

PLAN COMMISSION MINUTES - 12/15/2010

Plan Commission Offices  
Manitowoc City Hall

Regular Meeting  
Manitowoc City Plan Commission  
Wednesday  
December 15, 2010  
6:30 P.M.

I. CALL TO ORDER

The meeting of the City Plan Commission was called to order by Chairman Justin Nickels at 6:30 P.M.

II. ROLL CALL

Members Present

Jim Brey  
Justin Nickels  
Maureen Stokes  
Dan Hornung  
Val Mellon  
David Diedrich  
Jim Muenzenmeyer

Members Excused

Steve Alpert

Staff Present

David Less  
Paul Braun  
Michelle Yanda  
Elizabeth Werdermann

Others Present

See Attached Sign In Sheet

III. APPROVAL OF MINUTES of the Regular November 15, 2010 Meeting.

Motion by: Mr. Diedrich  
Moved that: the minutes be  
approved as presented.

Seconded by: Ms. Stokes  
Upon Vote: the motion was  
approved unanimously.

IV. PUBLIC INFORMATIONAL HEARINGS

A. PC47-2010 City-Wide Rezoning of Lands Annexed into City (August 15, 2000 - August 10, 2010) Pursuant to §66.021(7)(a) Wis. Stats. - Consideration to Modify Zoning at Certain Additional Non-Annexation Areas

Mr. Less explained that tonight's public informational hearing was in regard to a matter that was discussed and acted upon at the November Commission meeting. Mr. Less stated that at the regular November 10, 2010 meeting, the Commission discussed the need to forward to the Council a recommendation to proceed with a public hearing in regard to amending the City's zoning map to address areas annexed into the City after March 14, 2000 which received a "temporary" zoning designation pursuant to §66.021(7)(a) Wis. Stats. Mr. Less commented that the amendment process was originally limited to annexations into the City after March 14, 2000.

Mr. Less noted that regarding lands annexed, the properties comprising the annexation areas had their zoning established at the time an annexation ordinance was adopted by the Council pursuant to §66.021(7)(a) Wis. Stats., and that the "temporary" zoning classification applied from the effective date of an annexation ordinance, until the effective date the City's zoning map had been amended by ordinance adoption, and the zoning made permanent pursuant to procedures detailed in §62.23(7)(d) Wis. Stats. Mr. Less continued that the adoption of an ordinance by the Council to effectuate this change was to be preceded by a public hearing.

Mr. Less stated that as a result of the November 10<sup>th</sup> meeting, the Commission forwarded a unanimous recommendation to the Council to instruct the Clerk to call for a public hearing. Mr. Less continued that the Council adopted this report, but the Clerk had not called for the public hearing, as he had asked her to not call for the hearing until after tonight's Commission meeting. Mr. Less then advised that since the November Commission meeting, Building Inspection and Planning had identified several non-annexation areas that he'd like the Commission to consider including into the City-wide rezoning proposal. Mr. Less identified the following non-annexation areas:

1. Woodridge Estates Subdivision No. 8 - Lots 17-20, Block 7, west of Wild Oak Drive ("R-4" to "R-5") - Parcels 789-007-170, 180, 190 and 200.

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Lot 42, Block 6, south of Stoney Brook Drive ("R-5" to "R-4") - Parcel 789-006-430.

This change was to eliminate a split zoning of these parcels, and to re-align the zoning line with the recorded subdivision lot lines.

2. Unplatted lands located east of Knuell Street and north of Menasha Avenue - Parcels 812-303-109, 812-303-100, 813-201-100, 812-302-100, 812-302-105 and vacated railroad R/W.

This change would re-align the "P-1" Conservancy zoning district so that it was centered on the stream at 100' in width.

3. Silveridge Park in Silveridge Subdivision No. 1 - Lot 1, Block 7, Silveridge Subdivision No. 2 ("R-4" to "P-1") - Parcel 692-007010.

4. Emma Radandt Park (south of Flambeau, between So. 21<sup>st</sup> and So. 23<sup>rd</sup>) - Part of Lots Numbered 90 and 91 of Hinckley's Subdivision which lies west of So. 21<sup>st</sup> Street and So. of Flambeau Street ("R-6" to "P-1") - Parcel 355-091-001.

5. Unplatted lands located from the south line of Viebahn Street to the southbound lanes of I-43 - Parcels 835-401-010, 812-401-033, 835-402-020, 812-402-022, 812-402-023 and So. 44<sup>th</sup> Street R/W.

This change would re-align the "P-1" Conservancy zoning district so that it was centered on the stream at 100' in width.

6. Future development parcel created as part of the Dewey/"CR" interchange re-alignment located at SW corner of So. 42<sup>nd</sup> Street and Dewey Street (east of City-owned property housing the MAVCB) - Lot 1 of a CSM recorded in V. 28, P. 113 - Parcel 836-302-021.

