

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

PUBLIC HEARINGS

6:00 P.M. (3)TK R-10-07 Thomas Stoll & Bradley Smith – 18300 W. Cleveland Ave. –
Rezone from R-1/R-2/C-1/C-2 and P-1 to R-1/R-2/C-1/C-2 – Wetland delineation.

NEW BERLIN PLAN COMMISSION

OCTOBER 1, 2007

MINUTES

The public hearing relative to the request by Thomas Stoll and Bradley Smith for a rezoning at 18300 W. Cleveland Avenue from R-1/R-2/C-1/C-2 and P-1 to R-1/R-2/C-1/C-2 – Wetland delineation was called to order by Mayor Chiovero at 6:03 P.M.

In attendance were Mayor Chiovero, Mr. Sisson, Mr. Gihring, Alderman Ament, Ms. Groeschel, and Ms. Broge. Also present were Nikki Jones, Planning Services Manager; Tony Kim, Associate Planner; Eric Nitschke, Storm Water Engineer; and Mark Blum, City Attorney. Mr. Felda is expected.

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.

Mr. Kim 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 there was anyone wishing to speak in favor of this application, seeing none.

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

Mayor Chiovero asked for comments or questions from the Commissioners.

Alderman Ament – On Page 5 of the Staff Report, Findings No. 8, part of the last sentence is missing.

Mr. Kim – That sentence should read C-1 and R-2. There originally wasn't an R-1/R-2 designation, so the zoning on the property was just R-2 and C-1.

Alderman Ament – Regarding the frontage on Cleveland Avenue, the code for R-1/R-2 is 200 ft?

Mr. Kim – Correct.

Alderman Ament – I've got an old floodplain map. I don't know if it changed on the new map and I don't know if it effects this rezoning. The floodplain map that I have shows floodplain, but would this have anything to do with the zoning?

Mr. Kim – No. We determined that the buildable areas are outside the floodway and portions are in the flood fringe.

Alderman Ament – The map that I have just says floodplain, it doesn't break it down. The floodplain as described on my map shows it coming from below where the P-1 was and coming through going northwest and then widening out through the C-2 which should not effect them since they aren't going to be building in that area anyway, correct?

Mr. Kim – Correct.

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

Mayor Chiovatero closed the public hearing at 6:12 P.M.

6:01 P.M. (6)NJ R-14-07 Stonegate Apartments – 13175,13205,13235,13265 W. National Ave. – Rezone from Rm-1 to Rm-1 and C-2 – Wetland delineation.

NEW BERLIN PLAN COMMISSION

OCTOBER 1, 2007

MINUTES

The public hearing relative to the request by Dean Frederick, Thomson Corp. c/o Stonegate Apartments for a rezoning at 13175,13205,13235,13265 W. National Avenue from Rm-1 to Rm-1 and C-2 – Wetland delineation was called to order by Mayor Chiovaturo at 6:12 P.M.

In attendance were Mayor Chiovaturo, Mr. Sisson, Mr. Gihring, Alderman Ament, Ms. Groeschel, and Ms. Broge. Also present were Nikki Jones, Planning Services Manager; Tony Kim, Associate Planner; Eric Nitschke, Storm Water Engineer; and Mark Blum, City Attorney. Mr. Felda is expected.

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.

Ms. Jones gave a brief presentation describing the request and showed maps indicating 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 wishing to speak in favor of this application, seeing none.

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

Mayor Chiovaturo asked for comments or questions from the Commission.

Alderman Ament – The applicant received a variance and is working with the DNR on the floodplain issue. According to code they need to have a 30' setback from the C-2 zoning. Are they still going to fit the units in there?

Ms. Jones – This was approved in 1994 and they are maintaining the 10' setback, as we have done with other projects, since they haven't changed the detailing of their site plan.

Alderman Ament – On Page 2 of the Staff Report, under Use, Site, Architectural Review it mentions a Zoning Permit on file from July 22, 1994. Do those expire or have a time limit on them?

Ms. Jones – Currently, as you are aware we have made some Zoning Code changes where applicants have a certain number of months to pick up on a Zoning Permit and finish up their plans. This is a unique project. I was not involved in some of the early history. They have been making steady progress over the years. It was determined that they could continue on as long as they kept meeting all the guidelines. To date they could go to the State and get their State

approved plans and pull building permits, but they have the issue with the creek moving and now they are before us with the wetland delineation.

