

PLAN COMMISSION MINUTES - 4/11/2012

Plan Commission Offices
Manitowoc City Hall

Regular Meeting
Manitowoc City Plan Commission
Wednesday
April 11, 2012
6:30 P.M.

I. CALL TO ORDER

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

II. ROLL CALL

Members Present

Dan Hornung
Jim Muenzenmeyer
Jim Brey
Val Mellon
Steve Alpert
Maureen Stokes
Justin Nickels arrived at 7:10pm

Members Excused

David Diedrich

Staff Present

David Less
Paul Braun
Michelle Yanda

Others Present

See Attached Sign In Sheet

III. APPROVAL OF MINUTES of the Regular February 15, 2012 Meeting.

Motion by: Ms. Stokes

Moved that: the minutes be approved as presented.

Seconded by: Mr. Muenzenmeyer

Upon Vote: the motion was approved unanimously.

IV. PUBLIC INFORMATIONAL HEARINGS

- A. PC11-2012: Meyer; Request to Rezone Property at 2851 S. 10th Street from "R-4" Single and Two Family Residential to "C-1" Commercial District Pursuant to Section 15.310(2)(e)12 of the Manitowoc Municipal Code

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Mr. Less explained that tonight's public informational hearing was in regard to a request from Lee Meyer, the record owner of property located on the east side of So. 10th Street, south of Viebahn, and north of Silver Creek Park. Mr. Less stated that the petitioner was requesting that the existing "R-4" Single and Two Family Residential zoning be amended and rezoned to "C-1" Commercial District pursuant to Section 15.310(2)(e)12. of the City's Municipal Code, which would allow for the legal land usage of the property as a landscape/garden center. Mr. Less noted that the petitioner was the owner of Ecology Technology, a business dealing with areas including lawncare, fertilization and landscaping; shredded soils; snow and ice control; and light excavating and trucking.

Mr. Less detailed that the area proposed for rezoning was identified as the south 256' of the north 804' of the west 288.46' of Government Lot 1 in Section 5, T18N, R24E, excepting the west 33' for street purposes, and was further identified as tax parcel #805-202-040. Mr. Less noted that this parcel was acquired by Lee Meyer and Joan Meyer via Warranty Deed in May, 2008 for \$82,000 from Todd and Andrea Holschbach; has a total valuation of \$44,900 according to the City Assessor records; and generated approximately \$972 in annual real estate taxes.

Mr. Less noted that the rezoning application included the signature of Kerchefske Construction, Inc. as the contract purchaser of this property, so it was unclear to him as to whether or not this party was going to acquire the property, or would be involved in the planned business for the site. Mr. Less stated that Mr. Meyer had not provided any commentary on that matter.

Mr. Less explained that the subject parcel was a rectangle measuring 256' along So. 10th Street and had a lot depth of 255.46', for a total area of 65,398sf in area or 1.5-acres, with the south line of the parcel located just north of the north entrance into Silver Creek Park - approximately 50' from the north line of Silver Creek Park. Mr. Less continued that the subject property at present was vacant, but was being used for landscaping material storage. Mr. Less referenced the renderings provided by the petitioner which identified greenhouses and a proposed 10,000sf building at the north end of the property; material bins along its south side; garden products along So. 10th Street; and a cedar hedge along the north and east sides. Mr. Less stated that the rezoning application further noted that the business would create 8 jobs, and would provide parking for 15 vehicles.

Mr. Less then detailed surrounding land uses and zoning, and noted that the zoning surrounding the subject property was "R-4" to the north, south and east, and that township property to the west was zoned "Rural Residential" that was intended for

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mixed residential and low-impact non residential development on relatively small lots. Mr. Less stated that surrounding land uses were residential to the north (the petitioner's residence which he purchased in 1990) and northwest, Silver Creek Park to the south, UW-Manitowoc campus to the east, and vacant low lands in the Town of Manitowoc to the west zoned for residential purposes.

Mr. Less then explained that under the existing "R-4" zoning district, permitted uses were essentially limited to single and two family residential, parks, and community living arrangements and day care centers for not more than 8 individuals, and that conditional uses included churches, schools, private clubs and lodges, domestic violence centers, and community living arrangements and day care centers for 9 or more persons. Mr. Less continued that the proposed "C-1" zoning district allowed retail, office and professional uses, including, but not limited to contractor offices (including landscape contractors), motor vehicle sales and repair facilities, and tire sales and repair businesses, with conditionally permitted uses including wrecker services, mini-warehouses, and recycling facilities.

Mr. Less then commented that notices were mailed to property owners within 200' of the subject parcel on April 4th inviting those parties to tonight's meeting. In terms of responses, Mr. Less noted that he did receive an email from Norman Paternoster, who owned property at 2916 So. 10th, stating support for the rezoning. Mr. Less continued that they also received an email on March 7th from Bruce Peters at UW-Manitowoc, stating that he had met with Mr. Meyer to discuss the proposed zone change, and was not opposed, as long as it didn't impede their use of the access road to the south of the subject in any way.

On the matter of the access road, Mr. Less explained that according to City mapping, the drive was part of the property leased by UW-Manitowoc from Manitowoc County, and the Meyer proposal did not appear to conflict with this access drive, even though the southeast corner of the Meyer property was very close to the access drive. Mr. Less did note that there were no CSM's in this area, and the legals for the Meyer and UW/County properties were metes and bounds descriptions. Mr. Less noted that the access drive was private, adding that there was no Official Map or planned future street in this area.