This change would modify the zoning on the west half of this parcel from "P-1" to "B-3" to match the "B-3" zoning on the east half of the parcel.

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7. Former Fischl Ice Cream and Dairy Company property, 1423 Marshall, located south of Marshall, east of So. 15<sup>th</sup> Street, and owned by the Joseph Birkenstock Equity Trust - Lots 5-7 and W 12½' of Lot 4, Block 291, Original Plat - Parcel 000-291-070.

This change would rezone this nonconforming commercial land use from "R-4" to "C-1".

8. Property located south of Ellis Street and east of N. 40<sup>th</sup>, owned by Corrienne Gauthier, and which included a 1½ story frame house and detached garage - Lots 3-6 and E½ vacated N. 40<sup>th</sup> Street, lying adjacent to Lot 6, all in Block 26 of Original Plat in the Village of Manitowoc Rapids, now the City of Manitowoc - Parcels 450-026-060, 450-026-030 and 450-026-051.

This change would rezone these lots from "P-1" to "R-4". The existing homestead has been removed from the floodplain.

9. Property located on the east side of N. 41<sup>st</sup> Street, south of Archer, owned by James Tennant, and which included a 1-story frame house and detached garage - Lot 7, Block 2, Village of Manitowoc Rapids - Parcel 450-002-070.

This change would rezone these lots from "P-1" to "R-4". The existing homestead has been removed from the floodplain.

Mr. Less commented that these non-annexation areas were more maintenance-oriented rather than substantive changes to the zoning of these parcels. In closing, Mr. Less advised that notices of tonight's informational hearing were mailed by the Planning Department on December 9<sup>th</sup> to property owners that would be impacted by these non-annexation zoning changes. Mr. Less noted Mr. Braun received a phone call on December 14<sup>th</sup> from Carol Puls, 310 Woodridge Place, who, after being given an explanation of what was going on in this area, was not opposed to the rezoning proposal. Mr. Less continued that he received a call today from Tony Butala, who resided in Pennsylvania, and who owned property around Last Court, and was concerned that the re-alignment of the zoning around the creek bed was not in concert with a preliminary development plan for this area that was prepared by SMI, and would diminish the developable portion of his property. Mr. Less noted that he had advised Mr. Butala that

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he would be glad to sit down with he and SMI to review their preliminary site plan for this area, to determine if the zoning adjustment impacted those plans.

Mr. Diedrich commented that Mr. Less had omitted a reference in his narrative to impacted. lots near Woodridge Place.

Mr. Less agreed and noted that he had forgotten to reference Lots 29 and 40, Block 6, Woodridge Estates Subdivision No. 6, located both north and south of Woodridge Place (Parcels 787-006-290 and 787-006-400).

Mr. Brey commented that the property at 1423 Marshall was in his district, and complimented the Building Inspection Department for their continued effort to clean up this property. Mr. Brey then asked if Lot 7 was a house owned by the Birkenstock Trust, and asked why this property had been included in this proposal at this time?

Mr. Less responded that this property was nonconforming, and continued to be a problem for the City. Mr. Less noted that if there was an adaptive reuse of the property that would occur in the future, including Lot 7, this rezoning might help to ultimately return the site to a more productive use. Mr. Less added that this was similar to the logic used with the recent Saunders rezoning at So. 13<sup>th</sup> and Hamilton.

Mr. Muenzenmeyer stated that there was no home on Lot 7, rather trailers.

Mr. Brey then asked whether there were any WisDOT encumbrances related to the development parcel located to the east of the MAVCB?

Mr. Less explained that this parcel was created from a land dedication and as part of a R/W vacation, and that there were no WisDOT encumbrances against this parcel.

Mr. Hornung questioned if Silveridge Park was being included in this action because it had been dedicated for park purposes? Mr. Hornung added that if the land was dedicated for park purposes, what difference would the zoning make?

Mr. Less stated that he believed the parcel was dedicated for "park purposes", and that the proposed "P-1" zoning was the designation for all municipal parks under the code.

Paul Steinbrecher, SMI, Inc., 102 Revere Drive, commented that he had talked with Mr. Butala regarding his property near Last Court, and that he had explained to Mr.

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Butala that the adjustment to the zoning in this area did not impact the concept plan or the developability of his land. Mr. Steinbrecher noted that Mr. Butala was now comfortable with the proposed rezoning.

James Gauthier, 1409 Hubbard Circle, questioned the rezoning of the parcels at Ellis and No. 40<sup>th</sup>, and noted that Mr. Less had referenced the wrong ownership of this parcel.

Mr. Less explained that the buildings on these lots had been removed from the City's official flood insurance rate maps, and including these lots in the rezoning would make this existing home and garage conforming. Mr. Less added that the remainder of the lots would remain in the flood plain.

