderman Ament – I just wanted to make sure because I know over the years there has been a fair amount of concern about landfills. On Page 29 of the Staff Report under 275-65.4, does the red printing mean Sections B and C will be removed?

City Attorney Blum – Again, it is just a note indicating that the change that is being recommended is because of the distinction between existing mines and new mines. The existing mines already have a permit and do not need to go through the automatic permit process. If you look at the actual draft of the ordinance, Section 18 removes those two sections, so it reads permit is required and Letters D and C are being taken out. To your earlier question, also just to note the place where it is found. Section 8 also has that reference to existing mines. The last sentence in that last paragraph meets that referencing.

Alderman Ament – On Page 36 and 37 of the Staff Report there is reference in the Tables to the dollar amount. Will this have any affect on our budgets?

Mr. Kessler – I have not gotten into that sort of detailed analysis, but for 2006 I believe the revenue that was generated from NR135 fees was about \$4,000.00. One of the things I spoke with Mr. Fauble about was related to that very topic in terms of what the City was able to modify in these fee charts for our compliance reviews or hiring a consultant to do compliance check ups. He indicated that we could modify that fee table to support those costs. I am not prepared to present anything tonight, but I can certainly have some additional information available when we get to the Council with this ordinance. Right now, we are talking roughly \$4,000.00.

Alderman Ament – We could recover that back?

Mr. Kessler – Whatever our time and/or costs associated directly with contracting out. For example, we don't have a licensed geologist on staff to go out and inspect some of these sites. Whatever the cost would be, in terms of hiring and going to the quarries to do compliance reviews for reclamation can be charged, and we can put it in this ordinance.

Alderman Ament – It does not need to have a negative effect on us?

Mr. Kessler – It does not need to have a negative effect.

Mr. Gihring – In regard to those fees, we are talking about an increase of \$5.00-\$20.00 that the City has to give to the DNR for each application. How many applications do we get a year, just a few, right? Maybe two or three.

Mr. Kessler – It is based on un-reclaimed acres not number of applications. The actual table that applies to the City is Table 3. That would be what we would charge on a per acre basis.

Mr. Gihring – What I am saying, is the increase in the amount that must be given to the DNR is only \$5.00-\$20.00?

Mr. Kessler – That is correct.

Mr. Gihring – I don't know how many permits we issue per year, but if it is only a few, there is a negligible revenue loss.

City Attorney Blum – It is based on the acreage though. The number of mines is not significant. How many mines do we have that we have permits for?

Mr. Kessler – Five.

City Attorney Blum – Yes, that is my recollection also.

Mr. Gihring – It is still negligible.

Mr. Kessler – We can't change the dollar figure that has to go back to the DNR. I am more worried about what Alderman Ament was getting at. That is making sure that the compliance review and the work that the City needs to do to inspect the site and file the reports isn't a negative impact to the City.

Mr. Gihring – But that is a different issue.

Mr. Kessler – It is part of this ordinance. The fee has to be charged under this ordinance. I am not prepared tonight to tell you that the \$450.00 annual fee is appropriate. That is the fee that was originally put into the ordinance years back. I will do the investigative work.

Mr. Gihring – So it doesn't have to be done tonight?

Alderman Ament – I don't think so, unless there is some negative impact.

Mayor Chiovarero – What I am seeing here is that it is a \$450.00 fee, we have to give the DNR \$35.00, so the \$415.00 is to cover our costs at this time?

Mr. Kessler – That is correct.

Mayor Chiovarero – It goes up pretty exponentially. For the next acreage, we go up \$150.00, yet the fee we pay to the DNR only goes up \$35.00.

Mayor Chiovatero asked for further comments or questions, seeing none.

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

NEW BERLIN PLAN COMMISSION

NOVEMBER 5, 2007

MINUTES

PRIVILEGE OF THE FLOOR

The Plan Commission Meeting was called to order by Mayor Chiovatero at 6:30 P.M.

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

Motion by Mr. Sisson to approve the Plan Commission minutes of October 1, 2007. Seconded by Alderman Ament. Motion carried unanimously.

PLAN COMMISSION SECRETARY'S REPORT -

Mr. Kessler reminded the Plan Commission about the Plan Commission Training Workshop being held on November 6, 2007 at the Brookfield Suites beginning at 9:00 A.M.

