

Minutes
Plan Commission
Meeting

November 19, 2018

Members Present: Bruce Fischer, Peter Bloechl-Anderson, Brad Czebotar, Dan Kolk, Cathy Kirby, Tom Rogers
Members Absent: Jeff Sorenson
Staff Present: Pauline Boness, Marty Pilger, Dan Evans

1. CALL TO ORDER

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

2. PUBLIC APPEARANCES

None

3. APPROVAL OF MINUTES

- a. Review and approval of draft Minutes from the October 15, 2018 Plan Commission meeting.
Czebotar called the minutes approved by unanimous consent.

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.

Czebotar opened the public hearing at 7:10 p.m.; with no one wishing to speak, closed the public hearing at 7:10 p.m.

Boness indicated this is only a minor change regarding the voting as outlined in your packets.

Kirby moved to recommend to the Village Board approval Ordinance No. 2018-15 an Ordinance amending the Historic Preservation zoning code to qualify for the Certified Local Government Historic Preservation program. Rogers seconded the motion. Motion carried 6-0.

- 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.

Aaron Ruengpinyophum representing Beachhouse Properties, 1 Matson Court. – When they made the request in June 2018 they felt they would be able to meet their deadline. They have had some construction and scheduling delays, and are waiting for striping on the lower level. There will still be cars on the site but contractors will be phasing out. This is why they are making the request for an extension of four to six weeks. Czebotar pointed out he has been receiving complaints in regards to the parking lot; and while it is being dealt with, is he going to continue to receive complaints? Ruengpinyophum stated they would be moving items they do not need to warehouses, and in a week or two putting some of the materials into the unsold parking stalls, but at this point, he does not see much change for the next few weeks.

Kolk asked for a realistic date when this will be done. Ruengpinyophum replied they have some closings coming up; their hard deadline is December 14. Kirby asked if it is realistic to ask by January 1, 2019 will everything be gone, including the trailer. Ruengpinyophum replied he does feel the materials and cars will be gone, they do not have a plan for the trailer yet, but he can put one in place.

Ruengpinyophum advised at the end of December, when they are done with most everything and the only ones left at the site are Harmony Construction and a few cars, he does not see any reason why they cannot have the vacant lot clear. Kirby asked does that mean they will have all cars off the street, other than visitors. Could staff use the parking lot of the building rather than the street? Ruengpinyophum did not see any reason why not. Beachhouse LLC pays rent on the vacant lot monthly, Ruengpinyophum felt they would not need the lot after the end of December, the last thing he sees as an issue would be the trailer, and Beachhouse LLC would need to arrange to prepare it to be moved.

Kolk moved to approve an extended deadline of CUP #274 regarding parking and staging of construction materials from November 15, 2018 to January 1, 2019. Kirby seconded the motion. Motion carried 6-0.

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

Czebotar indicated there were a number of people in attendance for this agenda item and if no objections would like to move this item to be first on the agenda. With no objections, Czebotar moved to Agenda item C.

Marty Pilger, Building Inspector indicated he would be presenting this as Boness has a conflict due to her spouse serving on the church building committee. The church was built in 2009, Holscher Road was not improved and the Veridian development was in the early planning stages. Early plans were to have the church have a driveway that exited out into the subdivision. Veridian did not move forward

with their plans for economic reasons. The Plan Commission allowed the church to install a temporary driveway accessing Holscher Road, with the driveway altered to access through the subdivision onto Lodgecliffe Lane once the subdivision was completed. In 2009, there was discussion of no driveways accessing onto Holscher Road, which was why the driveway would only be temporary.

Since then, Gannon Construction and Veridian final plats were both approved with driveways onto Holscher Road. Risen Savior Church would like to get an opinion from Commissioners as to whether they can permanently keep what was once a temporary driveway and abandon the original location.