In closing, Mr. Less commented that this area appeared to be transitioning towards commercial/retail, as the east side of So. 10th, south of Viebahn was populated with a BP Amoco, Lake Terrace Apartments, and the Meyer residence; and the west side of So. 10th included residential, the Vinyl Top Shop and Popp's Car Wash. Mr. Less continued that the subject property was specifically identified in the City's 2009, 20-

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year land use map as part of the Comprehensive Plan, as “Single and Two Family Residential - Urban”. Mr. Less continued that based on the City’s future land use map, this proposed rezoning would not be consistent with the current Comprehensive Plan if taken literally, but in his opinion, it did meet the objectives of the Plan. Mr. Less went on to state that with the larger area transitioning to a mixture of land uses, this was an area that should be re-mapped when the City updated the Comprehensive Plan, hopefully in 2013. Mr. Less concluded by noting that regarding the consistency issue, the Comprehensive Plan provided guidance in terms of how to determine whether or not a land use decision was “consistent” with the overall Plan; noting first that the Plan was a living document, evolving as the City evolved. Mr. Less continued that the Plan further stated that the City should frame its determination of consistency based upon the following guidance: (i) consider if aspects of actions, programs or projects would further the overarching objectives and policies of the Plan; and (ii) determine if the proposed project would be compatible with the proposed future land use and densities contained in the Plan.

Charles Clark, Dean, UW-Manitowoc, 705 Viebahn, asked for clarification on one of Mr. Less’ comments regarding the placement of a cedar hedge on the north and east sides of the property, with no reference to the south line of the property.

Mr. Less clarified that there was no cedar hedge on the south side of the subject property identified on the sketch provided by Mr. Meyer, and explained the City’s formal site plan process. Mr. Less confirmed that they would make sure that there was an adequate setback along the south line of the property to provide a buffer from the access drive. Mr. Less noted that the sketch was not a site plan as far as the City was concerned, and was not intended to be a complete representation of how the subject property would be developed.

Mr. Clark clarified that they were, in general, not opposed to the rezoning, and noted that Ecology Technologies had been a good neighbor with the UW, and added that he felt the proposal would add to the overall aesthetics of the area. Mr. Clark continued that they did have concerns with setbacks of the proposed development from their access road, particularly in the winter. Mr. Clark added that he hoped a cedar hedge would be installed along the south side of the Meyer property as part of the project’s site plan.

Bruce Peters, Assistant Dean, UW-Manitowoc, 705 Viebahn, commented that the property underlying the UW facility was owned by Manitowoc County, and asked if there was a setback requirement between the subject property and the access road?

Mr. Less stated that there technically was not a setback requirement, and added

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that he would make sure there was adequate spacing in that area when a formal site plan was filed with the City. Mr. Less noted that the sketch would not be acceptable as a formal site plan.

Mr. Peters re-stated the concern with continued usage of the access road, and in particular at the southeast corner of the Meyer property where the subject parcel was within 6' of the access road.

Lee Meyer, 2717 So. 10th, stated that regarding the comment made earlier about Kerchefske Construction, Inc., he was a general contractor, a builder, and not an owner.

Mr. Less stated that his confusion stemmed from Mr. Kerchefske being listed on the rezoning application as a contract purchaser.

Mr. Meyer continued that regarding the south line of his property, the plan was to create a decorative wall, that would not have a tight cedar hedge, as he wanted to create a buffer wherein the green would accent the wall. Mr. Meyer noted that any landscaping in that area would not be tight against the wall.

Mr. Brey asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend to Council that it instruct the Clerk to call for the required public hearing (May 7th), and to further recommend approval of the rezoning and adoption of the ordinance upon completion of public hearing.

Ms. Mellon noted that she had received a telephone call today from Jeff Beyer, Manitowoc County, stating that they had no problem with the proposed rezoning, but wanted to make sure there were adequate setbacks along the south line of the subject property from the access drive.

Mr. Brey commented that he also received an email from Mr. Beyer who recommended that a minimum 6' separation along the south line would be adequate.

Motion by: Mr. Hornung
Moved that: the Commission approve
the Planner's recommendation above.

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

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- B. PC13-2012: JHA Properties, LLC/ TLC Homes; Request for Exception to 2,500' Separation Requirement Pursuant to Wis. Stat. § 62.23(7)(i)2r.a. for Establishment of an 4-Person Adult Family Home (AFH) at 2127 Menasha Avenue

Mr. Less explained that this was a request from Tim Frey as President of TLC Homes, Inc.(TLC), which is a provider of group homes and associated services for challenged individuals. Mr. Less noted that they were requesting that the City grant an exception to the 2,500' spacing requirement under Wis. Stat. § 62.23(7)(i)2r.a. to operate an Adult Family Home (AFH) for a maximum of 4 persons.

Mr. Less detailed that the subject property was a 1-story residential home located at 2127 Menasha, also known as Lot 10, Block 10, Forest Park Subdivision, together with part of a vacated alley (Tax Parcel # 280-010-100). Mr. Less continued that Mr. Frey was also the sole member of JHA Properties, LLC, which was the apparent owner of the subject property. Mr. Less explained that the property had been owned by the Bank of New York pursuant to a judgment of foreclosure and Sheriff's Deed since August, 2011, and added that while he had a copy of a closing statement signed only by JHA, he had not seen a deed evidencing ownership of the property by JHA. Mr. Less stated that his presumption going forward was that JHA was the owner of the property at this time, and its intent was to lease the facility to TLC Homes, Inc. as the operating entity.

Mr. Less then stated that an AFH was included in the definition of a "Community Living Arrangement" (CLA) under Wis. Stat. § 62.23(7)(i), and was specifically defined under Ch. 50 "Uniform Licensure" as a private residence where 3-4 adults who were not related to the operator resided and received care, treatment or services that were above the level of room and board, and that may include up to 7 hours/week of nursing care per resident. Mr. Less continued that an AFH was slightly different than a CBRF which was a community facility for 5+ adults who were not related, and did not require care above intermediate level nursing care, and resided and received care, treatment or services that were above the level of room and board, but included no more than 3 hours of nursing care per week per resident.

