

PLAN COMMISSION MINUTES - 1/13/2010

Plan Commission Offices  
Manitowoc City Hall

Regular Meeting  
Manitowoc City Plan Commission  
Wednesday  
January 13, 2010  
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

Steve Alpert  
Jim Brey  
Valerie Mellon  
Maureen Stokes  
Jim Muenzenmeyer  
David Diedrich  
Dan Hornung

Members Excused

Justin Nickels

Staff Present

Paul Braun  
Michelle Yanda  
Elizabeth Werdermann  
David Less

Others Present

See Attached Sign In Sheet

III. APPROVAL OF MINUTES of the Regular December 16, 2009 meeting.

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

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

IV. PUBLIC INFORMATIONAL HEARINGS

- A. PC49-2006: LVR Properties, LLC/Larry's Hauling, Inc; Request for Extension of 2009 Conditional Use Permit (CUP) Under Section 15.35(3)26. for Operation of a Recycling Facility at 901 So. 17<sup>th</sup> Street

Mr. Less explained that tonight's public informational hearing tonight was in response to a request from Larry Van Akkeren of Larry's Hauling, who was seeking issuance of a new CUP for the continued operation of a material recovery or recycling facility in approximately 9,000sf of leased space at 901 So. 17<sup>th</sup> Street under Section 15.35(3)26. of the City's Municipal Code (Code).

Mr. Less stated that this CUP was being considered in accordance with Section 15.37(27) of the Code, and that under a CUP, the Commission and Council had to determine if the proposed use was reasonably necessary for the convenience and welfare of the public, was in harmony with the character of the surrounding area, and would have a minimal or no effect on surrounding property values. Mr. Less noted that the Commission and Council could affix conditions to the CUP to provide assurances that the proposed use would not have a negative impact on the surrounding area.

Mr. Less continued that the subject real estate was located on the south side of Franklin Street, between So. 16<sup>th</sup> and So. 17<sup>th</sup> Street, and the subject property, in total, was legally described as Lots 1-14 inclusive of Block 247 of the Original Plat. Mr. Less added that this was a former Newell/Mirro plant located on approximately 2.9-acres, and which housed a 99,000sf manufacturing/warehouse/distribution facility. Mr. Less added that Newell sold the property to LVR in December, 2003.

Mr. Less went on to explain that the initial 2006 CUP was approved by the City Council back in December, 2006, and included a variety of compliance and operating conditions, including a December 31, 2008 termination date. Mr. Less continued that the CUP was renewed in 2007 and again in December, 2008 for operation through December 31, 2009, and had effectively terminated. Mr. Less continued that he had sent an e-mail to Russ Wetenkamp on December 30<sup>th</sup>, advising him that the current CUP was set to expire and that LVR could no longer operate beyond January 1, 2010, and in response to that, they filed the request which was the subject of tonight's informational hearing. Mr. Less reminded Commission members that the owner or lessor, LVR Properties LLC had a lease agreement in place with Larry's Hauling Inc. as lessee, for operating a material hauling/recycling operation in the subject property.

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Mr. Less explained that the CUP area was defined as an area of "I-2" Heavy Industrial District property measuring 76' x 120', or 9,120sf at the northeast corner of the building, and which was surrounded by "I-2" zoning and by heavy industrial land uses.

Mr. Less stated that the previously issued CUP's included an annual compliance review provision, and noted that problems first were identified with this CUP back in January, 2007 when Manitowoc County advised the City that there were problems with the LVR operation regarding commercial recyclables collected within the City that were not going to the County's Material Recovery Facility (MRF), and residential solid waste that was being taken to land fills other than RidgeView. Mr. Less continued that this matter was remedied when the City approved revisions to the original 2006 CUP in December, 2007, which included a requirement for LVR to enter into a side agreement with the City and County to clarify responsibilities and performance expectations in the handling of recyclables, subject to various recycling agreements in place. Mr. Less went on to explain that different problems arose in 2008, not with compliance with these agreements, but with various nuisance complaints filed from surrounding property owners, adding that these matters appeared to have been successfully remedied as well, as the August, 2009 review before the Plan Commission disclosed no problems with the LVR operation.

