VILLAGE OF MCFARLAND *NOTICE OF PUBLIC MEETING*

PLAN COMMISSION

Monday, November 19, 2018 **7:00 PM** **McFarland Municipal Center**
Community Room

AGENDA

1. CALL TO ORDER

2. PUBLIC APPEARANCES.

3. APPROVAL OF MINUTES.
   a. Review and possible approval of draft minutes from the October 15, 2018 Plan Commission meeting.

4. BUSINESS.
   a. Public Hearing - Review and possible recommendation to the Village Board regarding Ordinance No. 2018-15. an Ordinance amending the Historic Preservation zoning code to qualify for the Certified Local Government Historic Preservation program.

   b. Review and possible action on a request by Beachhouse LLC to extend the deadline of a temporary CUP No. 274 regarding parking and staging of construction materials from November 15, 2018 to January 1, 2019.

   c. Discussion only - Driveway location at Risen Savior Church, 5001 Holscher Road.

   d. Discussion and possible recommendation to the Village Board regarding annual review of fees in lieu of parkland dedication-Sec. 56-176 of the Village of McFarland Municipal code.

   e. Discussion Only - Village Attorney review latest law changes involving Conditional Uses and cell towers.

5. STAFF REPORTS
   a. Highlights and updates

   b. Property maintenance

6. ADJOURNMENT.

This meeting notice constitutes an official meeting of the above referenced group and was posted in accordance with all applicable laws related to Open Meetings Law. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals. For additional information or to request this service, contact the McFarland Municipal Center at (608) 838-3153 or cassandra.suettinger@mcfarland.wi.us.

Minutes

Working Draft - Plan Commission

Meeting

October 15, 2018

Members Present:	Bruce Fischer, Peter Bloechl-Anderson, Brad Czebotar, Dan Kolk, Cathy Kirby, Jeff Sorenson, Tom Rogers
Members Absent:	None
Staff Present:	Pauline Boness, Karen Knoll

1. CALL TO ORDER

Czebotar called the meeting to order at 7:00 p.m.

2. PUBLIC APPEARNCES

None

3. APPROVAL OF MINUTES

a. Review and approval of draft Minutes from the September 17, 2018 Plan Commission meeting.
Czebotar called the minutes approved by unanimous consent.

4. BUSINESS:

a. **Public Hearing Review and possible action regarding a Temporary Conditional Use Permit (CUP), requested by Don Goben, to allow a utility contractor to temporarily occupy 4313 Triangle Street, McFarland as a staging/storage area for materials and equipment. Property zoned MIC Manufactured Intensive Commercial.**

Czebotar opened the public hearing at 7:01 p.m.

Don Goben explained TDS Corporation is using his site at 4313 Triangle Street as a staging/storage area for their materials while working in McFarland, rather than storing it on the streets. Goben made an agreement with TDS to let them use the site and rather than pay rent, install a fence around the property to help protect the site. The fence will be a 10’ chain link with privacy slates. There will be barbwire only along the rear and side of the fence. Landscaping of arborvitaes will be placed every ten feet on the outside of the fence along the front and sides. Goben currently uses the site for inside storage of his vehicles. He does not intend to store anything outside on the property. He understands if he did, it would be necessary to come before the Plan Commission with an application. He is trying to do what is best for at this location. He does plan to do some repairs to the building in the future, and possibly change the color of the building; which is why, he would like the ability to select the fence and slat color himself.

Czebotar closed the public hearing at 7:05 p.m.

Kirby would like to know what type of arborvitaes would be used. Boness inquired of Rogers what type he would recommend. Rogers replied techny arborvitae comes to mind, as they grow wider. Commissioners discussed various types of plantings, as to size, shape and growth, concurring on using techny arborvitae. Kolk questioned the height of the fence per the ordinance- eight feet vs ten feet for screening and fence equal to the height of the items stored. Commissioners discussed the various options for requirements for the height of the landscaping. Kirby felt with the privacy slates and trees will give it some privacy along with softening of the area. Czebotar inquired of Goben if he had any idea on fence colors. Goben stated there are various options from blue to red, to tan. He is not in favor of using grey as he feels it gives too municipal of a look. Commissioners felt tan would be a good option, and were not concerned about the appearance against the gravel parking lot. Goben would like approval to plant the trees in the spring as he feels we are past the timeframe for planting this season. Commissioners discussed options of planting in the spring, weather issues, and allowing a reasonable amount of time to establish plantings. Commissioners agreed on a June 1, 2019. Goben felt the fencing and plantings would help the appearance of the property. Bloechl-Anderson inquired on the timeline for fence installation. Goben replied the company is ready to move on it, they needed to get through the proper approval process first.

Kirby moved to grant a temporary conditional use permit requested by Don Goben, to allow a utility contractor to temporarily occupy 4313 Triangle Street, McFarland as a staging/storage area for materials and equipment. Property zoned MIC Manufactured Intensive Commercial. With a deadline of June 1, 2019 for installation, completion of landscaping; and, the fence to be as outlined in the background material submitted by Mr. Goben and approved by staff. Fischer seconded the motion. Sorenson inquired if we needed a deadline for installation of the fence. Commissioners felt it would likely be installed in a few weeks. Kirby amended the motion to read "as a staging storage area for materials and equipment with the understanding that a 10' fence will be erected to screen those items within the next 30 days with a deadline of June 1, 2019 for installation of landscaping" Fischer agreed to the amendment. Motion carried 7-0.

5. STAFF REPORTS

a. Highlights and updates – Boness mentioned at the next meeting she would like to have the Village attorney come and speak on the changes to Conditional Uses under the statutes.
b. Property Maintenance – No comments

6. ADJOURNMENT

Kirby moved to adjourn, Kolk seconded the motion, motion carried. Meeting adjourned at 7:27 p.m.

PLAN COMMISSION SUMMARY SHEET

MEETING DATE: **Monday, November 19, 2018**

SECTION: **Business**

DEPARTMENT: **Community Development**

CONTACT:

AGENDA ITEM: **Public Hearing - Review and possible recommendation to the Village Board regarding Ordinance No. 2018-15. an Ordinance amending the Historic Preservation zoning code to qualify for the Certified Local Government Historic Preservation program.**

PREVIOUS ACTION:

ISSUE SUMMARY:

According to the State Historic Preservation Office, some minor changes to the Villages' Historic Preservation code relating to voting and notice for hearings are now required in order for the Village to be eligible for status as a certified local government.

Our attorney has made the necessary changes. The Landmarks Commission has reviewed and recommended approval. This item is before you as sections 62-395, 398 & 402 are part of the zoning code, which is under jurisdiction of the Plan Commission and Village Board.