Alderman Ament – I just want to make sure we are being consistent. Do we have any issues with this, City Attorney?

Atty. Blum – No, as Ms. Jones indicated, this is a unique set of circumstances and the consensus based on the history and the applications that have been made is that there is substantial compliance with the application process and the deadlines that are necessary under the Code to the justify moving forward with this project.

Alderman Ament – Do we need to do anything special such as a waiver?

Atty. Blum – A waiver is not necessary. That was the conclusion that was reached. If there was an objection to it, it could be reviewed by the Commission.

Ms. Jones – Out of the 236 units, only 44 units are pending now for the four last buildings. When you look at substantial completion of the project, they have stayed on task and have not changed the plans. Mother Nature has thrown them a twist, which is why they are here tonight.

Alderman Ament – I just want to make sure that we are consistent and not doing something that later on will come back at us. Under Environmental Impact on Page 2 of the Staff Report, it states that the applicant has submitted a wetland delineation report dated 10/21/05. Those are good for five years, correct?

Ms. Jones – That is correct.

Alderman Ament – If we are good with that Zoning Permit from 1994, then that is all the comments and questions I have.

Ms. Broge – Nikki, you mentioned that the creek has migrated north and that they are working with the DNR on a creek bed stabilization plan. If it is known, how is that movement or shift in the creek bed going to effect any property owners in either direction?

Ms. Jones – They have added some elements to this plan that will help, such as a bio-swale in one of the areas to help with some of the additional drainage. Mr. Nitschke can add further information.

Mr. Nitschke – The impact of the property owners should be minimal and that is why the applicant is working with DNR to make sure that the creek does not migrate any further north. There will be stabilization. When we talk about stabilization, it is armoring of the stream banks in order to prevent them from eroding and allowing the creek to move any further. Flooding to the property that the applicant is looking to build the final buildings on, will not change. The floodplain has not changed with the relocation of the creek other than the creek is in a different spot within the limits of the floodplain itself. To any property owners to the south, there is enough fall that there really is no change. The creek may end up migrating south again sometime in the future, but it will stay in the valley down in that area.

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

Mayor Chiovatero closed the public hearing at 6:23 P.M.

NEW BERLIN PLAN COMMISSION

OCTOBER 1, 2007

MINUTES

PRIVILEGE OF THE FLOOR

The Plan Commission was called to order by Mayor Chiovero at 6:24 P.M.

In attendance were Mayor Chiovero, Mr. Sisson, Mr. Gihring, Alderman Ament, Ms. Groeschel, and Ms. Broge. Also present were Nikki Jones, Planning Services Manager; Tony Kim, Associate Planner; Eric Nitschke, Storm Water Engineer; and Mark Blum, City Attorney. Mr. Felda arrived at 6:30 P.M.

Motion by Mr. Sisson to approve the Plan Commission minutes of September 10, 2007.
Seconded by Ms. Broge. Motion carried unanimously.

PLAN COMMISSION SECRETARY'S REPORT

Ms. Jones referred to a handout in the Plan Commissioners packets from SEWRPC relating to the Transportation Plan on our pending item list. Ms. Jones said she has an extra copy of the Transportation Plan if anyone would like to look at it. A representative from SEWRPC is willing to come to our meeting to help in the progress to move the resolution for this plan on to Common Council. It was the consensus of the Plan Commissioners to discuss the Transportation Plan at the November Plan Commission Meeting without SEWRPC's assistance.

Ms. Jones said October 29, 2007 the library will be reserved for approximately two hours between 4:00 P.M.- 6:00 P.M. to have people from the City Center report on the development and status of City Center and have a workshop to look at Phase II. That room is very difficult to get, so it is advisable to stick to the October 29, 2007 date so Plan Commissioners should mark their calendars. Just as a note, this will be separate from the City Center public workshop that may be held here in November.

CONTINUED BUSINESS

1. (6)NJ U-14-94 Stonegate – 13125-13265 National Ave. (original application at 13401 W. National Ave.) – Modification of Use, Site, and Architecture from Original Application. (Tabled 6/4/07)

Motion by Mr. Sisson to remove this item from the table. Seconded by Ms. Broge. Motion carried unanimously.