Mr. Less noted that notices were mailed to property owners within 200' of the entire parcel on January 6, 2010, as well as to the same neighborhood mailing area identified for this CUP in the past, plus County officials, and that the only response received was a telephone call on January 11<sup>th</sup> from Scott Zairnak from the Wisconsin Aluminum Foundry, stating that they had no problem with the LVR operation, and that they had appeared to have cleaned up their operation.

In closing, Mr. Less noted that the land use for this area was identified in the City's 2009 newly adopted comprehensive plan as "office/industrial" and as such, the proposed land use was deemed consistent with the plan.

Nora Rodriguez, 1011 So. 16<sup>th</sup>, explained that she and her neighbors were still having problems with garbage blowing on to their property from the LVR operation. Ms. Rodriguez continued that the problem occurred mainly in the summer, and added that while the owner had cleaned up the area around his facility, they were still having problems with the blowing garbage. Ms. Rodriguez added that some of her neighbors did not receive the letter from the City that she had received regarding tonight's meeting.

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Moises Rodriguez, 1011 So. 16<sup>th</sup>, identified himself as the husband of Nora and echoed his wife's comments. Mr. Rodriguez added that after she had complained, the situation seemed to have improved, but that at the end of work shifts, the garbage was blowing around the neighborhood. Mr. Rodriguez asked if this was the only facility available for the garbage operation, and felt that the location of the garbage operation was not good for the City?

Mr. Less asked the Rodriguez's if they had contacted the Building Inspection Department to advise them of the blowing garbage problem?

Ms. Rodriguez replied "yes", noting that they had called the Building Inspector, but added that the problem continued. Ms. Rodriguez added that they didn't want the garbage problem to continue, and advised the Commission that she would video tape the garbage when it occurred in the future.

Mr. Brey asked if anyone from LVR was present?

No one responded.

Mr. Brey stated that Mr. Less had provided a recommendation on this matter.

Mr. Less stated that he was recommending that the Commission recommend Council approval of the CUP, subject to the compliance conditions, and noted that he was proposing, as a modification to the CUP conditions, that the automatic termination clause of the previously issued CUP's be eliminated, and that the annual compliance review remain as part of the CUP. Mr. Less added that regarding the Rodriguez's concerns, video taping the garbage problem was a good idea.

Mr. Brey stated that he represented this aldermanic district, and hadn't received any complaints regarding the LVR operation. Mr. Brey noted that he drove through the area on a regular basis, and had not noticed the garbage problem. Mr. Brey stated that he was now concerned if the operation was being used as a waste transfer station.

Mr. Less noted that under the operating conditions, the Building Inspector could inspect the LVR operation, on an as needed basis.

Mr. Muenzenmeyer commented that he had made 2 inspections of the LVR operation last summer, and found the facility to be clean at those times. Mr. Muenzenmeyer continued that he had talked with Mr. Wetenkamp (whom Ms.

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Rodriguez had called on several occasions about the garbage issue), and added that the problem was that when LVR would open its door to the west, the wind would blow through the facility and would exit the east side of the building. Mr. Muenzenmeyer commented that Mr. Wetenkamp had always been responsive.

Mr. Rodriguez noted that they were concerned, as they were trying to sell their So. 16<sup>th</sup> Street property.

Mr. Brey re-stated that videotaping the garbage problem would be very helpful at the time of the annual compliance review.

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

V. REFERRALS FROM COMMON COUNCIL

A. None.

VI. OLD BUSINESS

A. PC5-2009: Burgarino; Discussion of Public R/W on So. 22<sup>nd</sup> Street - Proposed City-Initiated Vacation and Official Map Amendment for So. 22<sup>nd</sup> Street

Mr. Less reviewed with the Commission: (i) a memo entitled "Street Vacation and Official Map Procedures - City-Initiated" which outlined the requirements for completing these procedures, and which included a timetable for implementation regarding So. 22<sup>nd</sup> Street; and (ii) an off-street parking calculation for the Tony's Pizza business operation. Mr. Less noted that approximately 71 per cent of the business's parking needs were being handled on-site or off-street.