Czebotar inquired if Pilger had spoken with the Police and Fire Departments to see if they had any concerns. Pilger responded Chris Dennis, Fire Chief indicated in the past 9 years he could not recall any issues at that intersection due to the driveway location. Pilger advised he spoke the Village Engineer, Brian Berquist, who indicated the Village's opinions on driveways on Holscher Road had changed quite a bit over the past nine years and he did not see any problem with leaving it where it is. Czebotar asked for clarification as to the location where the original driveway would have been. Pilger indicated the driveway would exit onto Lodgecliffe Lane, then Red Oak Trail and then onto Siggelkow Road. There is currently only the Holscher Road access to the property.

Peter Palmer – 5025 E. Buckeye Road, Madison – Palmer is a parish member and tends the property. Palmer indicated he did not feel it would be a good idea at this time to have two entrances to the church. They also do not feel having the access moved to the Lodgecliffe Lane as their architect indicated the grade going down would be up to 15%, which would make it quite steep, requiring rock walls to match the elevation Veridian has established. Pilger confirmed there is quite a bit of elevation difference between the church property and the new road in the Veridian subdivision.

Kirby concurred; historically the idea was to only have a temporary access, as Veridian was not planning to have driveways accessing Holscher. As Veridian changed their plat design, and due to the grade difference, she feels this is a moot point. Palmer indicated if they are able to keep the present driveway there would be a sign by the street stating “no thoroughfare”.

Czebotar indicated as this is not an action item, merely for discussion purposes, it does not appear there are any major concerns in regards to this potential proposal.

- d. Discussion and possible recommendation to the Village Board regarding annual review of fees in lieu of parkland dedication Sec. 56176 of the Village of McFarland Municipal code.

Czebotar advised this is something they go through annually. Boness stated the amounts have been stable the last couple of years, the state law however has changed and you need to do an analysis to come up with fee figures. We would need to do an update to the fees in lieu as well. Boness recommendation would be to do nothing at this time or a 2 ½% change. There is money in the budget for a consultant, namely our auditors to revisit the park impact fee and the fees in lieu value so we would be in compliance with current laws. Czebotar inquired if there would be some utility in postponing this until the review is done. Boness advised that would be her recommendation, a study would likely take place in the first quarter and recommend a new park fee and fees in lieu. Kolk asked if we could adjust the fee at any point. Boness replied yes, as that would keep us more in line with what the state statute requires. Every community will be doing something similar. Village attorney Dan Evans concurred with Boness analysis to wait. Commissioners discussed how we relate to what other communities charge, and how they too will be doing the same thing regarding their fees. Czebotar inquired if it is in the statutes for what we can use our fees park in lieu fees for. Boness replied it is in our policy, and that reflects what the state statutes have been looking at, there is also a system in place to track those fees as they have to be used within a certain amount of time, if left unused we have to actually return them. Evans confirmed the time frame is eight years; he will look into any restrictions on the usage.

Kirby moved to recommend to the Village Board postponement of the annual review of fees in lieu of parkland dedication Sec. 56176 of the Village of McFarland Municipal code until after the audit is completed. Seconded by Bloechl-Anderson. Motion carried 6-0.

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

Evans reviewed his outline of changes on the Conditional Use Permits, and the need for objective standards as provided in packets. Evans discussed “substantial evidence” standard and “reasonable persons would accept in support of a conclusion.” The new law went into effect on November 17, 2017 and is known as the Landowners Bill of Rights, 2017 Wisconsin Act 67. Much of it pertains to would other reasonable persons come to the same conclusion as the Plan Commission when deciding whether to grant or deny a CUP permit. The question becomes is the information you have sufficient to come to that conclusion. You can request from an applicant certain information to make sure they meet the standards you are concerned about for a particular use. This does not mean the applicant can state, they will meet it. That does not meet the evidentiary standard you are looking for. Evans gave the example of noise, if a party advised they wouldn’t make noise to disturb neighbors, that would not be enough information; if they submit a study or information on the types of machines used and the decibel level that would be the type of information you can rely on to approve, or if the information is not there