Mr. Less continued that TLC was requesting that the City grant an exception to the 2,500' provision contained in Wis. Stat. § 62.23(7)(i)2r.a. which stated that the City, at its discretion, may grant an exception to this statute to permit a CLA to locate within 2,500' of an existing CLA. Mr. Less noted that the proposed AFH was located approximately 1,492' from a 6-person CBRF located at 1301 N. 24th (HIL Lighthouse).

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Mr. Less added that TLC Homes was currently the licensee for 2 support facilities in the City for developmentally disabled, and emotionally disturbed clients: (i) TLC Homes Expo Drive, 5053 Expo Drive (4-person AFH); and (ii) TLC Kimberly Circle, 3302 Kimberly Circle (4-person AFH). Mr. Less added that TLC was also the licensee for an 8-person CBRF in Two Rivers, and that Greg Buckley had advised him that this facility had not been problematic in that city.

Mr. Less again stated that the subject parcel appeared to be owned by JHA Properties, and referenced a copy of the "Settlement Statement" in his possession dated December 16, 2011, which identified a purchase price of \$68,000, even though he had not seen a deed evidencing ownership. Mr. Less referenced that the property had been previously owned by the Bank of New York, which acquired the property in 2011 by virtue of a property foreclosure and subsequent Sheriff's Deed.

Mr. Less added that the subject parcel was located on the south side of Menasha Avenue, west of N. 21st Street; and featured new handicap ramps located on both the east and north sides of the property, and a new deck constructed off of the rear of the home. Mr. Less stated that the property included an attached 1-car garage, and that the back yard was open and unfenced. Mr. Less continued that it appeared that the Bank of New York spent around \$35,000 in upgrades to the home since the beginning of 2012 to, among other things, gut and rehab the interior, and install handicap ramps. Mr. Less noted that it appeared that the number of bedrooms, which was originally 5, was reduced to 3 as part of the remodeling.

Mr. Less explained that the subject parcel itself measured 75' on Menasha with a lot depth of 120', and included a 1-story, 1,316sf, 5-bedroom ranch home. Mr. Less noted that the property was currently zoned "R-3" Single Family District, had an estimated fair market value of \$105,200, and generated approximately \$2,200 in real estate taxes. Mr. Less indicated that there were no overnight or winter parking ban restrictions on the north side of Menasha, but the south side was impacted by the winter parking ban, and as such, there was no parking December 1st - March 31st, 1am - 6am.

Mr. Less continued that under the "R-3" zoning, a CLA for 8 or fewer individuals was a permitted use, and did not require a Conditional Use Permit (CUP). Mr. Less noted that the proposed AFH would be for a maximum of 4-persons, and would operate as a facility for physically disabled, traumatic brain injured and developmentally disabled adults. Mr. Less noted that placements would occur through the Lakeland Care District (a regional long term care district providing family care program services in Manitowoc, Fond du Lac and Winnebago Counties), and the facility would be staffed 24 hours/day, with shifts featuring double coverage (2 direct care staff

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on duty) and triple coverage (3 direct care staff on duty) as well.

Mr. Less then explained that the purpose of the 2,500' spacing requirement was to disperse CLA's throughout the community, and to avoid over intensifying the location of such person's into limited geographic areas. Mr. Less continued that CLA's were regulated under Wis. Stat. § 62.23(7)(i)2r.a. which included the following provisions:

1. (7)(i)2r.a. in regard to the 2,500' separation requirements for AFH's and that an agent of an AFH may apply for an exception to this requirement, and the exception may be granted at the discretion of the City; and
2. (7)(i)2r.b. which stated that an AFH was entitled to locate in any residential zone without restriction as to the number of AFH's and may locate in any residential zone, without being required to obtain "special zoning permission", except for the annual review provision under (7)(i)9. of the statute.

Mr. Less continued that AFH's were regulated by the State's Department of Health Services (DHS), and were further required to meet the certification requirements under Wisconsin Administrative Code DHS 82, and the licensing requirements under Wisconsin Administrative Code DHS 88. Mr. Less noted that the Division of Supportive Living was responsible for the licensing of all AFH's in Wisconsin, and no AFH could operate unless they had been certified to do so by DHS.

Mr. Less then noted that among the requirements for operation of an AFH were the delivery to DHS of: (i) evidence of the financial ability to operate; (ii) a fire evacuation plan, resident rights and grievance policies; (iii) resident rooms meeting certain minimum square footage requirements; (iv) medication storage areas; and (v) other requirements

Mr. Less then detailed the surrounding zoning and land uses in the area.

Mr. Less then stated that notices were mailed from Planning on April 4th to property owners within 200' of the subject property, and noted that he did receive a single phone call today from Joretta Mountford, 2117 Menasha, who told him she would not be present tonight, and added that she had been through the house, and they had done a nice job renovating the structure. Mr. Less did note that she did ask if this type of facility would have an impact upon her property value, and he advised her "no", and that this was not a valid concern in these deliberations.

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Tim Frey, TLC Homes, P.O. Box 1407, Sheboygan, commented that he was available to answer any questions, and added that TLC Homes had been in business for 15 years and had a good reputation. Mr. Frey added that they had a strong management presence, and had been operating in Manitowoc since 2000.

Mr. Brey asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend to Council that it grant the exception to the 2,500' spacing requirement as requested to JHA Properties, LLC d/b/a TLC Homes, Inc. (together "TLC") pursuant to Wis. Stat. § 62.23(7)(i)2r.a. with the understanding that if TLC did not secure all required licenses from the State by December 31, 2012, this exception would be void and terminates effective January 1, 2013.

Motion by: Mr. Muenzenmeyer
Moved that: the Commission approve
the Planner's recommendation above.