FINANCIAL/BUDGET IMPACT:

VILLAGE PLAN REFERENCE:

ORDINANCE REFERENCE:

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

Approval to the Village Board

ATTACHMENTS:

1. 11.19.18 Historic pres ord - emails
2. Ord 2018.15 - 11.19.18 updated

Village of McFarland

Pauline Boness

From:	JOSEPH R DEROSE <jrderose@wisc.edu>
Sent:	Thursday, September 13, 2018 1:16 PM
To:	Pauline Boness
Subject:	Slight ordinance changes required for CLG status

McFarland's Historic Preservation Ordinance looks pretty good! A few changes, however, are required in order to meet Wisconsin's Certified Local Government program requirements. In 2015, Wisconsin Act 176 was signed into law by the Governor. It states that appeals of landmark commission decisions only require a majority vote. Sec. 62-395 (c) and Sec. 62-398 of your ordinance requires a 2/3 vote so this needs to be changed in order to be in compliance with state law. Act 176 also affects Sec. 62-402 (a) of your ordinance. The reference to "...a class 2 notice" needs to be changed to "first class mail." Once these changes have been made, send me the revised ordinance and I'll pass everything on to the National Park Service for final approval. As always, let me know if you have questions regarding this.

Joe DeRose
Certified Local Government Coordinator
State Historic Preservation Office

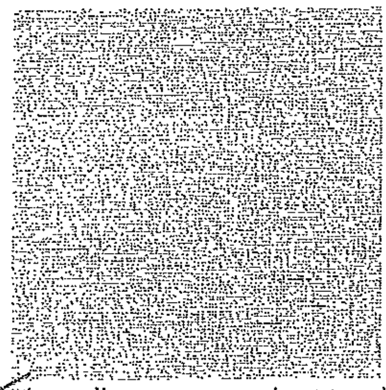
Wisconsin Historical Society
816 State St
Madison WI 53706
608-264-6512(o)
Email: joe.derose@wisconsinhistory.org

Wisconsin Historical Society
Collecting, Preserving, and Sharing Stories Since 1846

Pauline Boness

From: JOSEPH R DEROSE <jrderose@wisc.edu>
Sent: Thursday, May 4, 2017 12:08 PM
To: Pauline Boness
Subject: RE:

Follow Up Flag: Follow up
Flag Status: Flagged



The ordinance you sent me meets Wisconsin's requirements for admission in the CLG program. The rest of the application process may be found on our website at http://www.wisconsinhistory.org/Content.aspx?dsNav=N:4294963828-4294963805&dsRecordDetails=R:CS4323 Let me know if you have questions regarding this process.

From: Pauline Boness [mailto:Pauline.Boness@mcfarland.wi.us]
Sent: Thursday, May 04, 2017 10:30 AM
To: JOSEPH R DEROSE
Cc: Mary Pat Lytle
Subject:

Morning Joe, Was nice talking to you last week at the conference. The Village is interested the Certified Local Government Program. I've attached our Hist. Pres. Ord. and was wondering if you could look over and point to any problem area we would need to change. We do have an appeal process so we are good on that point. Thanks in advance for your help

Pauline Boness
Community Dev. Dir.
Village of McFarland
608-838-3154
pauline.boness@mcfarland.wi.us

ORDINANCE 2018-15
AN ORDINANCE AMENDING THE HISTORIC PRESERVATION ZONING CODE TO QUALIFY FOR THE CERTIFIED LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAM.

Purpose: Under this proposed ordinance, the Historic Preservation Code is amended in order for the Village to qualify for the Certified Local Government Historic Preservation Program administered by the Wisconsin Historical Society. Participation in the program includes the benefit of eligibility to apply for grants from the Historic Preservation Fund. The proposed changes to the existing ordinance are relatively minor and do not change the substance of the current ordinance.

Sponsor: Community Development Director Boness

Recommended Referral: Plan Commission and Landmarks Commission (Required)

Public Hearing: Required; Preceded by Class 2 Notice

The Village Board of the Village of McFarland does hereby ordain as follows:

1. Section 62-395 (c) of the McFarland Municipal Code is hereby amended to state as follows:

   (c) *Granting of certificate.* If the Landmarks Commission decides the above questions applicable in the negative, it shall grant the certificate of appropriateness. Upon the issuance of such certificate, the Building Inspector shall issue the building permit. The Landmarks Commission shall make this decision within 45 days of the filing of the application. Should the Landmarks Commission deny the application, the applicant may appeal such decision to the Village Board, which may grant said certificate by a majority New vote of the membership, upon a clear showing of economic hardship by the applicant. In addition, if the Landmarks Commission fails to approve an application, the Landmarks Commission shall, at the applicant's request, cooperate and work with the applicant in an attempt to obtain a certificate of appropriateness within the guidelines of this Article.

2. Section 62-398 of the McFarland Municipal Code is hereby amended to state as follows:

   A decision by the Landmarks Commission to deny a certificate of appropriateness may be appealed to the Village Board. The appeal shall be initiated by filing a petition, specifying the grounds therefor, with the Village Clerk-Treasurer within ten days of the date the decision of the Landmarks Commission is made. After a public hearing, the Village Board may, by vote of a majority of its members, reverse or modify the decision
   New

of the Landmarks Commission if, after balancing the interest of the public in preserving the subject property and the interest of the owner in using it for such owner's own purposes, the Village Board finds that, owing to special conditions pertaining to the specific piece of property, demolition will preclude any and all reasonable use of the property and/or will cause serious hardship for the owner, provided that any self-created hardship shall not be a basis for reversal or modification of the Landmarks Commission's decision.

3. Section 62-402 (a) of the McFarland Municipal Code is hereby amended to state as follows:

New

(a) The Landmarks Commission shall hold a public hearing when considering the plan for an Historic District. Notice of the time, place, and purpose of such hearing shall be made by 1st class mail to the owners of the places, structures or objects of the determination, and as otherwise provided by law. Notice of the time, place and purpose of the public hearing shall also be sent by the Village Clerk-Treasurer to the owners of record, as listed in the assessment records, who are owners of property situated within the district or within 200 feet of the boundaries of the proposed district at least ten days prior to the date of the hearing. Following the public hearing, the Landmarks Commission shall vote to recommend, reject or withhold action on the plan. The recommendation, if any, shall be forwarded to the Village Board.

The above and foregoing Ordinance was duly adopted at a regular meeting of the McFarland Village Board on the _____ day of ________________, 2018.