Mr. Less noted that the discussion of the parking lot to the north of the building would be handled at the February Commission meeting. Mr. Less then stated that under the "Sidewalk Privilege Agreement" (SPA), a request for a parking lot in a residential zoning district was to be filed with the Clerk's office by January 5, 2010, and that the request was filed on January 5<sup>th</sup>, and met the deadline as specified.

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Mr. Less explained that tonight's discussion was a continuation from last month, and added that after the December Commission meeting, staff met with Mr. Burgarino to discuss and formulate a plan to move forward regarding the various issues related to his property. Mr. Less added that the conclusion of the staff meeting was to request tonight that the City initiate a street vacation and Official Map amendment proceeding. Mr. Less described the 12' strip that would be proposed for vacation, and cited the reversion of title statute, and the subsequent sale of the 6' wide City-owned property to Mr. Burgarino, should the vacation proceedings be successfully completed.

Mr. Less stated that his memo included the suggested procedure and timetable for moving forward with a street vacation, and that this method was the cleanest and most efficient real estate remedy to this matter, and recommended that the Commission recommend to Council initiating:(i) a street vacation under §66.1003(4) Wis. Stats.; and (ii) an amendment to the Official Map under §62.23(6) Wis. Stats., for the westerly 12' of So. 22<sup>nd</sup> Street R/W for a length of 150'. Mr. Less added that David Pawlowski, counsel for Mr. Burgarino, had also received these various documents.

Mr. Less recommended that the Commission recommend to Council that they: (i) authorize the City Planner to proceed with a street vacation under §66.1003(4) Wis. Stats. in accordance with the above referenced memo; (ii) authorize the City Planner to proceed with a City-initiated amendment to the Official Map under §62.23(6) Wis. Stats., for the westerly 12' of So. 22<sup>nd</sup> Street R/W (all recording and publication fees related to the vacation and Official Map proceedings be paid by Mr. Burgarino, regardless of whether or not the vacation and Official Map modifications are approved by Council); and (iii) that the City Attorney be authorized to negotiate the sale of the easternmost six (6) feet of the proposed vacated area to Mr. Burgarino, subject to approval of the vacation and Official Map amendment, as well as negotiate and finalize with Mr. Burgarino any further required amendment to the current SPA.

Mr. Hornung asked why not vacate 24' of R/W, and asked how the proposed process would differ in its result, if the City would re-dedicate its 12' as R/W?

Mr. Less explained that vacating beyond the 12' width would be invasive to the public sidewalk and travel path for So. 22<sup>nd</sup>. Mr. Less added that the end result would be the same under either scenario.

Additional discussion was held with the Commission noting that it would support further modification of the SPA to include lands to the north of the area legally described and covered under the current SPA, but would not support any further

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extension of the SPA to the east of the newly established, post-vacation west R/W line of So. 22<sup>nd</sup> Street.

Ms. Mellon commented that she was not comfortable with proceeding in this direction, as vacation of the R/W could preclude the City at some time in the future from being able to perform intersection improvements at Washington and So. 22<sup>nd</sup> along a major corridor for the City. Ms. Mellon stated that the City didn't need the R/W, but that in the grand plan for the City over the next 60 years, a need could emerge.

Mr. Hornung commented that he did not like the process.

Mr. Brey commented that if this was a discussion regarding a different street, he would be more concerned. Mr. Brey continued that he was nearly 100 per cent confident that the City would not make improvements at the Washington/So. 22<sup>nd</sup> Street intersection, and added that the City should be trying to help a business to become even more successful.

Mr. Muenzenmeyer added that this was a discussion about a 1-block R/W that dead-ended on Franklin Street, and would likely forever handle a very low volume traffic flow. Mr. Muenzenmeyer added that the width of the So. 22<sup>nd</sup> Street R/W was wider than other streets in the area, and felt that So. 22<sup>nd</sup> Street had excess R/W available.

Mr. Hornung commented that he did not disagree with this position, but questioned what would happen if Mr. Bugarino wanted to use additional public lands beyond the area that would be vacated?