Mr. Muenzenmeyer commented. that the owner of this property had contacted him 1-2 years ago regarding replacing the garage, which would not be permitted land use in the "P-1" zone.

Mr. Less commented that this would eliminate title and insurance problems for this property in the future. Mr. Less added that the owner of the property should have been identified as Susan L. Gauthier LaViolette.

Mayor Nickels asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend to Council that the previous Commission report filed on this matter be amended to include the non-annexation parcels identified above (including Lots 29 and 40, Block 6, Woodridge Estates Subdivision No. 6), with the Clerk be instructed to call for a public hearing on this matter. Mr. Less added that as there was no Council meeting on December 20<sup>th</sup>, by his calculation, the public hearing on this matter would occur at the February 7, 2011 Council meeting. Mr. Less noted that the property owners receiving notice of tonight's meeting would not be given specific notice of the February hearing, and that their notice of the upcoming hearing would be via publications in the Herald-Times-Reporter on the 2 Monday's prior to the date of the hearing.

Motion by: Mr. Diedrich \_\_\_\_\_ Seconded by: Mr. Hornung  
Moved that: the Commission approve \_\_\_\_\_ Upon Vote: the motion was  
the Planner's recommendation above. approved unanimously.

V. REFERRALS FROM COMMON COUNCIL

A. PC1-2010: City of Manitowoc; Utility Easement to Manitowoc Public Utilities for .009-Acres for Location of Electrical Utility Facilities at N. 9<sup>th</sup> Street

Mr. Less explained that this was a continuation of a previous discussion held before the Commission. Mr. Less noted that while there was no question regarding the intention of the City to issue MPU an easement for siting a transformer to the south of the Dermatology project, there were environmental issues that had to be addressed. Mr. Less noted that as of tonight, he was still exchanging language suggestions with Steve Bacalzo at MPU to find a common ground. Mr. Less provided Commission members with a copy of maps from the recent Phase II ESA work done at the site of the proposed easement, that identified potential environmental issues related to concentrations in the soil of lead and arsenic. Mr. Less explained that Mr. Bacalzo, in his last email to him, wanted the City to take financial responsibility for any environmental remediation required at the easement location. Mr. Less stated that he had a problem with that position, and would continue to keep the Commission advised of what was going on. Mr. Less stated that he would keep this item on the agenda for the January meeting to see if there was resolution. Mr. Less added that while all parties were aware of the potential environmental conditions at this site, he did not feel the City should be responsible for remediation and disposal should MPU disturb any contaminated soils in the area.

Mr. Less stated that the options were to advance this easement recommendation back to Council for action, subject to resolving the language differences, or to take no action and keep this item on the Commission agenda for further discussion.

Mr. Hornung asked Mr. Less if his proposed conditions for inclusion in the document were consistent with a standard easement?

Mr. Less replied that the document would be standard, except for the known environmental condition at the site.

The Commission decided to take no action.

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- B. PC1-2010: Holiday House of Manitowoc County, Inc.; Permanent Easement to City of Manitowoc for .002-Acres at Meadow Lane, West of So. 28<sup>th</sup> Street

Mr. Less detailed a “Permanent Easement” to the City for a 13' x 9' area on the north side of Meadow Lane, west of Riverview Drive. Mr. Less noted that while he had no problem with the easement, he did note that the grantor was not correctly identified in the document as a Wisconsin corporation, and it did not appear that the document was signed by an officer of the corporation, rather its Executive Director.

Mr. Less recommended that the Commission recommend to Council approval of the document, subject to the City Attorney’s office re-drafting the document to correct the name of the grantor, and to confirm the accuracy and correctness of the signator as an authorized party for the corporation.

Motion by: Mr. Brey \_\_\_\_\_ Seconded by: Ms. Stokes  
Moved that: the Commission approve \_\_\_\_\_ Upon Vote: the motion was  
the Planner’s recommendation above. approved unanimously.

- C. PC50-2010: Duveneck; Temporary Access Easement Agreement Over Unopened Golet Drive for Property at 3608 Menasha

\_\_\_\_\_ Mr. Less explained that this was an easement over unopened Golet Drive, located north of Menasha Avenue and west of Paul Road. Mr. Less noted that he did not have any issues with the easement, and recommended that the Commission recommend to Council entering into the agreement, with the grantee to pay the cost for recording the document.

Motion by: Mr. Hornung \_\_\_\_\_ Seconded by: Mr. Muenzenmeyer  
Moved that: the Commission approve \_\_\_\_\_ Upon Vote: the motion was  
the Planner’s recommendation above. approved unanimously.