APPROVED:

____

Brad Czebotar, Village President

ATTEST:

____

Cassandra Suettinger, Village Clerk-Treasurer

ORDINANCE 2018 –15	
MOTION	SECOND
ACTION	DATE
Adopted	
Referred	
Tabled	
Withdrawn	
Defeated	
Published	
INDIVIDUAL VOTING RECORD	

PLAN COMMISSION SUMMARY SHEET

MEETING DATE: **Monday, November 19, 2018**

SECTION: **Business**

DEPARTMENT: **Community Development**

CONTACT:

AGENDA ITEM: **Review and possible action on a request by Beachhouse LLC to extend the deadline of a temporary CUP No. 274 regarding parking and staging of construction materials from November 15, 2018 to January 1, 2019.**

PREVIOUS ACTION:

ISSUE SUMMARY:
The development of Waubesa Shores by Beachhouse LLC has experienced some delays; as a result, the developers would like to extend the November 15, 2018 deadline to mid-December 2018.

FINANCIAL/BUDGET IMPACT:

VILLAGE PLAN REFERENCE:

ORDINANCE REFERENCE:

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:
I suggest an expiration date of January 1, 2019 to cover any additional delays.

ATTACHMENTS:
None

PLAN COMMISSION SUMMARY SHEET

MEETING DATE: **Monday, November 19, 2018**

SECTION: **Business**

DEPARTMENT: **Community Development**

CONTACT:

AGENDA ITEM: **Discussion only - Driveway location at Risen Savior Church, 5001 Holscher Road.**

PREVIOUS ACTION:

ISSUE SUMMARY:

Due to the fact my husband Ray Boness chairs the building committee assigned to this project our Building Inspector will be handling this agenda item. The background on this item is from Marty Pilger.

FINANCIAL/BUDGET IMPACT:

VILLAGE PLAN REFERENCE:

ORDINANCE REFERENCE:

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

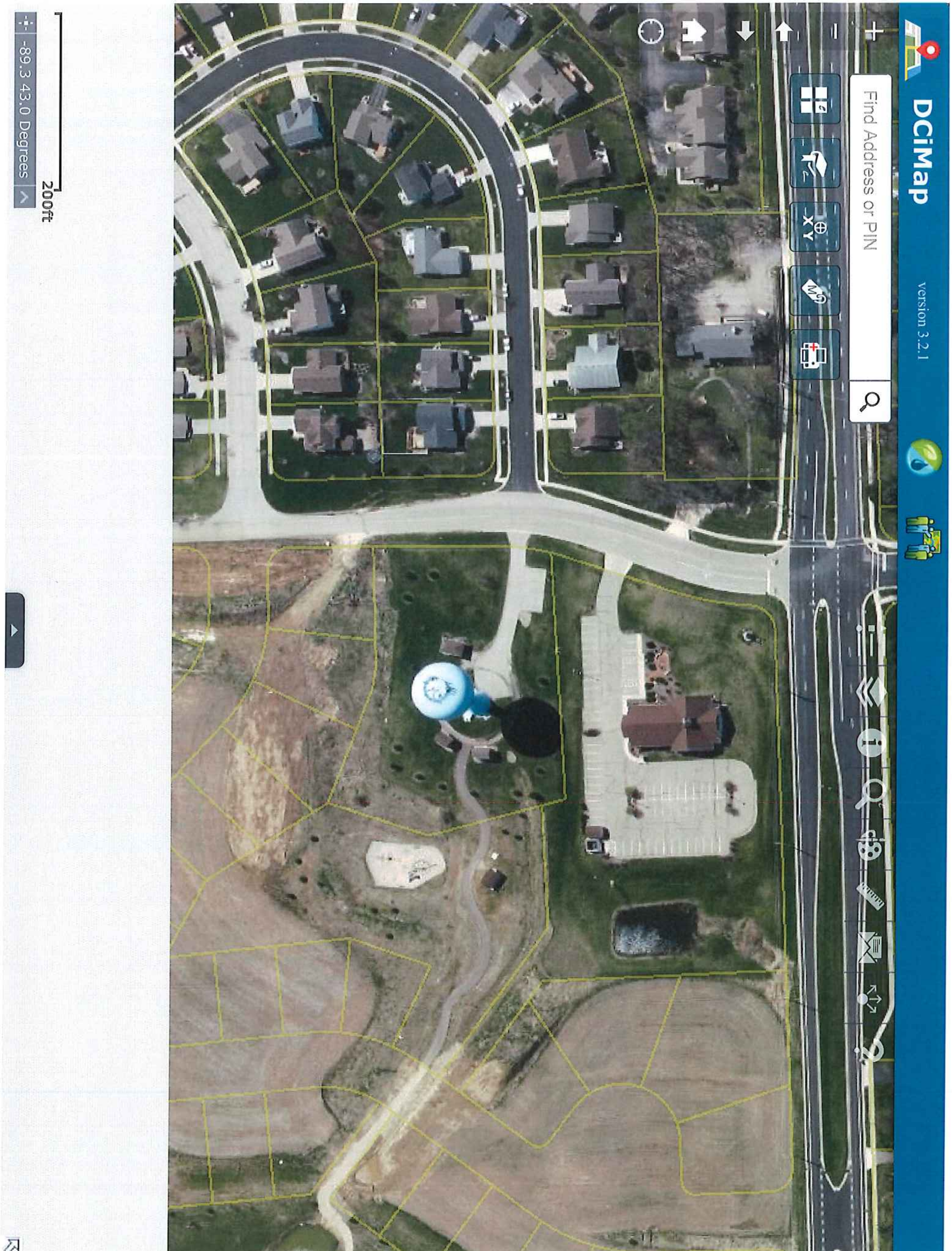
ATTACHMENTS:

1. Risen Savior background 2018
2. Risen Savior Church 11.19.18

In 2009 when Risen Savior Lutheran Church was approved the original plan included driveway access to the property through the Juniper Ridge Subdivision. Because of the economy, the development of the subdivision was postponed. The Plan Commission approved driveway access off Holscher Road with the understanding that once the subdivision was completed the original driveway access would be installed and the Holscher Road driveway abandoned.

In 2009 the Village planned to restrict access points on Holscher Road in the Juniper Ridge Plat. Since that time Gannon Construction has developed his lots on the west side of Holscher Road and the final plat of Juniper Ridge Subdivision was approved with driveways on Holscher Road.

Risen Savior Lutheran Church is planning on building and addition and wishes some direction on the driveway location issue.


DCiMap
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PLAN COMMISSION SUMMARY SHEET

MEETING DATE: **Monday, November 19, 2018**

SECTION: **Business**

DEPARTMENT: **Community Development**

CONTACT:

AGENDA ITEM: **Discussion and possible recommendation to the Village Board regarding annual review of fees in lieu of parkland dedication-Sec. 56-176 of the Village of McFarland Municipal code.**

PREVIOUS ACTION:

ISSUE SUMMARY:

You may recall, for new residential land divisions/ subdivisions, dedication of parkland (l acre per 15 units) for park purposes, or where not feasible, fees in lieu ($4,115 per unit) are required. Our code requires an annual review by the Plan Commission and Village Board. Recent land sales in our area are reviewed; if no comparable land sales have taken place, the consumer price index is used to make any monetary adjustments.