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

- C. PC15-2011: JHA Properties, LLC/TLC Homes; Request for Exception to 2,500' Separation Requirement Pursuant to Wis. Stat. § 62.23(7)(i)1. for Establishment of an 8-Person Community Based Residential Facility (CBRF) at 4436 & 4438 Fleetwood Drive

Mr. Less explained that this was a request from Tim Frey as President of TLC Homes, Inc. (TLC), which was a provider of group homes and associated services for challenged individuals, and that they were requesting that the City grant an exception to the 2,500' spacing requirement under Wis. Stat. § 62.23(7)(i)1. to operate a Community Based Residential Facility (CBRF) for a maximum of 8 persons. Mr. Less stated that the subject property was a 1-story residential duplex located at 4436 and 4438 Fleetwood Drive, also known as Lot 2, Block 4, Highland Estates Subdivision No. 1 (Tax Parcel # 343-004-020).

Mr. Less stated that Mr. Frey was also the sole member of JHA Properties, LLC, which was the contract purchaser of the subject property. Mr. Less noted that the Offer called for closing on the sale on or before April 30th, and also identified appraisal and financing contingencies of sale. Mr. Less added that the property had been owned since 1975 by Vincent and Darlene Koutnik, and his presumption was that JHA, as the contract purchaser, would own the property, and lease the facility back to TLC Homes, Inc. as the operating entity.

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Mr. Less noted that a CBRF was included in the definition of a “Community Living Arrangement” (CLA) under Wis. Stat. § 62.23(7)(i), and was specifically defined under Ch. 50 “Uniform Licensure” as a facility for 5+ adults who were not related, and which did not require care above intermediate level nursing care, and in which clients received care, treatment or services that were above the level of room and board, but included no more than 3 hours of nursing care per week per resident. Mr. Less noted that CBRF’s were further regulated under DHS 83 which detailed regulations and standards for the care, treatment and services, as well as the health, rights and welfare of residents of a CBRF.

Mr. Less continued that TLC was requesting that the City grant an exception to the 2,500' provision contained in Wis. Stat. § 62.23(7)(i)1. which stated that the City may grant an exception, at its discretion, to this statute to permit a CLA to locate within 2,500' of an existing CLA. Mr. Less noted that the proposed CBRF was located approximately 1,674' from a 4-person Adult Family Home (AFH) located at 2019 Kellner (HIL Sierra Home); and approximately 2,267' from a 43-person CBRF located at 2115 Cappaert Road (Harmony of Manitowoc-West). Mr. Less added that as of January 1, 2012, there were 28 CBRF’s and AFH’s dispersed throughout the City.

Mr. Less stated that in this matter, the proposed CBRF would be a “Class C Non-Ambulatory (CNA)” facility serving residents who were ambulatory, semi-ambulatory or non-ambulatory, but one or more of whom were not physically or mentally capable of responding to a fire alarm by exiting the CBRF without help or verbal or physical prompting.

Mr. Less continued that as previously mentioned at the earlier hearing, TLC was currently the licensee for 2 support facilities in the City for developmentally disabled, and emotionally disturbed clients, and was also the licensee for an 8-person CBRF in Two Rivers. Mr. Less again referenced his conversation with Greg Buckley in which he was advised that the TLC facility in Two Rivers had not been problematic in that city.

Mr. Less then noted that the subject parcel was located on the north side of Fleetwood Drive, west of Kellner and east of N. Rapids Road. Mr. Less explained that the property measured 100' of frontage on Fleetwood, and had a lot depth of 145', and that site improvements included a 1-story, 1,900sf vinyl sided duplex, and an attached 3-car garage. Mr. Less noted that the home had 8 bedrooms, and a full basement, with an open and unfenced backyard.

Mr. Less noted that the subject parcel was currently zoned “R-5” Low Density

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Multiple-Family Residential District, had an estimated fair market value of \$168,500, and generated approximately \$3,500 in real estate taxes. Mr. Less added that there were no overnight or winter parking ban restrictions on either side of Fleetwood Drive.

Mr. Less then stated that under the "R-5" zoning, a CLA for 15 or fewer individuals was a permitted use, and did not require a Conditional Use Permit (CUP). Mr. Less continued that the proposed CBRF would be for a maximum of 8-persons, and would operate as a facility for physically disabled, traumatic brain injured and developmentally disabled adults, with placements occurring through the Lakeland Care District (a regional long term care district providing family care program services in Manitowoc, Fond du Lac and Winnebago Counties). Mr. Less noted that the facility would be staffed 24 hours/day, with shifts featuring double coverage (2 direct care staff on duty) and triple coverage (3 direct care staff on duty) as well.

Mr. Less then mentioned that the purpose of the 2,500' spacing requirement was to disperse CLA's throughout the community, and to avoid over intensifying the location of such person's into limited geographic areas. Mr. Less explained that CLA's were regulated under Wis. Stat. § 62.23(7)(i) which included the following provisions:

3. (7)(i)1. in regard to the 2,500' separation requirements for CLA's and that an agent of a CLA may apply for an exception to this requirement, and the exception may be granted at the discretion of the City; and
4. (7)(i)3. which stated that a CLA was entitled to locate in any residential zone without restriction as to the number of CLA's and may locate in any residential zone, without being required to obtain "special zoning permission", except for the annual review provision under (7)(i)9. of the statute.

Mr. Less then noted that CBRF's were regulated by the State's Department of Health Services (DHS), and were further required to meet the certification requirements under Wisconsin Administrative Code DHS 83, and added that the Division of Supportive Living was responsible for the licensing of all CBRF's in Wisconsin, and no CBRF's could operate unless they had been certified to do so by DHS.

Mr. Less then explained that among the requirements for operation of a CBRF included:

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1. Filing of a program statement with the State that detailed evidence of the financial ability to operate, along with a fire evacuation plan, resident rights and grievance policies.
2. Providing evidence that the applicant for licensing has made a good faith effort to establish a community advisory committee (communication link between the CLA and neighborhood).
3. Staffing requirements:
 - A. At least 1 staff present when 1+ residents present in the house.
 - B. At least 1 staff present when 1+ residents are in need of supervision.
4. Resident rooms (CNA facilities):
 - A. 100sf/resident for single occupancy bedrooms.
 - B. 80sf/resident for multiple occupancies.
5. Common dining and living space of 60sf per ambulatory or semi-ambulatory resident, and 90sf per non-ambulatory resident.
6. Medication storage areas, and administration requirements.
7. Criminal background checks.
8. Training.