VI. OLD BUSINESS

- A. PC53-2009/PC28-2007: Orion Energy Systems, Inc.; Proposed Small Wind Energy System on Woodland Drive Under Section 15.77 of Manitowoc Municipal Code - Annual Compliance Review

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Mr. Less explained that regarding the Conditional Use Permits (CUP) referenced under A. and B. below, there were no issues or problems identified. Mr. Less added that the agenda packet included an e-mail from Woodland Dunes that was also complimentary to the Orion wind towers.

Mr. Less recommended that the Commission recommend to the Council that neither of the CUP's under A. or B. be modified, amended or revoked at this time.

Mr. Brey commented about the reference to 2 dead birds contained in the Woodland Dunes e-mail, and questioned if the concern was with the wind towers being responsible or the windows of the Orion corporate complex?

Mr. Less stated that the Woodland Dunes e-mail stated that the concern was with the building windows, and not the wind towers. Mr. Less added that the outreach to Woodland Dunes was an important part of this process and project.

Motion by: Ms. Stokes \_\_\_\_\_ Seconded by: Mr. Diedrich  
Moved that: the Commission approve \_\_\_\_\_ Upon Vote: the motion was  
the Planner's recommendation above. approved unanimously.

- B. PC21-2010/PC53-2009/PC28-2007: Great Lakes Energy Technologies, LLC/Orion Energy Systems, Inc.; Proposed Small Wind Energy System on Woodland Drive Under Section 15.77 of Manitowoc Municipal Code - Annual Compliance Review

See discussion under VI. A. above.

Motion by: Ms. Stokes \_\_\_\_\_ Seconded by: Mr. Diedrich  
Moved that: the Commission approve \_\_\_\_\_ Upon Vote: the motion was  
the Planner's recommendation above. approved unanimously.

- C. PC41-2010/PC51-2008/PC30-79: City of Manitowoc; Discussion of Potential Official Map Amendment and Comprehensive Zoning Map Amendment Regarding Erosion Hazard Areas

Mr. Less reminded Commission members of the discussion on this topic, and advised that the December 6<sup>th</sup> public hearing on the amendments to the comprehensive

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zoning map and to the Official Map had been held without any public input. Mr. Less reminded Commission members that the objective of this project was to make uniform, consistent and the same, areas delineated as “Erosion Hazard Areas” (EHA) in the City.

Mr. Less recommended that the Commission recommend to Council that it adopt the ordinances to amend both the comprehensive zoning map and the Official Map to make these areas uniform in both documents.

Motion by: Mr. Diedrich \_\_\_\_\_ Seconded by: Mr. Hornung  
Moved that: the Commission approve \_\_\_\_\_ Upon Vote: the motion was  
the Planner’s recommendation above. approved unanimously.

- D. PC49-2010: Saunders; Request for Special Permit Under Section 15.43(11) for Creation of a Parking Lot in a Residential Zoning District - 1205 So. 13<sup>th</sup> / Lot 3, Block 314, Original Plat

Mr. Less explained that the rezoning on the Saunders property had been completed, and that as a companion matter was consideration of a Special Permit for siting a parking lot in a residential zoning district. Mr. Less added that the plan was to originally hold the public informational hearing on the Special Permit at tonight’s meeting, but this did not occur, as there was no site plan prepared.

Mr. Less stated that a preliminary site plan had now been prepared, and if found acceptable, the informational hearing could be scheduled for the January Commission meeting. Mr. Less added that he wanted to use tonight’s session to determine the Commission’s level of comfort with the preliminary site plan. Mr. Less reminded Commission members that based on current land usage, an estimated 12 off-street parking stalls would be needed to support the adjacent building, and added that parking on So. 13<sup>th</sup> and Hamilton was unencumbered and also available to support the Saunders building. Mr. Less noted that while he liked the overall parking lot site plan, he did except out the proposed garage, and added that he didn’t think it made sense in its proposed location. Mr. Less continued that the larger issue that needed to be addressed was overall site drainage. Mr. Less stated that based on the preliminary site plan, it appeared that the lot would drain to the east on to the neighbor’s property to the east of the Saunders lots. Mr. Less added that this would not be an acceptable arrangement. Mr. Less then referenced an SMI note at the bottom of the site plan indicating that there was no storm sewer available at this site.

Paul Steinbrecher, SMI, Inc., 102 Revere Drive, commented that the lot drainage flowed to the east, and that there was no storm sewer available in the area deep enough

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to deal with the drainage problem. Mr. Steinbrecher noted that the front third of the lot would drain towards So. 13<sup>th</sup> Street, and added that as an alternative, they could eliminate several of the planned parking stalls, add approximately 5' of fill, and pitch the lot to drain to the west. Mr. Steinbrecher commented that the owner's problem was a lack of funding.

Mr. Less stated that he would be willing to lose a few parking spaces in order to fix the drainage, and added that he had a problem endorsing a concept plan that would create drainage problems for an off-site neighbor.

Mr. Hornung commented that an additional 4' of fill on the east side of the property could be expensive.