Recent changes in state law as to how fees in lieu of land dedication are calculated indicate a new approach to establishing fees in lieu may be necessary. Approximately $15,000 has been designated in the 2019 budget for our auditor to review the new law and analyze our current methodology. In addition, these monies will be used to also update the Village Park Impact Fee, which has not been revised since 2004. Impact fees are typically based on capital improvement plans effecting the park system.

FINANCIAL/BUDGET IMPACT:

VILLAGE PLAN REFERENCE:

ORDINANCE REFERENCE:

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

Due to possible major changes to how we determine these fees, I recommend (if you so desire) a 2.5% adjustment to reflect the CPI.

ATTACHMENTS:

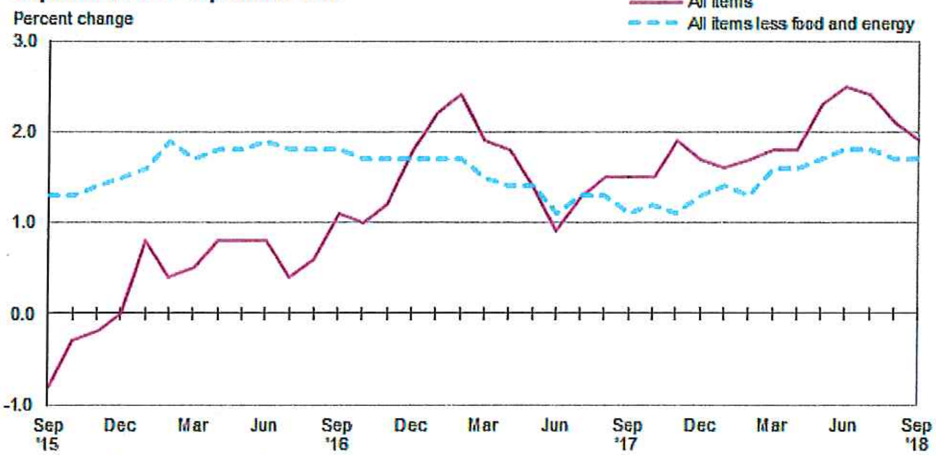
1. CPI 11.19.18

Consumer Price Index, Midwest Region – September 2018

Prices in the Midwest up 0.1 percent in September and 1.9 percent higher over the year

The Consumer Price Index for All Urban Consumers (CPI-U) in the Midwest inched up 0.1 percent after recording no change in each of the prior two months, the U.S. Bureau of Labor Statistics reported today. Higher prices for apparel (5.0 percent) had the largest upward impact on the monthly index. Lower prices for new and used motor vehicles (-2.1 percent) provided the largest offsetting effect. Food prices were up 0.3 percent for the month and energy prices were unchanged. The index for all items less food and energy was little changed, up 0.1 percent, in September. (Data in this report are not seasonally adjusted. Accordingly, month-to-month changes may reflect the impact of seasonal influences.)

Chart 1. Over-the-year percent change in CPI-U, Midwest region, September 2015–September 2018



Source: U.S. Bureau of Labor Statistics.

News Release Information

18-1665-KAN
Thursday, October 11, 2018

Contacts

Technical information:
(816) 285-7000
BLSInfoKansasCity@bls.gov
www.bls.gov/regions/mountain-plains

Media contact:
(816) 285-7000

PDF

PDF version

Related Links

CPI Overview Table - U.S. and areas

CPI Detailed Tables - Mountain Plains

Area Economic Summaries

The CPI-U for the Midwest advanced 1.9 percent from September 2017 to September 2018. (See chart 1 and table A.) The energy index, which includes motor fuel and household fuels, rose 5.9 percent and food prices increased 0.8 percent. Excluding food and energy, the CPI-U was up 1.7 percent over the year. (See table 1.)

Food

Food prices in the Midwest were 0.3 percent higher in September after registering a 0.3 percent decline in the prior month. Prices for food away from home were up 0.3 percent and prices for food at home rose 0.2 percent.

From September 2017 to September 2018, the index for food rose 0.8 percent. Prices for food away from home were up 2.2 percent and were responsible for the increase. Prices for food at home were 0.2 percent lower over the year.

Energy

The energy index was unchanged in September after registering little change (-0.1 percent) in August and declining 0.7 percent in July. Lower prices for electricity (-1.1 percent) were offset by other components of the index in September; prices for electricity rose 0.3 percent in the prior month. Utility piped gas service costs were up 0.3 percent following a 1.6-percent increase in August. Gasoline prices turned up 0.5 percent in September after declining 0.7 percent in the prior month.

Energy costs advanced 5.9 percent from September 2017 to September 2018 due largely to an increase of 13.6 percent in prices for gasoline. Costs for electricity and utility (piped) gas service were lower than in September 2017, decreasing 2.8 and 1.8 percent, respectively, over the year.

All items less food and energy

The index for all items less food and energy for the Midwest was little changed (0.1 percent) after remaining unchanged for three consecutive months. Among the expenditure categories registering higher costs were apparel (5.0 percent) and shelter (0.2 percent), while prices for new and used motor vehicles (-2.1 percent) were among those that declined over the month.

The index for all items less food and energy was up 1.7 percent from September 2017 to September 2018. Higher costs for shelter (3.1 percent) led the over-the-year increase.

The Midwest Consumer Price Index for All Urban Consumers (CPI-U) stood at 235.524 in September 2018. A typical market basket of goods and services that cost $100.00 in the 1982-84 base period cost $235.52 in September 2018.

CPI-W

In September, the Midwest Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) was 229.998. The CPI-W inched up 0.1 percent in September and rose 2.2 percent over the year.