Motion by Mr. Sisson to approve the Modification of Condition #7 of the Use, Site, and Architectural Approval for Zoning Permit #U-14-94 for the construction of the last four (4) apartment buildings within the Stonegate Apartment Complex (Buildings#: 15, 16, 17 and 18) to allow buildings to encroach within the 50' Ordinary High Water Mark (OHWM)/Shore setback located at approximately 13175, 13205, 13235, and 13265 W. National Avenue, subject to the application, plans on file, and satisfaction of the following conditions:

- 1) General

- a) Building plans shall be signed and stamped by a licensed architect or professional engineer per Wisconsin Enrolled Commercial Building Code. (Comm 61.31 Plans)
 - b) Building plans shall be approved by the State of Wisconsin Dept. of Commerce Safety and Buildings Division per Wisconsin Enrolled Commercial Building Code. (Comm 61.70 Certified municipalities and counties.)
 - c) Apply and obtain appropriate building, plumbing and electrical permits.
 - d) Erosion control shall be approved, permitted, installed and inspected prior to any commencement of site work or issuance of any building permits. This includes any temporary erosion control measures.
 - e) Board of Appeals granted variances of 14.4 feet; 35.9 feet, and 13.4 feet for buildings 16, 17, & 18 for setbacks from the Ordinary High Water Mark of creek to south.
- 2) Storm Water
- a) The bio swale shall be installed next construction year in the timeframes recommended in the landscape plan and / or wetland enhancement plan.
 - b) Since the Board of Appeals has granted the variance, the stream bank stabilization plan will be constructed before construction of buildings #'s 16-18 begins.
 - c) Applicant shall adhere to all conditions in the DNR permit for the stream bank stabilization and shall coordinate with Community Development Staff to ensure all construction sequencing is addressed prior to the start of construction.
 - d) Developer shall provide the City with a final completion date for the project.
- 3) Engineering
- a) Applicant shall correct the PDF architectural elevation plan for the proposed 8-family building (building # 18) as it was mislabeled as a 12-unit building.
 - b) Applicant shall coordinate with Building Inspection to ensure that handicap accessibility routes shown meet the State Building Code.
 - c) Since the creek has moved, the City will require that the existing drainage easement be revised to include the part of the creek close to building #17. Drainage easement shall not include the retaining walls and the Storm Water Maintenance Agreement shall indicate that the Association/Owners shall be responsible of the maintenance of these walls and associated Best Management Practices.
 - d) The proposed location of the sanitary sewer easement is acceptable. Applicant shall provide legal description.
 - e) Applicant shall provide a letter from Waukesha County approving the work within their right-of-way. This includes approval of the "street type" entrance off of National Avenue.

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

2. (3)TK R-10-07 Thomas Stoll & Bradley Smith – 18300 W. Cleveland Ave. – Rezone from R-1/R-2/C-1/C-2 and P-1 to R-1/R-2/C-1/C-2 – Wetland delineation. (Tabled 7/9/07)

Motion by Ms. Groeschel to remove this item from the table. Seconded by Alderman Ament. Motion carried unanimously.

Motion by Alderman Ament to recommend to Common Council adoption of an ordinance that approves the rezoning of the property located at 18300 West Cleveland Avenue from R-1/ R-2, C-1,C-2 and P-1 to R-1/R-2, C-1 and C-2 to field delineate the wetlands and remove the P-1 zoning on the property.

Seconded by Mr. Felda. Motion carried unanimously.

3. (3)TK LD-2-07 Thomas Stoll & Bradley Smith – 18300 W. Cleveland Ave. – SW ¼ Sec. 9 – Three-Lot Land Division. (Tabled 7/9/07)

Motion by Mr. Felda to remove this item from the table. Seconded by Mr. Gihring. Motion carried unanimously.