Mr. Braun commented that the proposed garage structure could be relocated to the far east, and a berm added at the south line of the property for drainage.

Mr. Steinbrecher noted that they would need a lot of fill for this site, and added that he was directed by the owner to maximize the number of parking stalls. Mr. Steinbrecher added that they could lose stalls #9-#11, add 3½' - 4' of fill, and pitch the lot to the west.

Ms. Mellon asked if there was any vertical drainage, and if a rain garden had been considered for the east side of the lot?

Mr. Steinbrecher replied that he didn't think a rain garden would be practical as it would still require an under drain.

Mr. Less noted that he would be more comfortable with losing a few parking stalls, and pitching the lot drainage back to the west to make sure the site drainage was positive and not draining off-site.

Mr. Diedrich asked Mr. Steinbrecher to clarify the availability of storm sewer in the area?

Mr. Steinbrecher stated that the existing storm sewer at So. 13<sup>th</sup> and Hamilton was only 4' - 5' deep at the corner, and added that he felt eliminating stalls #9-#11 to facilitate positive surface drainage made a lot of sense.

Mr. Diedrich asked if there was a recommended action?

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Mr. Less stated that the purpose of tonight's discussion was to see if the site plan would be acceptable, so as to eliminate site concerns in advance of the public informational hearing phase of the process.

Mr. Diedrich stated that he was not comfortable with the current site plan because of the drainage problem, and added that he would have no problem losing 3-4 stalls to facilitate positive surface drainage.

Mr. Hornung asked what purpose the new garage would serve?

Mr. Steinbrecher replied that the owner wanted it, and added that it had been located on the preliminary site plan in 2 previous locations.

Mr. Brey asked if Mr. Hord was still interested in acquiring some land from the Saunders'?

Mr. Less replied that he had been told that Mr. Hord was no longer interested in this matter.

Mr. Steinbrecher stated that he understood the sentiments of the Commission in this matter.

Mr. Less advised Mr. Steinbrecher that the informational hearing would be scheduled for the January Commission meeting, unless he heard otherwise from him.

No action was taken.

### VII. NEW BUSINESS

#### A. PC51-2010: Modification to Planning Fees

Mr. Less reviewed the proposed fee resolution, and explained that this was a collaboration between Building Inspection, Planning and Engineering. Mr. Less noted that the fees were last scrutinized approximately 3 years ago. Mr. Less highlighted the major change areas covered in the proposal.

Mr. Diedrich stated that he did review the proposal, and did not see anything that was out of line.

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Mr. Less made specific reference to a new bond issuance fee for bonds to be issued by the City and/or Community Development Authority. Mr. Less then made mention to a proposed 2-tier zoning letter fee structure, a fee for processing requests to locate parking lots in residential zoning districts, a fee blending telecom and wind energy system facilities, and a fee for research requests. Mr. Less stated that a bright line distinction between a perfunctory and a more detailed research request would have to be determined on a trial and error basis.

Mayor Nickels stated that a fine line would have to be identified between routine and “above and beyond” work, the latter being what he would consider as the fee portion of a research request.

Mr. Diedrich stated that when reviewing the information provided on the proposed fees vs. those being charged in comparable communities, the City was still providing the services at a reasonable cost level.

Mr. Braun noted that when he contacted other communities, many replied to him that they would also be reviewing and revising their respective fee schedules.

Mr. Less recommended that the Commission recommend to Council approval of the fee resolution amendment.

<u>Motion by:</u> Ms. Stokes	_____	<u>Seconded by:</u> Mr. Diedrich
<u>Moved that:</u> the Commission approve	_____	<u>Upon Vote:</u> the motion was
the Planner’s recommendation above.		approved unanimously.

- A. PC3-2011: City of Manitowoc; Comprehensive Outdoor Recreation Plan 2011-2016

Mayor Nickels commented that the draft plan was being provided to the Commission for review.

Mr. Less requested that any proposed changes and modifications to the draft be given to him at the January Commission meeting.

No action was taken.

VIII. MISCELLANEOUS

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A. Manitowoc County Activities:

1. None.

Ms. Mellon provided commentary regarding the status of the Bay-Lake Regional Planning Commission (BLRPC), and noted that they were in trouble financially. Ms. Mellon continued that she wanted to communicate this information to the Commission, and explained that BLRPC was taking actions including terminating their lease, as well as looking at other cost saving alternatives to get control of their expenses. Ms. Mellon added that over the past year, BLRPC had laid off half of their staff, maintained a 0% levy increase for member counties, and noted that she hoped to provide a further update to the Commission at the January meeting.

Mayor Nickels asked which counties had recently dropped out of the BLRPC?

Ms. Mellon commented that both Brown and Door Counties had dropped out of the 7 member counties.

Additional discussion was held.

No action was taken.