Table A. Midwest region CPI-U 1-month and 12-month percent changes, all items index, not seasonally adjusted

	2014		2015		2016		2017		2018	
Month	1-month	12-month	1-month	12-month	1-month	12-month	1-month	12-month	1-month	12-month
January	0.5	1.4	-0.6	-0.3	0.3	0.8	0.7	2.2	0.6	1.6
February	0.6	0.9	0.3	-0.5	0.0	0.4	0.2	2.4	0.2	1.7
March	0.9	1.5	0.6	-0.9	0.6	0.5	0.1	1.9	0.2	1.8
April	0.3	1.9	0.1	-1.1	0.4	0.8	0.4	1.8	0.4	1.8
May	0.2	1.6	0.4	-0.8	0.4	0.8	0.0	1.4	0.5	2.3
June	0.5	1.7	0.5	-0.7	0.6	0.8	0.0	0.9	0.2	2.5
July	-0.3	1.8	0.0	-0.5	-0.5	0.4	0.0	1.3	0.0	2.4
August	-0.2	1.6	0.0	-0.3	0.1	0.6	0.3	1.5	0.0	2.1
September	0.1	1.6	-0.3	-0.8	0.2	1.1	0.3	1.5	0.1	1.9
October	-0.5	1.6	-0.1	-0.3	-0.1	1.0	-0.2	1.5		
November	-0.6	1.2	-0.5	-0.2	-0.3	1.2	0.2	1.9		
December	-0.7	0.7	-0.6	0.0	0.1	1.8	-0.2	1.7		

The October 2018 Consumer Price Index for the Midwest region is scheduled to be released on Wednesday, November 14, 2018.

Technical Note

The Consumer Price Index (CPI) is a measure of the average change in prices over time in a fixed market basket of goods and services. The Bureau of Labor Statistics publishes CPIs for two population groups: (1) a CPI for All Urban Consumers (CPI-U) which covers approximately 93 percent of the total population and (2) a CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers approximately 29 percent of the total population. The CPI-U includes, in addition to wage earners and clerical workers, groups such as professional, managerial, and technical workers, the self-employed, short-term workers, the unemployed, and retirees and others not in the labor force.

The CPI is based on prices of food, clothing, shelter, and fuels, transportation fares, charges for doctors' and dentists' services, drugs, and the other goods and services that people buy for day-to-day living. Each month, prices are collected in 75 urban areas across the country from about 5,000 housing units and approximately 22,000 retail establishments–department stores, supermarkets, hospitals, filling stations, and other types of stores and service establishments. All taxes directly associated with the purchase and use of items are included in the index.

The index measures price changes from a designated reference date (1982-84) that equals 100.0. An increase of 16.5 percent, for example, is shown as 116.5. This change can also be expressed in dollars as follows: the price of a base period "market basket" of goods and services in the CPI has risen from $10 in 1982-84 to $11.65. For further details see the CPI home page on the Internet at www.bls.gov/cpi and the BLS Handbook of Methods, Chapter 17, The Consumer Price Index, available on the Internet at www.bls.gov/opub/hom/pdf/homch17.pdf.

In calculating the index, price changes for the various items in each location are averaged together with weights that represent their importance in the spending of the appropriate population group. Local data are then combined to obtain a U.S. city average. Because the sample size of a local area is smaller, the local area index is subject to substantially more sampling and other measurement error than the national index. In addition, local indexes are not adjusted for seasonal influences. As a result, local area indexes show greater volatility than the national index, although their long-term trends are quite similar. **NOTE: Area indexes do not measure differences in the level of prices between cities; they only measure the average change in prices for each area since the base period.**

The Midwest region is comprised of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

PLAN COMMISSION SUMMARY SHEET

MEETING DATE: **Monday, November 19, 2018**

SECTION: **Business**

DEPARTMENT: **Community Development**

CONTACT:

AGENDA ITEM: **Discussion Only - Village Attorney review latest law changes involving Conditional Uses and cell towers.**

PREVIOUS ACTION:

ISSUE SUMMARY:

Village Attorney Dan Evans will appear to discuss the latest changes to state law regarding conditional uses and cell towers.

You should have information in your packets from Atty. Evans on these topics

FINANCIAL/BUDGET IMPACT:

VILLAGE PLAN REFERENCE:

ORDINANCE REFERENCE:

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

ATTACHMENTS:

1. 11.19.18 Outline of changes in CUP
2. 11.19.18 Outline of changes re small cell facilities
3. 11.19.18 small cell article

REUTER, WHITISH & EVANS, S.C.
ATTORNEYS AT LAW
44 EAST MIFFLIN ST., SUITE 306
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BARBARA O. WHITISH (1952-2013)
DANIEL J. EVANS
DAVID D. RELLES
KEVIN F. MILLIKEN (OF COUNSEL)
BLAYNE NICOLE STEINKRAUS

TELEPHONE
(608) 250-9053

FACSIMILE
(608) 250-9054

To: McFarland Plan Commission
From: Dan Evans, Assistant Village Attorney
Date: November 15, 2018
Re: Outline of Changes in the Law involving Conditional Use Permits.

On November 27, 2017, the Wisconsin Legislature enacted a set of new laws known as the Landowner's Bill of Rights, 2017 Wisconsin Act 67. Some of the stated goals of the Act were to protect property rights and specifically address the lack of statutory language related to Conditional Use Permits.

The new laws provide an evidentiary standard in the permit review process and impose new requirements on applicants and reviewing authorities. These changes include:

1. Requiring use of a "*substantial evidence*" standard. Under the new law, decisions by the municipality related to conditional use permits must be based on substantial evidence, which means *"facts and information, other than merely personal preferences or speculation, directly pertaining to the requirement and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion."*

2. Any condition imposed must be related to the purpose of the zoning ordinance and be based on *substantial evidence*. The requirements and conditions must be reasonable and, to the extent practicable, *measurable* and may include conditions such as the permit's duration, transfer and renewal.

3. The permit applicant *must* demonstrate that the application and all requirements and conditions imposed by the zoning code or the municipality relating to the conditional use are or will be satisfied, both of which must be supported by *substantial evidence.*

4. If an applicant meets or agrees to meet all of the requirements and conditions imposed by a zoning code or zoning board, the permit *shall* be issued.

5. The municipality's decision to *approve or deny* the conditional use permit must be supported by *substantial evidence.*

Based on the new law, the Plan Commission should consider:

1. Ensuring that the applicant, and interested members of the public, are aware of the "substantial evidence" standard. As an example, residents concerned with a proposed use may contend that the use will have an adverse impact on their property value. Simple speculation that value may go down is not sufficient evidence, while a report or testimony from a qualified appraiser or other expert would most

likely meet the standard. Other evidence, such as changes in the values of other properties immediately after a similar use was commenced elsewhere, may be substantial evidence if the facts and circumstances are similar enough. Statements made at a public hearing or in an application are not sufficient to support the Commission's decision unless the facts stated are supported by reasonable evidence.

2. When a condition is imposed, ensuring it is related to the purpose of the zoning code, and based on the substantial evidence standard. Include a "measurable" standard to determine compliance whenever possible. "Measurable" conditions may set forth a specific minimum or maximum level or amount (such as a decibel level if noise is a concern). Certain detrimental impacts, such as odor, are not objectively measurable, and a more general standard should still be permissible. The Commission may also consider limiting the duration, transfer and renewal of the permit if there is a rational basis to do so.