Regarding the 2008 Meeting Schedule, there has been a request to move the January 2008 meeting from January 7 to January 14. If there are no objections from the Plan Commission, and the Council Chambers is available, we will make change accordingly and issue a revised schedule.

CONTINUED BUSINESS

1. ()RS PG-968 SEWRPC Transportation System Plan for Southeastern Wisconsin 2035 (PG-968) – Approve Plan and Resolution. (No Action 8/13/07, 9/10/07)

Motion by Mr. Sisson to recommend to Common Council adoption of a resolution to approve SEWRPC's Year 2035 Transportatio Plan for the region.

Seconded by Mr. Felda. Motion passes with Mayor Chiovatero, Mr. Gihring, Mr. Sisson, Mr. Felda, Ms. Groeschel voting Yes, and Alderman Ament voting No.

2. (5)NJ R-7-07 The Preserve at Weatherstone Meadows – 4200 S. Cambridge – Rezone from R-4.5/PUD, C-2/PUD and C-1 to R-4.5/PUD and C-2/PUD to Field Delineate the Wetlands and update/amend PUD Ordinance # 2108. (Public Hearing 6/4/07)

Motion by Mr. Sisson to recommend to Common Council adoption of an ordinance that approves the rezoning of the property located at 4200 S. Cambridge Drive from R-4.5/PUD, C-2PUD, and C-1 to R-4.5/PUD and C-2/PUD to field delineate the wetlands and update/amend the PUD Ordinance # 2108 accordingly.

Seconded by Mr. Felda. Motion carried unanimously.

3. (1)GK U-82-06 Deer Creek Inn & Conference Center – 1401 S. Moorland Road – Hotel & Conference Center. – Modification of Use, Site, and Architecture from Original Application.

Motion by Mr. Sisson to approve the modification to Condition # (5)(h) to waive the requirement for the applicant to submit a revised Certified Survey Map (CSM) as identified in Condition #(5)(h), subject to the application, plans on file, all other original conditions of approval, and the following summary points:

- 1) The Plan Commission granted the use approval for this project at the February 5, 2007 meeting. Condition #(5)(h) of that approval states that “The applicant shall prepare formal written permanent easement documents (to include water main), including graphic and written legal description attachments for each and record it at the Waukesha County Register of Deeds after review/approval by the City of New Berlin for each Water-Sanitary-Storm Drainage easements shown on an updated Certified Survey Map. A current, completed, signed and recorded CSM (Certified Survey Map) representing a consolidation of lots as required and approved as part of the PUD for the site shall also be submitted.
- 2) The portion of the condition identified above that is underlined is what is being requested be waived. The applicant has already prepared the necessary easement documents and is combining the lots via the Assessor’s Office. The City’s central concern is the dedication of the utilities. The recorded easements will satisfactorily accomplish this without going through the CSM process. The completion of a CSM is an unnecessary step.

Seconded by Ms. Groeschel. Motion passes with Mayor Chiovatero, Mr. Gihring, Mr. Sisson, Mr. Felda, Ms. Groeschel voting Yes and Alderman Ament voting No.

NEW BUSINESS

4. (3)AB CU-7-07 AT&T – 20855 W. Downie Rd. – Cabinet and Power Pedestal. (Public Hearing Tabled 8/13/07)

Motion by Mr. Sisson to remove this item from the table. Seconded by Alderman Ament. Motion carried unanimously.

Motion by Mr. Felda to approve the request for a Conditional Use for the installation of an AT&T cabinet and a power pedestal in the C-1 District located at 20855 W. Downie Road subject to the application, plans on file, and the following conditions:

- 1) The cabinet shall be located 5’ from the ROW line within the 10’ wide easement.
- 2) Cabinet to be serviced by technicians as necessary for installation, repairs, maintenance and service.
- 3) Apply and obtain appropriate building, plumbing and electrical permits.