B. Certified Survey Maps (CSM):

1. 7 Saints Corp; CSM in the NE¼ of SE¼, Sec. 25, T.19N., R.23E., City of Manitowoc

Mr. Braun commented that this proposed CSM was discussed at the November Commission meeting, and was the old Schmidt Oil & Muffler/PDQ property, and which was tabled due to lack of information regarding the underground storage tanks (UST). Mr. Braun added that the land was currently a single lot of record.

Mr. Braun noted that the owner wanted to split and sell off approximately the west half of the property identified as proposed TR1. Mr. Braun stated that additional information regarding UST setbacks had been attained, and would range on the approved CSM from 6' - 10' from the tank to the property line. Mr. Braun noted that he had talked with the original tank installer, who advised him that while a 3' separation distance was a required minimum, this minimal distance was inadequate and did not make sense. Mr. Braun explained that cross easements between proposed TR1 and TR2 would be required, and recommended approval of the CSM.

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Motion by: Mr. Hornung

Moved that: the Commission approve the CSM as presented, subject to required easements, petitions, and other conditions as specified above.

Seconded by: Ms. Mellon

Upon Vote: the motion was approved. Mr. Diedrich abstained.

2. Jeff Krueger Properties LLC; CSM in the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Sec. 11, T.18N., R.23E., Town of Newton

Mr. Braun explained a proposed CSM located east of I-43, west of CTH "CR" and south of Silver Creek Road. Mr. Braun noted that this was an existing tract located approximately 1 mile south of the City limits, and the owner's goal was to split the area into 2 tracts, to retain the northern tract and to sell the southern tract. Mr. Braun added that the County and Town had already approved a variance for creation of a lot that did not meet the requirement for having a minimum 100' of R/W frontage. Mr. Braun continued that access to the southern tract would be provided via a proposed 33' access easement connecting the land to CTH "CR". Mr. Braun explained that the location of the property was probably not conducive to an internal street pattern in this area, and subsequently recommended approval of the CSM with all easements to be identified on the CSM, as well as identification of a 90' R/W for CTH "CR".

Motion by: Mr. Hornung

Moved that: the Commission approve the CSM as presented, subject to required easements, petitions, and other conditions as specified above.

Seconded by: Mr. Brey

Upon Vote: the motion was approved unanimously.

3. Volta Holdings, LLC; CSM in the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$ , Sec. 8, T.19N., R.24E., City of Manitowoc

Mr. Braun explained that this was land owned by Mark Nischke located to the west of Johnston Drive, and north of Albert Drive. Mr. Braun noted that this was a single, 65-acre parcel of land, and added that the homestead would be sold to a buyer, with Volta Holdings retaining ownership of the balance of the land area. Mr. Braun continued that the new CSM would identify a minimum 10' "no build" area between buildings.

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Jeff DeZeeuw, SMI, Inc., 102 Revere Drive, , commented that a separation distance between buildings of 2' was permitted in the zoning code, with 10' specified in the building code.

Mr. Braun explained other easements required as part of the CSM, and noted that the mini-warehouses located on this tract were constructed prior to annexation, as the current zoning would not permit this land use. Mr. Braun recommended approval of the CSM.

<u>Motion by:</u> Mr. Muenzenmeyer	<u>Seconded by:</u> Ms. Stokes
<u>Moved that:</u> the Commission approve the _____	<u>Upon Vote:</u> the motion was
CSM as presented, subject to required	approved unanimously.
easements, petitions, and other conditions	
as specified above.	

4. DM and RS Inc.; Resurvey of TR4A2 of CSM Rec. in Vol.11, P. 465 Located in the NW<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub>, Sec. 36, T.19N., R.23E., City of Manitowoc

Mr. Braun explained that this was a proposed CSM located on the east side of So. 41<sup>st</sup> Street, north of Calumet Avenue/USH151. Mr. Braun stated that this would be a new .50-acre tract created out of an existing CSM tract, and that the split was motivated by a potential buyer who planned to construct a Mexican grocery store and restaurant at the site. Mr. Braun added that a site plan meeting to discuss the development was scheduled for tomorrow, and that he was concerned that the project might be put on hold after tomorrow's meeting because of concerns that the site might be too small. Mr. Braun recommended approval of the proposed CSM.

<u>Motion by:</u> Mr. Hornung	<u>Seconded by:</u> Mr. Diedrich
<u>Moved that:</u> the Commission approve the _____	<u>Upon Vote:</u> the motion was
CSM as presented, subject to required	approved unanimously.
easements, petitions, and other conditions	
as specified above.	