3. The permit applicant must demonstrate that the conditions will be satisfied, by substantial evidence, so there is a burden for the applicant to provide sufficient information to the Plan Commission to enable it to make its decision. The applicant cannot simply speculate that his or her use will meet conditions.

4. Preserving a good record so that it is clear what evidence was relied upon as the basis for the decision to deny or approve to application. Minutes reflecting the reasons given for approving, denying or adding conditions to a CUP will generally be helpful in defending the Commission's decision. Make findings of fact as part of the review process, and include those findings in the record.

5. Given the new standard that conditional use permits "shall" be granted when the applicant meets or agrees to meet all the requirements of the zoning code and Commission, consider whether some conditional uses should be eliminated from certain districts, and amend the zoning code accordingly.

6. Specifying in the motion which standards for approval are or are not met, and why that decision is made. If a permit is denied, state whether that decision is based on the failure of the applicant to meet its burden of proof (substantial evidence) or on other evidence refuting the applicant's evidence. If the permit is approved, state that the applicant has met its burden of proof and that the applicant's evidence outweighs the opposing evidence if the issue is contested. The new law does not expressly state what is to happen if substantial evidence is presented on both sides of an issue relevant to the CUP decision. We believe that the Commission must decide the weight to be given to the evidence, and that its decision is likely to be upheld if the issue is fairly debatable.

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To: McFarland Plan Commission
From: Dan Evans, Assistant Village Attorney
Date: November 15, 2018
Re: Outline of the FCC Order regarding local regulation of Small Cell Facilities.

On September 27, 2018, the Federal Communications Commission approved an order preempting local authority over small wireless facilities.

Small wireless facilities are small antennas and equipment typically placed in the right of way (ROW). The new technology, known as 5G, provides wireless internet at higher speeds than existing cellular services. Unlike more traditional cell services, small cell has a shorter range and requires more antennas. According to the New York Times, this new equipment will be placed an average of 500 feet apart in neighborhoods and business districts.

The FCC order provides:

1. Local government is limited in the fees it may charge for ROW access;
2. The approval process is limited to 60 or 90 days, depending if the proposed facility is to be collocated with an existing facility;
3. Annual "maintenance" fees are limited to reasonable costs directly related to maintaining the ROW.
4. Aesthetic requirements are limited to reasonable restrictions, published in advance.

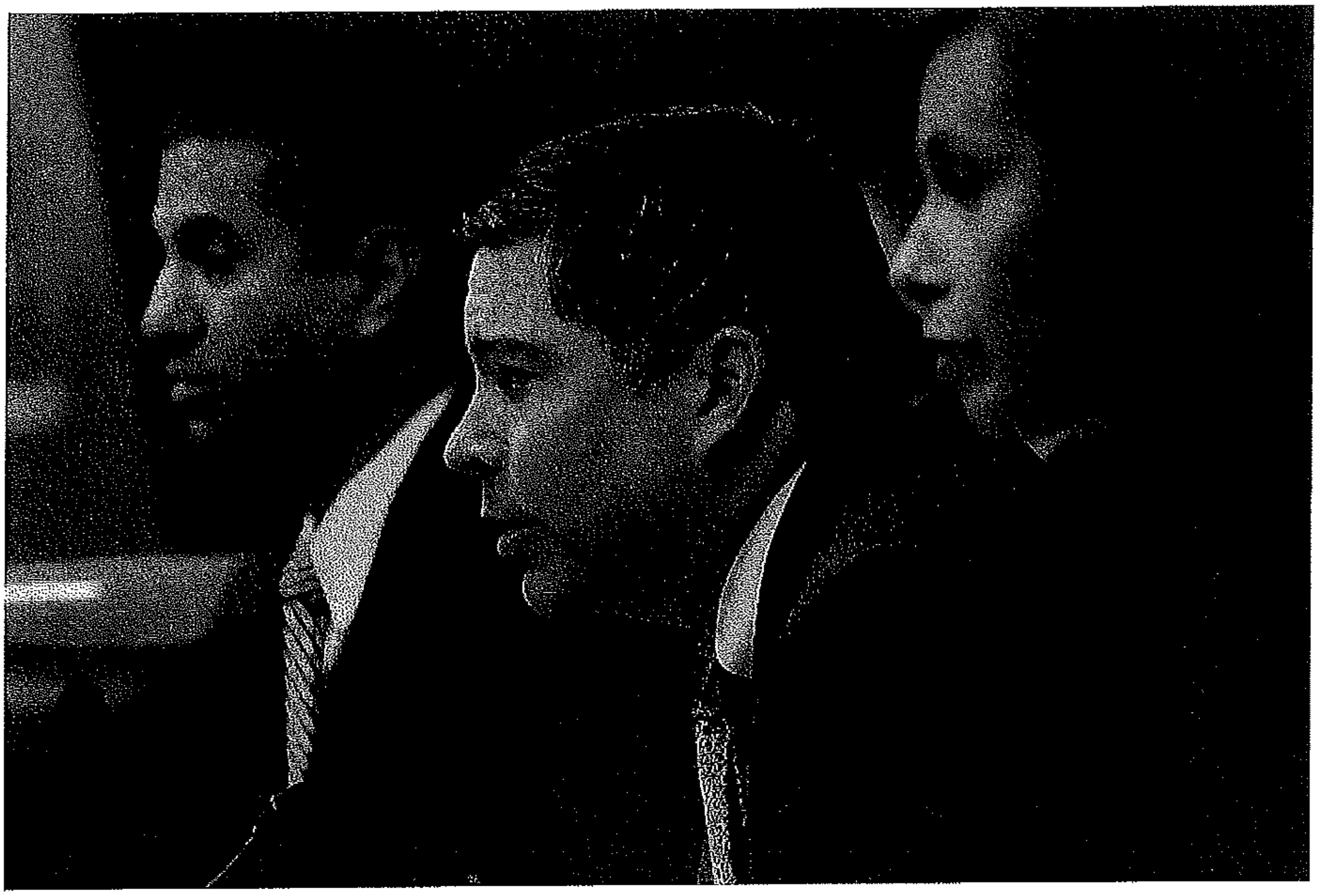
The full impact of the FCC's Order is still being evaluated, but potential areas the Village may consider include:

1. Ensure a fee schedule is in place consistent with the FCC guidelines.
2. Ensure small cell proposals are reviewed promptly within the 60 or 90 day window.
3. Set forth any aesthetic standards in advance of the arrival of small cell facilities in the Village. These standards may include more detailed neighborhood requirements regarding integration into existing poles or other infrastructure, color, and other aesthetic requirements sufficient to protect the Village.

From P.B.