Mr. Less then explained the zoning and land use surrounding the subject parcel.

In closing, Mr. Less stated that notices were mailed from Planning on April 4th to property owners within 200' of the subject property. Mr. Less explained that he did receive an email from Cheryl and Robert Schild, 4420 Fleetwood Drive expressing some concerns with the proposed CBRF including that they didn't think this type of facility belonged in a residential area, a concern with diminution of property values, and a fear of facility residents walking up and down the street. Mr. Less stated that he replied to them with an email detailing what federal and state law and the courts had said about these concerns, and that these arguments were not grounds, nor would they be accepted as justification for the discriminatory affects of the restrictions as they related to the Federal Fair Housing Amendment Act of 1988 (FHAA) and the American with Disabilities Act (ADA).

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Mr. Less continued that Mr. Braun also received a phone call today from James Behringer, 4445 Fleetwood Drive, who did not have any issues with the proposal after Mr. Braun discussed the situation with him.

In closing, Mr. Less stated that court cases for the eastern district of WI had found that the spacing requirement and the variance or special exception procedure were inconsistent with the legislative histories of both the FHAA and the ADA, and as a result, were pre-empted by both laws. Mr. Less explained that the doctrine of pre-emption was the holding that certain matters were of such a national, as opposed to local, character that federal law preempted or took precedence over state law. Mr. Less commented that this was a situation wherein the City did not have a legal basis to deny this request, but did explain that problems that would be identified as part of the City's annual review of CLA's could be a basis for revocation of a license, if there was a clear evidence trail between the proposed facility, and a bonafide health and safety issue(s). Mr. Less added that even under that scenario, any effort to revoke a license would be subject to judicial review under State law. Mr. Less did note that the City needed to proceed carefully in dealing with these facilities, and added that CLA's tended to be the best neighbors in a neighborhood.

Pam Olson, 4414 Fleetwood Drive, commented that she was concerned with fast moving traffic from N. Rapids Road on to Fleetwood, as well as a concern with parking and the overall safety of residents. Ms. Olson stated that there was a winter parking ban on Fleetwood, and then asked Mr. Frey what he was going to do with the 3 garages?

Tim Frey, TLC Homes, P.O. Box 1407, Sheboygan, stated that his plans would be to finish the garage into a residence space. Mr. Frey continued that residents of this facility would mainly be wheelchair bound, and not be leaving the home by themselves due to their conditions. Mr. Frey added that on-street parking was readily available, and should not be an issue to accommodate the infrequent times when visitors would come to the facility. Mr. Frey talked about team meetings that would be held at the facility approximately every 4-6 months, that would involve guardians, social workers, care management team members and others.

Ms. Olson again stated that this was a very busy corner, and was concerned with overall safety in the area.

Brad Urbanek, 4444 Fleetwood Drive, echoed Ms. Olson's comments and concerns with parking, and how much activity would be occurring with the residents.

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Dawn Madsen, 4441 Fleetwood Drive, stated that she was opposed to the facility, and felt that adding this operation into the neighborhood would result in more frequent visits by Police and Fire services to the area. Ms. Madsen stated that she was opposed to the TLC facility, and cited parking concerns, and a feeling that the use would be detrimental to the neighborhood.

Andrew Harrigan, 4413 Knuell Court, asked for clarification on the number of residents that would be at the facility, and specifically wanted to know if there would be an overall total of 8 residents, or 8 residents per each side of the duplex?

Mr. Frey stated that there would be 8 residents in total in this facility, and it would be staffed when residents were present. Mr. Frey stated that the structure would have 6 bedrooms, and 2 shared bedrooms. Mr. Frey added that based on their licensing and funding, they would not be able to have more than 8 residents at the facility.

Mr. Harrigan asked how many staff would be present at any single time?

Mr. Frey replied that it would likely be 1 or 2 staff present at any time.

Mr. Harrigan also referenced a concern with area congestion caused by parking related to families and visitors to the residents in the facility.

Mr. Brey asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend to Council that it grant the exception to the 2,500' spacing requirement as requested to JHA Properties, LLC d/b/a TLC Homes, Inc. (together "TLC") pursuant to Wis. Stat. § 62.23(7)(i)1. with the understanding that if TLC did not secure all required licenses from the State by December 31, 2012, this exception would be void and terminate effective January 1, 2013.

Motion by: Mr. Hornung
Moved that: the Commission approve the Planner's recommendation above.

Seconded by: Ms. Stokes
Upon Vote: the motion was approved 6-1. Mayor Nickels voted against the motion.

Ms. Olson commented that it didn't seem that there was much that could be done about this proposal.

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Mr. Brey commented that this matter would be ultimately decided by Council next Monday, and added that there was public input session as part of that meeting.

Mr. Less again referenced the concept of pre-emption, and that the City would be on shaky legal ground if it decided to not approve the request. Mr. Less commented again on the court proceedings regarding the 2,500' spacing requirement, and added that the local home rule call in these matters had been pre-empted.

D. PC5-2012: City of Manitowoc; Proposed Vacation Under Wis. Stat. § 66.1003(4) Wis. Stats and Official Map Amendment Under Wis. Stat. § 62.23(6) for Clay Pit Road

Mr. Less explained that tonight's public informational hearings were in regard to a City-initiated amendment to the City's Official Map to eliminate 2 portions at the end of Clay Pit Road located north of Riverview Drive and east of Union Place, extended, and a related vacation of the same areas. Mr. Less noted that the amendment of the Official Map would occur pursuant to Wis. Stats. § 62.23(6), and the concurrent discontinuance or vacation of a portion of Clay Pit Road would occur pursuant to Wis. Stats § 66.1003(4).