5. St. Francis of Assisi Parish/Christopher C. Allie Family Partnership LLC; CSM in the SE<sup>1</sup>/<sub>4</sub> of NE<sup>1</sup>/<sub>4</sub>, Sec. 23, T.19N., R.23., City of Manitowoc

Mr. Braun explained a proposed lot split (4 tracts proposed) for the St. Francis of Assisi Parish (SFA) and Christopher C. Allie Family Partnership properties on the south

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side of Michigan Avenue, west of N. Rapids Road. Mr. Braun identified the proposed school building location on the property, and stated that SFA had been encouraged to prepare a CSM, which was currently 3 separate parcels described via metes and bounds. Mr. Braun added that additional R/W dedications along Michigan Avenue and Ravine Heights Drive would also be required.

Mr. Braun identified 2 smaller land areas that would be added to the SFA parcel (.44-acres) from the Allie parcel, and added to the Allie parcel (.44-acres) from the SFA parcel, and noted that the overall lot division strategy was driven by a 30-acre tax exemption statute for all SFA properties in Manitowoc.

Mr. Braun went on to explain that Planning was not enthusiastic about the storm water pond being located on a separate tract of land, and noted concerns that the parcel could be allowed to go tax delinquent. Mr. Braun added that it was his understanding that the area identified as TR2 would be deeded to the Green Bay Diocese. Mr. Braun noted that the tract numbers would change on the final CSM.

Pat Brandel, SFA, 3310 Lindbergh Drive, Manitowoc, commented that he hoped that the City would consider owning the storm water pond in the future, and added that SFA may be deeding the pond and TR4 to a separate entity for liability reasons. Mr. Brandel stated that the land divisions would be organized, and the parcels conveyed to different entities so as to stay below the 30-acre threshold and to minimize liability exposure.

Mr. Braun commented on a preliminary concept plan which identified the area where future ballfields could be located.

Mr. Hornung commented that there would be liability concerns related to the ballfields as well as the pond.

Mr. Braun explained that apartments would not be constructed in this area.

Mr. Brandel explained that the .44-acre swap with Mr. Allie was a trade of additional flatter land for SFA, and additional high quality viewing areas for Mr. Allie.

Mr. Braun commented on the utility easement bisecting the property.

Mr. Less asked Mr. Steinbrecher if there were any utility issues caused by the re-adjustment of the buildings on this property that would be impacted by the Michigan Avenue deed restriction that had been recorded against the property?

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Paul Steinbrecher, SMI, Inc., 102 Revere Drive, stated that there were no issues, and added that there were 2 places to connect the facilities to a water main, along with a separate 8" sanitary sewer stub to the property. Mr. Steinbrecher added that all of the service stubs were located outside of the pavement and public R/W.

Mr. Less raised concerns with the siting of the storm water pond on a separate parcel, and suggested that he would rather see the pond become part of the school tract, and at the time there was an entity identified for ownership of the pond, a separate CSM tract could be created at that time. Mr. Less added that he would look for an arrangement whereby SFA would serve as a guarantor for performance under a storm water maintenance agreement with the City Engineering Department.

Mr. Brandel stated that he understood what Mr. Less was saying, and felt that the current proposal would be easier.

Mr. Less stated that his preference was to see the pond as part of a larger parcel, and did not see any issue with splitting it off in the future when the third party owner was identified.

Mr. Steinbrecher noted that he felt including the pond area with the proposed TR3 would put the acreage over 30-acres, and added that all of the storm water ponds in the City were located on separate tracts of land.

Mr. Less stated that he did not think the latter comment was correct.

Mr. Brey commented that the Streets and Sanitation Committee continued to discuss the future ownership of these ponds around the City with area developers.

Additional discussion was held regarding the entities that would take ownership of the various parcels. There was no clarification regarding what these entities would be called, or how they would be created.

Mr. Brandel commented that the new entities would be separate from SFA in order to meet the 30-acre requirement.

Mr. Hornung stated that the entities would all be non-profit.

Mr. Brandel noted that this was the current idea now, but made no guarantees towards the future, adding that he would not want to be held to a "non profit"

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requirement in the future, and suggested that it was within the realm of possibility that at some time in the future, SFA might want to sell off a parcel of land.

Mr. Hornung asked what could be constructed on the property if it was sold?

Mr. Braun stated that there were no restrictions.

Mr. Less replied that the CUP was issued to SFA, and therefore, the default regarding permitted land usage would be the underlying zoning (currently "R-5"). Mr. Less stated that he was uncomfortable with the lack of clarity regarding the entities referenced during the discussion, and was more comfortable with combining the proposed storm water tract with the SFA parcel.

Mr. Brandel commented that if storm ponds throughout the City were located on separate parcels, why would the SFA situation be viewed differently?

Mr. Less replied that he was not aware that all of the storm water ponds were on separate parcels of land, as he did not think that was the case.

Mr. Diedrich felt the SFA proposal should be accepted as presented.

Mr. Muenzenmeyer questioned if there would be a development agreement with SFA that would include dealing with the storm water pond?