CitiesSpeak

EQUITY POLICY HOUSING ENVIRONMENT FINANCE HEALTH YOUTH



Five Takeaways for Cities from the FCC's Small Cell Preemption Order

By **Angelina Panettieri** on **September 26, 2018**

On Wednesday, September 26, the Federal Communications Commission voted to approve a declaratory ruling and report and order that would enact harsh new preemptions of local authority over small cell wireless facility deployment and management of local rights-of-way.

The order will go into effect 90 days after publication of the final version in the Federal Register. As previously reported on CitiesSpeak, the order will:

- Shorten the time cities have to process applications for small cells to either 60 or 90 days, depending on whether they are being mounted on an existing or new structure;
- Limit application fees for small cells to $100 per site, and recurring fees to $270 per site, per year, for small cells in the rights-of-way;
- Prohibit cities from assessing fees that include anything other than a "reasonable approximation" of "reasonable costs" directly related to maintaining the rights-of-way and the small cell facility; and
- Limit aesthetic review and requirements (including undergrounding and historic/environmental requirements) to those that are reasonable, comparable to requirements for other rights-of-way users, and published in advance.

NLC, along with its local government partners, has fought this preemption order through comments to the FCC and advocacy on Capitol Hill, and will continue the fight in all three branches of the federal government. The final text of the order was released September 27 and is substantially similar to the draft, with one noteworthy change: if cities notify wireless providers that applications are incomplete, they will be able to restart, rather than toll, the shot clock for that specific application.

Here are five key takeaways for cities from the FCC's vote:

.. Cities Have an Image Problem

Cities have faced an upswing in preemption from state and federal governments, particularly on telecommunications issues. This latest preemption is just further evidence of an ongoing image problem for cities – namely that they are obstructions to business and to winning the "race to 5G," rather than innovators and builders of strong communities. Commissioner Mike O'Rielly described local governance as consisting of "ridiculous fees and prolonged delays," and Commissioner Brendan Carr, in his pre-vote statement, inaccurately depicted 5G deployment as a zero-sum battle between urban and rural areas, in which only preemption can save rural communities from the ambitions of large cities.

Despite the leadership of cities like San Jose, California and Lincoln, Nebraska in deploying small cell wireless facilities, wireless advocates have convinced many policymakers that city leaders are not the best people to make decisions about their own communities and streets. A Wall Street Journal editorial published the morning of the FCC meeting claimed that "U.S. cities are throttling deployment with extortionist fees... [and] self-serving behavior from local politicians." The FCC's vote, the many state bills preempting local authority passed in the last several years, and the introduction of the STREAMLINE Small Cell Deployment Act in the Senate demonstrate that cities need to overcome this bias against local leadership.

Cities Need to Educate Their Legislators

However, federal policymakers can change their minds when they hear from their local leaders. FCC Commissioner Jessica Rosenworcel, who both affirmed and dissented in part on the preemption order, told her fellow commissioners that "If we want to speed the way for 5G service, we need to work with cities and states across the country because they are our partners." Nine members of the House Energy and Commerce Committee, as well as senators from New York and Nevada sent letters to the FCC prior to its vote, urging the Commission not to hold the vote on this item, as it did not sufficiently incorporate the many objections raised by local governments. Commissioner Rosenworcel and the senators and representatives who objected to the preemption did so in no small part because of the hundreds of city officials who called and sent letters to Congress and the FCC describing how the order would harm their communities.

Very few members of Congress or their staff have personal experience with city administration, and even fewer have personal experience with managing telecommunications equipment in cities. Without helpful stories, data, and examples from local officials, these legislators have no evidence to counter the lobbying by wireless companies that claims cities need to be preempted to successfully deploy new technologies. While the FCC's action may reduce some of the urgency felt by members of Congress to legislate on small cell deployment, it's imperative for cities to keep educating Congress on how preemption widens, rather than narrows, the digital divide.

3. Cities Should Strengthen Their Own Policies and Procedures

While NLC, its local association partners, and local governments around the country will fight the implementation of the order, cities should take a close look at their own policies and procedures around small cell deployment. Regardless of whether the order is implemented or not, small cell technology is here to stay, and cities need to prepare themselves to protect residents and streetscapes while pushing for the best deployment they can get for their communities.

In our recently-published Municipal Action Guide on Small Cell Wireless Technology in Cities, NLC identified some important best practices for cities to follow as they plan small cell deployment. In the face of new requirements for shorter shot clocks and stricter tests on aesthetic requirements, it is more important than ever for cities to work with community groups to determine and publish the specific requirements for successful deployment. These may include more detailed, neighborhood-by-neighborhood requirements regarding issues such as infrastructure density, color, or decorative pole requirements, to ensure that sensitive areas of the city are sufficiently protected in advance. Any requirements imposed on providers must be available publicly before applications are submitted, so finalizing these requirements should be a first step for most communities.

Cities should be cautious when working with providers on these proactive steps – while it is important to incorporate technical needs into design decisions, any pre-application consultation that could be considered mandatory will start the new, shorter shot clock timeline for application reviews. Cities should also consider updating requirements for other occupants of the rights-of-way to harmonize them with requirements for small wireless facilities, to ensure that no rights-of-way user can claim requirements are not neutrally applied.

Cities Should Expect a Bumpy Road for Implementation

As many communities noted in their comments to the FCC opposing this decision, the new order is likely to increase, rather than decrease, litigation over wireless deployment. This is because the order contains little guidance and few definitions and offers a great deal of leeway to future judges in cases between local governments and wireless providers over interpreting the reasonableness of local fees and aesthetic requirements.

While this may have been intended to provide local governments with some degree of flexibility, this means that cities have little way to know what a "reasonable" consultant expense is if they do not have internal staff to manage small cell deployment, or what are "reasonable" aesthetic requirements, particularly as they relate to undergrounding requirements. Providers are likely to challenge local governments on these two points, particularly when a city sets rates at above the FCC-determined "safe harbor" rate of $270 per small cell, per year, or if meeting aesthetic requirements will increase the cost of a particular deployment.

Cities may also see an increase in proactive outreach by wireless providers or tower companies, informing them of what those companies see as the cities' obligations under the new order. However, local governments should take care to consult with their municipal attorneys, state municipal leagues, and possibly state utility commissions to verify these claims before taking any new actions.

;. Cities Can Fight Back

While the FCC's vote represents another preemption blow for local governments, cities can fight back against this measure and others like it. NLC and our partners are pursuing administrative, legal, and legislative steps to stop the FCC's overreach.