- 4) The grant of this Conditional Use permit from the City of New Berlin ("City") to place certain facilities and supporting infrastructure ("facilities") on private property for the use of AT&T Wisconsin ("AT&T") is conditioned upon AT&T obtaining all permits, licenses, franchises and permissions required under federal, state or local law prior to AT&T's commencement of the use of the facilities to provide any video programming or other programming services, as those terms are defined in 47 U.S.C. Section 522, as amended, to subscribers in the City. Except for the grant of this Conditional Use permit pursuant to Chapter 275 of the New Berlin Municipal Code, this action by the City shall not constitute nor be construed as a grant of any permit, license, franchise or permission to provide any video programming or other programming services, as those terms are defined in 47 U.S.C. Section 522, as amended, to subscribers in the City otherwise required under federal, state or local law. Neither AT&T nor the City hereby waive any of their respective rights concerning their respective positions as to what, if any, permits, licenses, franchises and permissions are required under federal, state or local law concerning AT&T's use of the facilities to provide any video programming or other programming services, as those terms are defined in 47 U.S.C. Section 522, as amended, to subscribers in the City.

Seconded by Mr. Gihring. Motion carried unanimously.

5. (3)JT U-76-07 Dean & Mary Jo Grant – 1810 S. Springdale Road – Grading Plan.

Motion by Ms. Groeschel to approve a site grading plan for the property located at 1810 S. Springdale Road subject to the application, plans on file, and the following conditions:

- 1) Applicant shall seed and restore grass as soon as final grading is completed.
- 2) The berms shall not exceed a 3:1 slope anywhere on the property. For every one foot (1.0') of rise three feet (3.0') of run.
- 3) The grading, filling, landscaping and berm shall remain approximately five to ten feet (5.0'-10.0') off of the eastern (rear) lot line.
- 4) Maintain the existing tree line on the eastern (rear) lot line.
- 5) No trees shall be cut down or removed for this project.
- 6) Applicant shall be sure drainage from the neighboring properties to the east is not trapped along their rear (western) property lines to the railroad easement.
- 7) Drainage and landscaping shall not adversely impact any adjoining/neighboring properties.
- 8) No filling, grading or landscaping into the existing drainage easement running through this property, as shown on the City of New Berlin maps.
- 9) Erosion control/silt fence shall be installed and maintained until the ground is 80% stabilized. Periodic erosion control inspections shall be conducted by City staff.
- 10) Applicant shall submit a landscaping plan to be reviewed by staff.

Seconded by Mr. Felda. Motion carried unanimously.

6. (2)JT U-69-07 Alan C. Olson – 2880 S. Moorland Rd. – Building Addition.

Motion by Alderman Ament to table the request for use, site & architectural approval to construct a building addition located at 2880 S. Moorland Road subject to the plans on file and the following reason for tabling:

- 1) Applicant shall first make an application to the to the City of New Berlin Board of Appeals to determine if they will be able to grant a variance for a reduction in the 50' setback outlined in Section 275-25.D(2) which states: "No principal building shall be located closer than 50 feet to a residential district." The properties to the north and east are zoned R-5.

- 2) Submitted plans depicted a small pocket of wetlands in the northwest corner of the property. Applicant has completed a wetland delineation and has submitted an application for rezoning for the December Plan Commission meeting.
- Seconded by Ms. Groeschel. Motion carried unanimously.
7. ()NJ PG-574(2 of 2) – Revision of non-metallic mining ordinance to reflect changes in the State Ch. NR135 Administrative Code requirements.
- Motion by Mr. Sisson to recommend to Common Council adoption of an ordinance that approves the updates to the current sections of the New Berlin Zoning Ordinance Chapter 275-62 related to Non-Metallic Mine Reclamation.
- Seconded by Mr. Felda. Motion carried unanimously.

COMMUNICATIONS

8. Communication To: Plan Commission
Communication From: Nikki Jones, Planning Services Manager
RE: 2008 Plan Commission Meeting Dates (PG-790)
- See discussion under Secretary's Report above.
9. Communication To: Plan Commission
Communication From: Gregory W. Kessler, Director of Community Development
RE: Memo from Gregory W. Kessler, dated October 5, 2007 regarding P.E. Certification.
- Congratulations Ms. Simonson!
- Motion by Mr. Sisson to adjourn the Plan Commission meeting at 7:25 P.M. Seconded by Alderman Ament. Motion carried unanimously.