Motion by Mr. Gihring to recommend to Common Council approval of the 3-lot Certified Survey Map for the property located at 18300 West Cleveland Avenue 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) 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.
- 2) The ultimate right-of-way for CTH D (Cleveland Avenue) is 130-feet (65-feet on each side of the centerline). Existing right-of-way is only 110-feet west of the subject property (not 120-feet as shown – 60-feet north, 50-feet south). The dedicated public right-of-way should be dimensioned as 65-feet from the reference centerline to clarify the area being dedicated.
- 3) The Cleveland Ave. road and ditch drains through proposed Lot #1. The City shall not be responsible for drainage problems and recommends that the owner discuss this situation with Waukesha County. Discharge from the ditches along Cleveland Avenue shall be accounted for prior to the City signing the CSM. An easement may be required.
- 4) All easements shall be shown on the face of the CSM. This includes the Conservation Easement Document number provided by Waukesha County.
- 5) The Southeastern Wisconsin Regional Planning Commission (SEWRPC) has determined that there is Primary Environmental Corridor (PEC) on this site and concurs with the work performed by Yaggy-Colby on July 8, 2007. (Please see attached letter.) The SEWRPC's definition of a Primary Environmental Area states that "they contain concentrations of our most significant natural resources. They are at least 400 acres in size, at least two miles long and at least 200 feet wide". A Conservation Easement will be prepared for this parcel limiting areas of disturbance on each lot to 25,000 sq. ft. as has been past practice with other projects with PEC.
- 6) Applicant shall be required to coordinate with City staff to execute a Conservation Easement over the site that is outside of the C-2 Shoreland Wetland District to protect the Primary Environmental Corridor (PEC) on the site. This will further strengthen the development requirement guidelines outlined in Section 275-37 B (3) and Section 275-37.D.(3)(c)[3].
 - a) Note 1 on CSM: A note shall be placed on the CSM that the 25,000 square ft. of buildable area shall be established and recorded at the time of Building Permit via a stake out survey.
 - b) Note 2 on CSM: Since this is PEC a second note shall be added to the CSM that at the time of building permit application a detailed tree inventory of the tree canopy that is being removed shall be provided and reviewed by Staff prior to the issuance of a Building Permit.

- c) Note 3 on CSM: A tree preservation plan/protection plan shall be in place prior to any construction and will be inspected at the time of building permit.
 - d) The applicant shall be responsible for recording the conservation easement document first then shall add that conservation easement document # from Waukesha County to the face of the CSM as a note. The surveyor will need to add this note to the CSM and leave a blank for the applicant to fill in the document number.
- 6) Rezoning must be approved by the Common Council prior to the City signing the CSM.

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

NEW BUSINESS

4. (7)AB U-35-05 Ronald Regan Elementary School – 4225 S. Calhoun Road – Lighting waiver.

Motion by Mr. Gihring to approve the request for the lighting waiver at 4225 S. Calhoun Road, subject to the following conditions/criteria:

- 1) Waiver Request – Applicant requests a waiver to deviate from the City lighting requirements per Section 275-60I because of maintenance and cost for the school district.
 - a) One (1) standard We-Energies light pole to be located at the end of the service drive at National Avenue within the City right-of-way. The School District shall pay initial installation costs. The City shall pay ongoing maintenance and electrical costs.
 - b) One (1) or two (2) light pole(s) to be located at the midpoint of the service drive. Said light pole shall be fed by the on-site lighting system.
 - c) Reduced lighting in overflow parking lot shall be allowed in the range of ~1.0 foot candle. Said light poles shall be fed by the on-site lighting system.
 - d) The property owner shall agree to indemnify the City against any claims arising from the waiver of the lighting standards as to the foot candle level in the parking area and service drive.

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

5. (6)NJ R-14-07 Stonegate Apartments – 13175,13205,13235,13265 W. National Ave. – Rezone from Rm-1 to Rm-1 and C-2 – Wetland delineation.

Motion by Alderman Ament to recommend to Common Council adoption of an ordinance that approves the rezoning the property located at approximately 13175, 13205, 13235, and 13265 W. National Avenue from Rm-1 to Rm-1 and C-2 to field delineate the wetlands.

Seconded by Ms. Groeschel. Motion carried unanimously.