A city, or cities, will likely appeal the FCC's order in a circuit court. Depending on that court's decision, or if there are cases in multiple circuits with differing outcomes, the issue could move as high as the Supreme Court, as in the case of *City of Arlington v. FCC*. Finally, under the terms of the Congressional Review Act, Congress may choose to overrule the order within 60 legislative (e.g., when Congress is in session) days of the rule's publication in the Federal Register. Use of the Congressional Review Act has grown in popularity in recent years but would still necessitate the building of substantial support on Capitol Hill by cities and their leaders.

For more information on small cell technology and how your city can prepare, view NLC's municipal action guide and tips from Next Century Cities.

***About the Author:** Angelina Panettieri is the Principal Associate for Technology and Communication at the National League of Cities. Follower her on twitter at @AngelinainDC.*

Community Development Highlights

October 2018

- During the month of October, 52 permits were issued. Seven permits for new single-family homes were issued for the month. Four permits related to Tim O'Brien Homes, two were pulled by Veridian, and one by Gannon Construction. Revenues for the month totaled $75,875.

- We received two returned RFP;'s for the Farwell St. redevelopment site. Matt and I will be reviewing and contacting the developers to clarify some issues. A presentation by each developer is anticipated at some point.

- Have been attending budget meetings for our 2019 budget.

- Have worked through some issues regarding mid-block delivery of building materials for the Waubesa Shores project. The Police Department has required flag persons to be present to direct traffic when these types of deliveries take place.

- A final presentation was made to the Board regarding the branding project. Monies have been included into the 2019 budget to begin implementation.

- The petition for annexation needed some revision due to necessary corrections to the legal description. It will be necessary for the Village Board to act again on this measure.

- Our commercial electrical inspector Bob Bolle and I have reviewed the proposed new light fixtures at the tennis courts. The existing pole locations as well as the number of poles will remain unchanged. The fixtures are now metal halide and will be changed over to LED. Poles supporting the LED fixtures will be changed out as well. Based on photometrics for the LED lights, light spillage will be reduced which will be an improvement. Mr. Bolle has had a positive experience with these types of poles & fixtures in Shorewood Hills.

- Work on the Outdoor Recreation and Open Space Plan continues with the Parks & Natural Resources Committee. An abbreviated make-up meeting was necessary in October due to a lack of a quorum at the regularly scheduled October 18th meeting.

- Plans are coming along for the annual Christmas in the Village set for Saturday December 1st. This event is put on by the McFarland Chamber of Commerce. New this year is a vendor tent and picnic in the park with Santa. The bonfire will take place in Arnold Larson Park along with handing out free hot apple cider and hot cocoa.

- Work on the ball diamonds on CTH MN continues.

- Staff continued to meet in October to discuss razing a residence due to disrepair. As required, a raze order was recently published in the Thistle. The owner has 30 days to raze the building or the Village will take measures have it removed.

- Attended the following meetings during the month of October.
    - Plan Commission
    - Village Board
    - Community Development Authority
    - Parks & Natural Resources

Submitted by:
Pauline Boness
Community Development Director

Village of McFarland

Memorandum

TO: Plan Commission Members

FROM: John Griffith, Code Enforcement Officer

DATE: November 12, 2018

RE: October Property Maintenance Report

ADDRESS-OWNER OR TENANT OCCUPIED (SEPTEMBER AND PRIOR LETTERS/CONTACT)	**VIOLATION:**	**STATUS**
Long St – vacant lot (O'Hearn)	Grass/weeds over 8" – Noxious weeds. Garbage, debris etc. on property	Owner mowed area
5706 Wisconsin (Frisch)	Accumulated junk, debris & unlicensed inoperable vehicles stored on property. Weeds & grass height	Property still in compliance 11-12-18
5408 Wild Cherry (Dekeyrel)	Grass/weeds over 8" – Noxious weeds	home owner corrected
5305 Rustling Oaks (Wood)	Grass/weeds over 8" – Noxious weeds	Mowed by owner
5805 Main St.	Trash at curb	Construction debris gone
4814 Dale St (Dale Street Apts LLC)	Exposed plywood on apartment building	New contractor has made it water tight
5602 Red Oak (Duda)	Grass/weeds over 8" –	Mowed by owner

	Noxious weeds	
5605 Leanne Lane (Crabb) rental	Grass/weeds over 8" – Noxious weeds	Mowed by owner
5009 Falling Leaves Lane (Hauser)	Construction work without permit	Letter sent, permit taken out
5311 Forest lawn Ct. (Lambert)	Desk/furniture at curb	letter sent – items removed
McFarland School district new ball fields	Noxious weeds	Letter delivered to maintenance
5116 Erling (Richel)	Garage repairs needed	Letter mailed - removing garage
5010 Rustic Way (Shubat)	Unsightly premises 7-19-2018 letter	Permit for siding repairs pulled
5108 Erling Ave (Racek)	Lawn over 8"	Letter taped to door - mowed
4509 Field Ave (Pulvermacher)	Unlicensed vehicles, vehicles on lawn	Vehicles relocated
5511 Scott Ave (Bacon)	Two vehicles parked on lawn	vehicles moved
4900 Larson Beach Road (Neitzel)	Grass/weeds over 8" – Noxious weeds	owner correcteed
5519 Milwaukee St (Gruenberg)	Garbage, debris etc. on property	resolved 9-10
5019 Card Ave (Zaemisch)	Non running unlicensed vehicle on property	Vehicle relocated
5707 Main St (Fitzgerald)	Grass/weeds over 8" – Noxious weeds	Mowed by owner
5873 Holscher Rd.(Kalscher)	Weeds in right of way School Dist. Ball diamond project is working on fencing in that area School Dist.	resolved

LETTERS /CONTACT IN OCTOBER:	**VIOLATION:**

5201 Norma (Murphy)	Bushes overgrown, blocking line of sight in street
5212 Valley (Cheramy)	Burning leaves in the Village, no permit, not a burn weekend. Leaf burning not allowed per ordinance
5107 Falling Leaves Lane(Tschopik)	Installation of furnace without a permit
5403 Leanne Ln (Dziewior)	Chicken permit not picked up
5107 Linden Parkway (Koch)	Installation of shed without a permit
5201 Norma (Murphy)	Building materials on site, no valid permit. Landscape rocks in road
5102 Paulson Rd (Foskett)	Installation of driveway without permit
5005 Valley Dr. (Behm)	Storage of building materials, washer and dryer outside on property
5915 Exchange St. (Byrne)	Tuck pointing
4016 Terminal Dr.	Trash stored outside on property
4709 Taylor Road (Howe)	Van stored on lawn
5701 Lexington (Westerhof)	Couch at curb
6418 Lani Lane (Hussaini)	Concrete in road
6325 Erling (Harrison)	Junk at curb
6322 Exchange St (Torbleau)	Junk at curb
5115 Ridge Road (Bell)	Trailer on lawn