Mr. Less stated that the purpose of these proceedings was to re-establish the Clay Pit Road R/W, and to modify the lot layout in this area to correct for the location of the City's storm water pond which overlapped into multiple parcels, and to place it within a single lot of record. Mr. Less added that these actions were recommended by the Plan Commission at their January 11th meeting, and which was confirmed by the Council on January 16th. Mr. Less noted that tonight's informational hearings were essentially the first step in this process.

Mr. Less explained that procedurally, the City-initiated street vacation process was governed under Wis. Stats. § 66.1003(4), and that as the vacation proceedings had been initiated by the City, this portion of the statute stated that there was no vacation petition requirement. Mr. Less continued that the City had prepared the Notice of Lis Pendens and recorded it at the Register of Deeds; the City Council would then introduce a vacation resolution; notices would be formally served by the City on to the abutting property owners only; a public hearing would be required, and public hearing notices would be published three (3) times prior to a required public hearing (held at least 40 days after the date the resolution was introduced); a public hearing would be held; and

the Council could subsequently adopt the resolution. Mr. Less noted that the proposed

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vacation could become problematic if a written objection was filed with the City by an abutting property owner to the area proposed for vacation, which was not relevant in this case as the City was the 100% owner of the abutting lands.

Mr. Less continued that the Official Map process also required a public hearing with a Class 2 notice adding that the vacation and Official Map hearing notices could be combined. Mr. Less did note that the Official Map hearing could not be held at the same Council meeting where the street vacation was actually voted upon. Mr. Less then noted the following dates and actions:

1. "Notice of Lis Pendens" regarding the vacation proceedings was filed at the Register of Deeds office and recorded on March 12th.
2. A Resolution for vacation and an Ordinance for amending the Official Map would be introduced at the April 16th Council meeting.
3. The property owners of all the frontage of the lots and lands abutting upon the area to be vacated (in this case just the City) would be served notice of the upcoming public hearing on or before May 4th.
4. The required Council public hearings regarding the Official Map amendment and vacation would be scheduled for June 4th.
5. The vacation proceedings would require a Class III notice to be published pursuant to Wis. Stats. § 66.1003(8)(b), and the Official Map amendment a Class II notice to be published-- notices would be published on May 14th, 21st and 28th.
6. The Plan Commission would provide its final recommendations on the vacation and Official Map amendment at its June 13th meeting.
7. Final Council action on the Official Map amendment and the vacation could occur on or after June 18th.

Mr. Less stated that in the case of this proposed Official Map amendment and vacation, the portions of the public R/W to be vacated were:

1. A 5-sided rectangular or polygon in shape, that measured 129.52' along its north side, 109.12' along its east side, which connected to

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a segment measuring 47' along its south side, which connected to a segment measuring 62.35' along its south side, which connected to a segment measuring 35.0' along its west side, and finally connecting to a segment measuring 60.87' along its west side, and back to the point of beginning.

.25-acres or 10,890sf in area.

2. A nearly right triangle with a base at its east end of 5.96', connecting to a north line opposite the hypotenuse measuring 70.95', and a south line of the triangle being the hypotenuse measuring 72.20', and back to the point of beginning.

.0048-acres or 208sf in area.

Mr. Less continued that regarding the area proposed for removal from the Official Map and vacation, the 100% landowners abutting the proposed vacation area was only the City of Manitowoc. Mr. Less did reference that the City had a long term lease with Chiefs Football, Inc. since at least 1958 for 5.82-acres, adding that the areas proposed for vacation were not part of the lands covered by the property lease.

Mr. Less explained the zoning and land use in the area, adding that in the case of the proposed amendment to the Official Map, the area to be removed from the Official Map matched the area of the proposed R/W vacation. Mr. Less noted that the City would retain all easement and utility rights incidental to the vacated R/W which were in place prior to the vacation of the R/W.

In closing, Mr. Less stated that notices of this evening's informational hearings were mailed on April 4th to property owners within 200' of the ends of the proposed Official Map amendment and vacation, along with the Manitowoc Chiefs, and that there were no responses received.

Mr. Less continued that as the proposed vacation and Official Map amendment related to the City's Comprehensive Plan, this would be an improvement to existing conditions in a City park and conservancy area, and as such, would have no impact upon land usage in the area. Mr. Less stated therefore, the proposed proceedings were found to be consistent with the Plan.

There was no public comment.

Mr. Brey asked Mr. Less for his recommendation.

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Mr. Less recommended that the Commission recommend to Council that it: (i) instruct the Clerk to call for the required public hearings; and (ii) publish the required legal notices.

Motion by: Mr. Alpert

Seconded by: Ms. Mellon

Moved that: the Commission approve the Planner's recommendation above.

Upon Vote: the motion was approved unanimously.

V. REFERRALS FROM COMMON COUNCIL

- A. PC16-2012: SMI; Release of Easement in Lots 5 & 6, Block 1, Manitowoc I-43 Industrial Park Subdivision No. 2

Mr. Less explained the request to extinguish an easement in the Manitowoc I-43 Industrial Park Subdivision No. 2. Mr. Less reviewed various maps identifying the proposed easement to be vacated, and stated that vacating this easement would facilitate a private land sale in the I-Park involving Lots 5, 6 and 7, in Block 1, and the ultimate reconfiguration of these existing 3 lots into 2 lots as depicted in a draft CSM referenced under Section VIII.B.3. of these minutes. Mr. Less stated that utilities had been contacted, and none were opposed to vacating the easement.

Mr. Less recommended that the Commission recommend to Council that it: (i) approve entering into the Release; (ii) authorize the City Attorney's office to draft the Release; (iii) authorize the Mayor and Clerk to sign the document at the call of the City Planner; and (iv) authorize the Clerk to record the document, with SMI or its third party client to pay for all recording fees. Mr. Less added that upon recording of the Release instrument, SMI would be required to affix the Release recording information on to the unrecorded CSM, which would subsequently be recorded, with all recording fees to be paid by SMI or its third party client.