6. (6)NJ U-67-07 Krause Funeral Home – 12405 W. National Avenue - Change in Use

Motion by Alderman Ament to approve the request to modify the Use, Site and

Architectural approval by amending the original Plan of Operation for Krause Funeral Home located at 12405 W. National Avenue to allow food and beverages to be served in the facility as an accessory use to the funeral operations subject to the application, plans on file, and the following conditions:

- 1) Under Table 275-34-1 for B-2, Funeral Homes and restaurants are listed as "principal" uses. The serving of food and beverage will be allowed as an "accessory" use only to the funeral home as defined by the Zoning Code as "a use that is subordinate to the principal use that is located on the same lot." The funeral home has provided this service in the past and would like to continue to do so with approval by the City. They have applied for a liquor license through the Clerk's office.
- 2) Plan of Operation:
 - a) The dining area is limited to the two dining areas on the lower level; one area is approximately 630 square feet and the other area is approximately 1400 square feet. These areas have previously been used as a place for family and guests to gather for food and refreshments.
 - b) In the past, the funeral home has provided coffee and soda, and coordinates with the family and Riversedge Catering in order to provide food for the family and guests. Food is not prepared at the site; food is brought in by the family or the caterer and removed following the event.
 - c) Deliveries can take place via the north first floor entrance or the garage entrance.
 - d) The funeral home has a restaurant license and has complied with all sanitary regulations necessary to maintain their license.
 - e) There has been no change in the hours of operation and the number of employees with this request.
- 3) Fire
 - a) This application shall not include food preparation, only food served by the catering company or brought in by a group.
 - b) Applicant shall coordinate with the Fire Department to post signs for the capacity of the dining area.

Seconded by Mr. Sisson. Motion carried unanimously.

7. (4)GK S-64-07 Buy Seasons – 5915 Moorland Road – Monument Sign.

Motion by Alderman Ament to approve the two (2) foot waiver to the overall height and a 19 square foot waiver for the size of the face of the monument sign to be located along Moorland Road subject to the application, plans on file, and the following conditions outlined below:

- 1) Due to existing site conditions such as the speed of traffic, grade changes, existing landscaping and the overall monument sign setback (approximately 100' feet from edge of pavement) from Moorland Road, staff recommends approval of the waiver.
- 2) One other monument sign along Small Road and sculpture near the front of the building will be reviewed and approved by staff administratively.
- 3) Pursuant to Section 275-61(l)(c)(2), "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". And, pursuant to Section 275-61(l)(c)(3), "Monument signs shall not exceed 32 square feet in face area per side". The applicant is proposing the monument sign be ten (10) feet tall and the face of the monument sign is proposed at approximately 51 square feet [13' 10" (13.83) x 3' 8" (3.67)].

- 4) 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 Mr. Sisson. Motion carried unanimously.

8. ()NJ PG-972 Community Planning Month Proclamation

Motion by Alderman Ament to approve the Community Planning Month Proclamation. Seconded by Ms. Broge. Motion carried unanimously.

9. ()GK PG-516(a) Nominations and Selection of Plan Commission Representatives to the Comprehensive Plan Steering Sub-Committee.

Alderman Ament nominates Paul Gihring as Plan Commission representative for Park & Rec Commission.

Nominations were closed.

Motion by Alderman Ament to elect Paul Gihring as Plan Commission representative for Park & Rec Commission. Seconded by Ms. Broge. Motion carried unanimously.

Mr. Felda nominated Alderman Ament for Plan Commission representative.

Nominations were closed.

Motion by Mr. Sisson to elect Alderman Ament as Plan Commission representative. Seconded by Mr. Felda. Motion carried unanimously

COMMUNICATIONS

10. Communication To: Plan Commission
Communication From: Greg Kessler, Director of Community Development
RE: By-Laws Update

Applicants to the Plan Commission will be informed that meetings adjourn at 10:00 P.M. No additional items will be considered unless granted by the majority of the Plan Commission. The Plan Commission may extend the meeting in 30 minutes intervals.

11. Communication To: Plan Commission
Communication From: Tony Kim, Associate Planner
RE: Parade of Homes 2007 Report

Mr. Kim gave a brief presentation on his tour of the Parade of Homes. Copies of the power point report are available upon request.

12. Communication To: Plan Commission
Communication From: Greg Kessler, Director of Community Development
RE: Required Revisions to the Nonmetallic Mining Reclamation Ordinances.

(PG-574)

The City Attorney is looking into this and will be providing an update on the changes in the revised ordinance after which a public hearing will be set before the Plan Commission.

ADJOURN

Motion by Mr. Sisson to adjourn the Plan Commission meeting at 8:00 P.M. Seconded by Mr. Felda. Motion carried unanimously.