Mr. Less replied that there was no development agreement, but there would be a storm water maintenance agreement from the Engineering Department. Mr. Less again suggested that he would feel more comfortable if SFA would serve as a guarantor for the new entity that would own the storm water pond tract. Mr. Less added that the storm water agreement needed to state that if maintenance responsibilities were not met, or there were other defaults under the future storm water agreement, that SFA would stand behind the new entity owner and cause the defaults to be remedied as consideration for approving the current CSM request.

Mr. Hornung expressed concern not with the pond issue, but rather with the proposed lot configuration, and suggested holding off approving the CSM for a month until the entity discussion was clarified.

Mr. Brandel stated that he hoped that the land swaps would be completed by the end of 2010, and was not clear regarding how a SFA guarantee would work. Mr. Brandel added that he did not know how to write what Mr. Less was requesting.

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Mr. Diedrich stated that legal counsel would have to determine if by becoming a guarantor, SFA would become liable for non-performance of a separate ownership entity.

Mr. Less stated that this was the idea he was pursuing.

Additional discussion was held.

Motion by: Mr. Diedrich

Moved that: the Commission approve the CSM as presented, subject to required easements, petitions, and other conditions as specified above.

Seconded by: Mr. Brey

Upon Vote: the motion was approved by a vote of 4-3. Mr. Diedrich, Ms. Mellon, Mr. Brey and Mayor Nickels voted in favor of the Motion. Mr. Hornung, Mr. Muenzenmeyer and Ms. Stokes voted against the motion.

6. Sack Realty LLC; Resurvey of TRA1 Rec.Vol.12, P. 147 Located in the SW<sup>1</sup>/<sub>4</sub> of SE<sup>1</sup>/<sub>4</sub>, Section 11, T.19N., R.23E., City of Manitowoc

Mr. Braun explained that this was a proposed CSM at the former Coach Lite Inn at the SE corner of N. Rapids Road and Menasha Avenue. Mr. Braun stated that no new building was being proposed, but rather this was a re-survey that would correct a previously recorded CSM and which would include a never dedicated public R/W. Mr. Braun added that the proposed CSM would correct an old CSM, and that as part of the approval, he would be requiring the dedication to the center line of N. Rapids Road. Mr. Braun explained that the new property line would be a sawtooth pattern around the west side of the building, and noted that he did not have any other issues with the proposal, and recommended approval.

Motion by: Mr. Diedrich

Moved that: the Commission approve the CSM as presented, subject to required easements, petitions, and other conditions as specified above.

Seconded by: Mr. Hornung

Upon Vote: the motion was approved unanimously.

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7. Tittl; Resurvey of TR1 and TR2 of CSM Rec. in Vol.12, P. 37 Located in Government Lot 2 Sec. 26, T.19N., R.23E., Town of Manitowoc Rapids

Mr. Braun explained a proposed CSM that had been previously approved by the Commission back in 2007. Mr. Braun noted that this property was located on the west side of So. Rapids Road and CTH "R", and north of the Rivers Bend property. Mr. Braun stated that Tom Tittl would be acquiring some additional acreage from his father, and that the CSM was being brought back to the Commission to discuss a previous requirement for the owner to sign a "Development Agreement", which was a condition of CSM approval back in 2007. Mr. Braun reviewed a recent court case that suggested the un-enforceability of these agreements. Mr. Braun commented that these agreements had originally been named "Annexation Agreements", but were ultimately modified.

Mr. Less explained that the annexation statutes were not friendly to municipalities, and did not allow municipalities to encourage, solicit or direct annexations at the expense of property owners. Mr. Less continued that the issue was whether or not the needs of the property owner were acceptable and affordable to the annexing municipality, and that determination would result in either acceptance or rejection of an annexation petition by the Council. Mr. Less added that he did not feel comfortable relying on those agreements.

Mr Braun provided more commentary on these agreements, including identification of parcels on a map which were historically encumbered by these agreements. Mr. Braun suggested that the agreements did not appear to be applied consistently over time, and then recommended approval of the CSM, and that the Development Agreement requirement be extinguished and not required.

Mr. Less commented that reliance on these agreements was not recommended, but where they were already in place, they might prove to be strategic in terms of accomplishing other non-annexation issues.

Additional discussion was held.

Motion by: Mr. Diedrich  
Moved that: the Commission approve the CSM as presented, subject to required easements, petitions, and other conditions as specified above.

Seconded by: Mr. Hornung  
Upon Vote: the motion was approved unanimously.

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C. Summary of Site Plans 11/4/2010 - 12/8/2010:

1. SP19-2010: Manitowoc County; Radio Communication Tower  
909 Hancock - New Construction (approved).

IX. ADJOURNMENT

The meeting was adjourned at 8:10 P.M.

Respectfully Submitted,

David Less  
Secretary