Mr. Muenzenmeyer noted that he would have to secure a building permit, which would not happen.

Mr. Hornung replied that hopefully it would be before the fact.

Mr. Muenzenmeyer agreed.

Mr. Alpert asked if the City would sell its 6' of vacated R/W to Mr. Bugarino?

Mr. Less stated that this was correct, adding that the City could not sell R/W, nor could it lease R/W for a private business, but noted that the City could sell un-designated City-owned property.

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Mr. Alpert asked if 12' was enough to accomplish Mr. Bugarino's need?

Mr. Less replied that it should be enough, based upon the boundary survey prepared by Colin Rayford. Mr. Less added that even with the vacation, there still might be a need for an SPA to cover the area to the north where a handicap ramp would be located, but that there should not be a need to go further east of the new, post-vacation, west line of the revised So. 22<sup>nd</sup> Street R/W.

Mr. Diedrich asked why the SPA did not accomplish this alteration?

Mr. Less replied that he didn't have a good answer for that question, other than to note that from a real estate perspective, it was preferred to have all of the Bugarino property titled under the same owner, instead of having a portion of the property with improvements located on public R/W, and a part covered under an SPA. Mr. Less added that this arrangement would likely make the Bugarino property more saleable in the future, and would eliminate what would become a title encumbrance.

Mr. Hornung commented that upon further consideration, he now felt that the vacation was the cleanest manner in which to proceed.

Mr. Alpert asked if the sale of the vacated 6' City-owned strip would have to be negotiated?

Mr. Less replied "yes", and that the authorization to proceed on this front would be part of the Commission's recommendation to Council.

Mr. Hornung expressed concern about setting a future precedent by proceeding with the vacation.

Mr. Less stated that no precedent was being set, as each vacation was a separate issue that would have to be evaluated based on the surrounding body of facts. Mr. Less added that in this specific matter, there were physical issues that had caused the City to get to this point in the discussion.

Mr. Muenzenmeyer noted that the deck, as located today, would not be a legal structure.

Attorney David Pawlowski, 817 Sequoia Court, commented that this issue had been a long journey, adding that he agreed that the vacation was the cleanest manner in which to proceed. Mr. Pawlowski continued that he felt that no precedent would be set,

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as the facts of this matter would be unique and distinguishable from other situations. Mr. Pawlowski added that the So. 22<sup>nd</sup> Street R/W was originally conceived to be a major thoroughfare, but that never happened. Mr. Pawlowski concluded that the goal for his client and himself was to work contemporaneously with the City.

Ms. Stokes commented that this matter had been discussed and studied for a very long time, and felt comfortable with proceeding.

Motion by: Mr. Alpert \_\_\_\_\_ Seconded by: Mr. Muenzenmeyer  
Moved that: the Commission approve the \_\_\_\_\_ Upon Vote: the motion was  
Planner's recommendation above. approved 6-1. Ms. Mellon voted against  
the motion.

VII. NEW BUSINESS

A. PC2-2010: Annual Review of Community Living Arrangements (CLA's)

Mr. Less explained that this was the annual review of CLA's in the City pursuant to Section 15.37(19)(b) of the City's Municipal Code (Code). Mr. Less noted that the Commission's review was based largely on a review of Police and Building Inspection Department records in 2009 regarding these facilities. Mr. Less stated that there were no problem facilities identified.

Mr. Less reviewed a map and the CLA demographics previously provided to Commission members, and noted that as of January 1, 2010, there were 7 Adult Family Homes (AFH) for 3-4 residents, and 21 Community Based Residential Facilities (CBRF) located in the City. Mr. Less reviewed a map of the 28 CLA's in the City, and subsequently recommended that the Commission recommend to Council that they approve the associated licenses for these facilities for 2010.