Motion by: Mr. Hornung

Seconded by: Ms. Stokes

Moved that: the Commission approve the Planner's recommendation above.

Upon Vote: the motion was approved unanimously.

VI. OLD BUSINESS

- A. PC40-2006/PC8-2005: Michels Corporation/City Centre LLC; Request for a Conditional Use Permit (CUP) Under Section 15.350(3)23. for

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Operation of a Stone Transloading Operation on So. 16th Street - Annual Compliance Review

Mr. Less reported that there were no issues related to this annual compliance review, and recommended that the Commission recommend to Council that it continue the CUP, but that the annual compliance review requirement be terminated.

Mr. Brey commented that he had been very impressed with the quality and integrity of the Michels operation.

Motion by: Mr. Hornung
Moved that: the Commission approve the Planner's recommendation above.

Seconded by: Mayor Nickels
Upon Vote: the motion was approved unanimously.

- B. PC21-2009: New School Investments, LLC; Adaptive Reuse Conditional Use Permit (CUP) Previously Issued to Keith Gauthier and Bank First National Pursuant to Section 15.370(29) for Property at 1402 Clark Street - Annual Compliance Review

Mr. Less reported that there were no issues related to this annual compliance review, and recommended that the Commission recommend to Council that it continue the CUP, and that the annual compliance review requirement be terminated.

Mr. Brey asked how a complaint would be handled in the absence of the annual compliance review?

Mr. Less stated that the elimination of the annual compliance review did not diminish the City's ability to enforce the CUP, nor the non-compliance section of the permit.

Mr. Alpert stated that it appeared that the new owners were doing a good job with this property.

Motion by: Ms. Stokes
Moved that: the Commission approve the Planner's recommendation above.

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

- C. PC23-2010: SMI, Inc./Popp Enterprises LLC; Popp Subdivision No 3 - Review of Final Plat

Mr. Braun explained the chronology of events that occurred related to the preliminary plat, a revised preliminary plat, and the current final plat for Popp

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Subdivision No. 3, and then reviewed a punch list with requirements that had to be completed prior to City officials signing the final plat for recording. Mr. Braun noted that the final plat included 2 previously approved CSM's, and contained 16 lots in total.

Motion by: Mr. Hornung

Moved that: the Commission approve the Planner's recommendation above.

Seconded by: Ms. Mellon

Upon Vote: the motion was approved. unanimously.

Mr. Braun commented on a new statutory requirement in Wis. Stat. Chapter 236 that was addressed at the bottom of his compliance conditions. Mr. Braun explained that the statement was the City's affirmation that the preliminary plat conformed substantially with the final plat.

VII. NEW BUSINESS

- A. PC14-2012: City of Manitowoc; Proposed Vacation Under Wis. Stat. § 66.1003(4) and Official Map Amendment Under Wis. Stat. § 62.23(6) for So. 16th Street/Center Street, and So. 18th Street

Mr. Less provided an overview of this proposed project, and noted that it was related to a pending WisDOT Transportation Economic Assistance (TEA) grant authorized pursuant to Council Resolution No. 2011-564 for the City Centre, LLC property. Mr. Less noted that Chris Allie was present representing City Centre, LLC. Mr. Less provided a brief overview detailing the various parties involved in this project, and the associated complexities that had brought the current vacation discussion to light. Mr. Less continued that at this time, the most current version of the proposed track layout intersected with portion of So. 16th and So. 18th Streets R/W's, and explained that in order to create a private rail crossing for this proposed trackage, it would be necessary for the City to vacate certain areas of both R/W's. Mr. Less continued that once vacated, the CN and the Office of the Commissioner of Railroads in Wisconsin would be sent a copy of the vacation resolution, and at that time, the crossing would be converted to a private crossing. Mr. Less added that at that time, the railroad and City Centre would then enter into an agreement wherein the railroad would grant City Centre a license to maintain and use the private crossing.

Mr. Less noted that he had sent Mr. Allie a "Reimbursement Agreement" (RA) that would effectively indemnify the City from any financial responsibilities in the project, and added that he didn't know when he would be receiving that document. Mr. Less detailed a schedule for moving forward with the vacation, predicated upon receipt of the signed RA prior to the May 4th Council meeting, and added that once the City Centre signed RA was in his hands, he'd have the Council approve it and have it signed

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by the Mayor and Clerk, and would also have Council authorize City officials to sign the WisDOT required job guarantee, both of which he'd file with WisDOT, so that the State could then award the TEA grant to the City.

Chris Allie, 3109 Waldo Boulevard, requested that Mr. Less send him a PDF of the RA.

Mr. Less then recommended that the Commission recommend to Council that it: (i) move forward on a City-initiated vacation and associated Official Map proceedings for the areas as described; (ii) authorize the City Planner and the City Plan Commission to move forward with these processes; (iii) instruct the Clerk to call for the required public hearings; (iv) publish the required legal notices; and (v) with the Clerk to invoice City Centre for all costs of publication and recording related to the proceedings.

Motion by: Mr. Hornung
Moved that: the Commission approve the Planner's recommendation above.

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

B. PC50-2011: City of Manitowoc; Proposed 2012 Tax Incremental Financing (TIF) District Activities - Designation of Various Districts as Distressed Pursuant to Wis. Stat. § 66.1105(4e)

Mr. Less explained that he wanted the Commission to recommend to Council moving forward with this action regarding under performing TIF's. Mr. Less explained that the availability of TIF District 16 to meet these objectives was in question, and he was waiting to hear from Baird on that matter.

Mr. Hornung asked if there were both "distressed" and "severely distressed" categories?

Mr. Less stated "yes".