it can be a reason to deny. When doing a condition use the things looked at often are light, noise, odors. When considering a CUP application you have to focus on the evidence submitted supporting the applicant's ability to meet requirements. Likewise, if neighbors were against a proposal they would have to submit evidence, which is more than just speculation. A real estate appraiser could speak on potential nuisance or impacts it would cause to neighboring property. If a group of neighbors come in and state at a certain time of day how the traffic is, that would be sufficient evidence as they witnessed it. It does come down to the applicant's burden to come forward and provide you with this information. If it is not met, you do have questions, or you think a specific concern is not met, you would need to make them come back and provide sufficient objective evidence to prove that condition is going to be met.

Other things needed is the municipality's decision to approve or deny the conditional use permit must be supported by substantial evidence. It is important you keep good records on how the certain conditions were met or not met. You need a clear record, which lists conditions which were met or not met and why. This is needed in case of an appeal. You need to keep copies of documents submitted by the applicant or the public, good recording and tape of the meeting. Minutes to reflect the findings of why something was approved or denied.

Evans felt it would be good to have this listed in the ordinance, the evidentiary requirements needed and it would be a good idea to make the public aware of these changes also, it would be good to have each Commissioner state for the record why they are making the decision they are. People would not necessarily have to be sworn in.

Czebotar inquired if you could still have people come in for a "discussion only" item. Evans responded if someone has a question on what issues you would be concerned about, that would not be a problem, just do not give preliminary approval or input without hearing all of the proposal and evidence. He did not feel there would be any harm with them coming in with an "idea" however; you could not tell them which way you are leaning on a decision. Just what items would be a concern and need to be addressed with a formal application. You should not have a preconceived opinion.

Czebotar asked if this would be the time to review and rewrite the Villages CUP ordinance. Evans confirmed if someone meets a requirement you would have to approve them. One option would be to have a list of approved CUPS, along with more specific requirements both in the application and in what you would consider for sufficient approval, i.e. require a traffic study, light lumens, decibel levels for machinery and how they would be met without being a nuisance etc. Evans stated he can review the ordinance, and would suggest you keep the general language of public health and welfare protections, which you already have in place. It is not clear if the court would require you to have both, he can see you keeping both. Kolk

inquired about the quality of evidence; wouldn't we have to agree on what we accept? Evans stated you would have to decide what weight you would give something. Sometimes there are competing experts. Boness felt many communities would be going to less conditional uses and something would either be allowed or not allowed. Czebotar confirmed that is what he was suggesting in reviewing a list. Evans advised you would also want to look at compatibility of areas meeting up to one another. Commissioners discussed having a more set approach to what would or would not be allowed in a specific area, along with how you cannot turn something down based on speculation of what may take place. Kolk asked is this a good idea to approach this as the time to look at the CUP standards. Evans responded it is a good opportunity to look at redoing the CUP process, even if courts are going to interpret it. The statutes are still the statutes, we should follow the procedures set forth in the statutes, and as discussed having the specific details as to what you are going to expect to protect the Village going forward.

Evan's summarized what small cell facilities are, and how they are smaller and will be in our right of ways, they need more of them as they have a much shorter range. The FCC has set up limitations on the fees you can charge, approval process, maintenance fees and aesthetic requirements or restrictions. You cannot come up with standards after the fact; you will have to have them in place prior to someone applying. Evans's suggestion is to start on the standards now for a fee schedule and aesthetics, even though you are limited to what you can charge. Kolk pointed out this is something to look at as the Village spent a lot of money burying cables, and now with this they would be able to have cell dishes with cables mounted on the new light fixtures.

5. STAFF REPORTS

- a. Highlights and updates – No comments
- b. Property Maintenance – No comments

6. ADJOURNMENT

Kirby moved to adjourn, Kolk seconded the motion, motion carried. Meeting adjourned at 8:17 p.m.