Bill Raboin, 2411 Knuell Street, explained that he had resided at this address for the past 5 years, and had an assisted living facility located across the street. Mr. Raboin stated that he came from a health care background, and added that this neighborhood was very neat when he moved in. Mr. Raboin stated that he was the president of the condominium association which operated pursuant to a set of by laws. Mr. Raboin stated that the facilities at 2408 and 2410 Knuell occurred approximately 4 years ago and that, at that time, there was a discussion about parking during which the owner of the facilities promised that they were going to use the garages and driveway for off-street parking, and would not park on the street. Mr. Raboin continued that this promise had not been kept.

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Mr. Raboin displayed pictures for the Commission which identified vehicles parking on Knuell Street, as well as open garages, and expressed concern with the overall appearance of the facility. Mr. Raboin continued that he had discussed the issues with Mr. Muenzenmeyer, and with former Alderman Tom Frieder. Mr. Raboin claimed that the street was being used as a parking lot for the facility, the driveway somewhat, and the garage never. Mr. Raboin stated that the garages were full of garbage and various items, adding that many similar operations would have their garbage placed in dumpsters outside of their building. Mr. Raboin stated that he felt the building was installed on too small a lot in the first place.

Mr. Less explained the State's statutory scheme regarding the siting of community living arrangements, and noted that these facilities were given pre-emptive authorization to locate in residential neighborhoods.

Mr. Raboin asked about compliance with building codes?

Mr. Less stated that this was a different issue. Mr. Less explained that these CLA's were placed on Knuell Street without any prior notice to the City, which was traditionally the case. Mr. Less stated that the complaints regarding the facilities were building inspection-related issues, and were not germane in considering whether or not to issue the licenses. Mr. Less added that as far as providing an accommodation for these facilities to locate in residential areas, the community's hands were effectively tied.

Mr. Raboin asked if the City could require the facility to maintain higher standards in this area?

Mr. Less stated that in the case of the Knuell Street facilities, the street, while available for parking, was not intended to serve as a primary parking lot for these facilities, and felt that there was room for a discussion to occur with the operator of the Knuell Street facilities.

Mr. Raboin explained that they hoped for some help, and noted that there was a large degree of staff turnover. Mr. Raboin felt that the operation was an eyesore.

Mr. Less advised that he and Mr. Muenzenmeyer would meet with the owner to discuss the parking and garage issues.

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Mr. Raboin commented that tonight was the first time he observed the majority of the vehicles parked in the garage and on the driveway, and surmised that the operator of the facilities must have known about tonight's meeting. Mr. Raboin suggested that no parking signs could be put up on one side of Knuell Street, with the facility employees to park on the west/northwest side along the fence and creek.

Mr. Brey suggested that Mr. Raboin pen a letter to Eric Sitkiewitz as Chairman of the Public Property and Safety Committee of the Council, and that this matter would likely be referred to and considered by the Safety, Traffic and Parking Commission.

Mr. Less advised about a State requirement for a community advisory committee, which would provide an interface between the facility and the neighborhood, and asked if one was in place for the Knuell Street facilities?

Mr. Raboin did not know if the advisory committee was in place.

Todd Berg, 2333 Knuell Street, commented that he would like to see consideration given to slowing down traffic on Knuell Street, as it was like a race track, particularly at shift change.

Mr. Brey added that the Police Department could be asked to monitor this situation.

Mr. Raboin provided a written communication to Mr. Less from an elderly neighbor.

Mr. Muenzenmeyer commented that he had been working with the facility owner, Tom Singleton, and that they had agreed to pour a concrete slab to the north of their building for the parking of their bus. Mr. Muenzenmeyer added that in terms of meeting current off-street parking requirements, they were required to have 6 stalls, but had 8 if they were fully utilized. Mr. Muenzenmeyer noted that traffic at shift changes was a problem, but added that the parking arrangement was also a problem, wherein, people would be parked in, if the off-street parking was fully utilized. Mr. Muenzenmeyer again stated that the owner of the facility had been cooperative.

Mr. Raboin commented that he appreciated Mr. Muenzenmeyer's efforts in this area, but wanted the parking to be reduced on the street.

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Motion by: Mr. Diedrich \_\_\_\_\_ Seconded by: Mr. Muenzenmeyer  
Moved that: the Planner's recommendation Upon Vote: the motion was  
as presented above be approved. approved unanimously.