Mayor Nickels noted that the City was no where near "severely distressed", and added that the City was also completing its 2011 audit which was revealing more information about the status of the TIF's.

Mr. Hornung asked if this matter would ultimately return to the Commission?

Mr. Less stated "yes", and added that while integral and essential to the process,

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the Commission was not definitive in these proceedings. Mr. Less stated that the Joint Review Board would be the final decision maker in these proceedings.

Mr. Brey commented that he felt the action of the Commission was appropriate to advance a recommendation to proceed to Council.

Mr. Less recommended that the Commission recommend to Council that it authorize the City Planner and his staff, along with the City Plan Commission, to proceed to identify those certain districts as “donor”, “recipient”, or “distressed”; to prepare the required amendment documents; and to take any and all steps necessary to complete said TIF amendments.

Motion by: Mayor Nickels
Moved that: the Commission approve
the Planner’s recommendation above.

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

C. PC17-2012/PC44-2011: City of Manitowoc; Proposed Ordinance
Changes to Chapters 3, 14, 15 and 21, Manitowoc Municipal Code

Mr. Less led the Commission in a discussion of a draft ordinance he had prepared that covered a panoply of topics, and noted that he had prepared a summary document which was emailed to Commission members yesterday. Mr. Less added that he had contemplated upgrading the City’s wind tower ordinance too, but decided to hold off on that for now. Mr. Less provided an overview of the draft ordinance.

Ms. Stokes led a discussion on the portion of the ordinance addressing the composition of the Commission, and questioned why the reference to the “Director of Public Works and City Engineer” was deleted in Mr. Less’ proposal?

Mr. Less replied that the way he had written the proposed change would actually provide greater flexibility in selecting elected and non-elected Commission members, should positions in the future go vacant or no longer be continued. Mr. Less stated that the idea was to provide flexibility in a changing work environment.

Ms. Stokes felt that the City Engineer should always be on the Commission.

Mr. Brey stated that the way it was written gave the Mayor the chance to appoint individuals other than the City Engineer on the Commission.

Mr. Less concurred that the intent was to provide flexibility.

Mr. Alpert stated that he did not want to see the number of citizen members

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reduced.

Mr. Less replied that the draft specified “at least” 3 citizen members, so it was effectively unchanged, except for more flexibility.

Mr. Brey felt that a specific number of citizen members should be identified in the ordinance, and that the member of the Streets Committee on the Commission should be elected by the Council, instead of a Mayoral appointment.

Mr. Hornung stated that the reference to the Mayor’s voting rights in the second to the last line of that section should be modified to state that the Mayor would be chairman and have voting rights for the Commission.

Mr. Less agreed to change the draft to add back in a specific reference to “City Engineer”, to specify an exact number of citizen members, to the election of the member from the Streets Committee, and to clarify the Mayor as a voting member.

Mr. Hornung then led a discussion regarding: (i) the definition of hoopouses; (ii) revisions to the definition of a “farmers’ market” to allow for the sale of ornamental plants and trees; (iii) the proposed community and urban gardening sections of the ordinance; and (iv) vacant lot residential gardens.

Additional discussion was held. Commission members asked for the draft to be revised, and that this discussion continue at the May meeting.

No action was taken.

VIII. MISCELLANEOUS

A. Manitowoc County Activities:

1. Ms. Mellon noted that Bay-Lake Regional Planning Commission was now operating in the black.

No action was taken.

B. Certified Survey Maps (CSM):

1. Marjorie Klessig: Proposed CSM in the NW¼, NW¼, Section 20, T.19N., R.23E., Town of Manitowoc Rapids

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Mr. Braun provided Commission members with information on a proposed CSM located south of CTH "JJ", and east of South Union Road for creation of a 2.42-acre tract.

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 unanimously.

2. Philip Nysse: Proposed CSM in the SE¹/₄, SW¹/₄, Section 26, T.20N., R.23E., Town of Kossuth

Mr. Braun provided Commission members with information on a proposed CSM located north of Rockwood Road, and west of N. Rapids Road for creation of a 2.26-acre tract.

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 unanimously.

3. Apex Leasing, LLP; Proposed CSM in Lots 6 & 7, Block 1, Manitowoc I-43 Industrial Park Subdivision No. 2, City of Manitowoc

See the discussion under V.A. of these minutes for a discussion of this proposed CSM.

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 unanimously.

4. Joseph & Marcia Salm Revocable Trust; Proposed CSM in the SE¹/₄, SE¹/₄, Section 17, T18N, R23E, Town of Newton

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Mr. Braun provided Commission members with information on a proposed CSM located north of Carstens Lake Road, and east of Karbon Lane for creation of a 2±-acre tract.

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 unanimously.

5. Eugene Neuser; NE¼, NE¼, Proposed CSM in Section 22, Town of Manitowoc Rapids

Mr. Braun provided Commission members with information on a proposed CSM located on south of CTH"JJ", and east of I-43 for creation of a 3±-acre tract.

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 unanimously.

6. Manitowoc County Habitat for Humanity, Inc.; Proposed CSM in SE¼, SW¼, Section 31, T19N, R24E, City of Manitowoc

Mr. Braun provided Commission members with information on a proposed CSM located south of Flambeau, and east of So. 21st Street for the splitting of a 3.07-acre parcel into 3 new lots of record.

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 unanimously.

7. Schardt; Proposed CSM in SW¼, SW¼, Section 7, T18N., R24E, Town of Manitowoc

Mr. Braun provided Commission members with information on a proposed CSM located east of So. 26th Street, south of Pheasant Drive for creation of a 1.57-acre tract.

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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 unanimously.

C. Summary of Site Plans 2/10/2012 - 4/5/2012:

1. None

IX. ADJOURNMENT

Mr. Less advised that he would not be present for the May meeting, and that Mr. Braun would lead the session.

The meeting was adjourned at 8:40 P.M.

Respectfully Submitted,

David Less
City Planner