B. PC5-2010: Colortech of Wisconsin/Popp Enterprises, LLC; Proposed  
Animated Sign at 50 Maritime Drive Pursuant to Section 15.45(18) of  
Manitowoc Municipal Code

Mr. Less reviewed materials previously sent to the Commission related to a request for issuance of a special permit to authorize the construction of a fixed animated sign on to the existing ground sign at the southeast corner of the Popp Enterprise development located north of Maritime Drive, between N. 7<sup>th</sup> and N. 8<sup>th</sup> Street. Mr. Less explained that while he had no problem with the sign, it was located in the City's design review area, but was not located in the 8<sup>th</sup> Street Historic District. Mr. Less noted that the animated sign ordinance was more limiting in this instance, as these signs were discouraged in the "B-4" zoning district. Mr. Less explained that the sign could be approved, subject to meeting a more extensive landscaping requirement.

Mr. Less recommended that the Commission:

1. Authorize the issuance of a special permit, with the location of the sign as specified in the filed application, and expressly subject to the constructor meeting either: (a) compliance with the landscaping requirement under Section 15.45(18)(g)4.; or (b) as an alternative to the landscaping requirement, that the sign message content be expressly limited to time, date, temperature or gas prices pursuant to Section 15.45(4)(a5).
2. Waive the 100' separation requirement (15.45(18)(g)9. from an existing or future intersection, with a finding that the proposed sign would not promote visual clutter, would not have an adverse effect on nearby property, and would not create a safety hazard.
3. Authorize the Director of Building Inspection to issue a sign permit, subject to the conditions specified herein, as well as compliance with all relevant sections of Section 15.45.

Mr. Diedrich commented that from the picture, it appeared that there was already landscaping beneath the sign.

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Mr. Less advised that the Code required a landscaped area to measure at least 5 times the area of the sign.

Mr. Muenzenmeyer commented that Popp would be required to have a 70sf landscape area, and believed that they currently had around a 100sf area.

Ms. Mellon stated that Engineering did not have any problem with the proposed sign, and added that the sign would not promote visual clutter, nor create a safety hazard in the area.

Mr. Muenzenmeyer agreed with Ms. Mellon's comments.

Mr. Brey advised the Commission that earlier in the day, the Community Development Authority had granted a design review approval for the proposed sign, subject to approval of the animated sign by the Commission.

Motion by: Ms. Stokes \_\_\_\_\_ Seconded by: Mr. Alpert  
Moved that: the Commission recommend \_\_\_\_\_ Upon Vote: the motion was  
Council acceptance of the Planner's \_\_\_\_\_ approved unanimously.  
recommendation above.

C. PC6-2010: Lamar Advertising/Holy Family Memorial Inc.; Proposed Animated Sign on So. 21<sup>st</sup> Street at Clay Pit Road Pursuant to Section 15.45(18) of Manitowoc Municipal Code

Mr. Less explained that this was a request for issuance of a special permit to authorize the conversion of an existing and conforming off-premise billboard to a fixed animated billboard on So. 21<sup>st</sup> Street at the Manitowoc River. Mr. Less noted that he had previously sent information on the proposed sign, along with his recommendation to the Commission, and noted that as this sign structure was initially authorized as an off-premise or billboard sign, it would be regulated as a billboard under Section 15.45(14)(g)3. of the City's Code.

Mr. Less recommended that the Commission authorize the issuance of a special permit, with the location of the sign as specified in the attached application, and subject to the billboard landscaping conditions in the Code, as well as compliance with all relevant sections of Section 15.45.

Ms. Mellon noted that Engineering did not have any problem with the proposed sign.

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Mr. Muenzenmeyer concurred with Ms. Mellon.

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

VIII. MISCELLANEOUS

A. Manitowoc County Activities:

1. None

B. Certified Survey Maps (CSM):

1. None

C. Summary of Site Plans 12/1/09 - 1/6/2010:

1. None

IX. ADJOURNMENT

The meeting was adjourned at 7:30 P.M.

Respectfully Submitted,

David Less  
Secretary