

PLAN COMMISSION MINUTES - 9/11/2013

Plan Commission Offices  
Manitowoc City Hall

Regular Meeting  
Manitowoc City Plan Commission  
Wednesday  
September 11, 2013  
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  
David Diedrich  
Maureen Stokes  
Steven Alpert  
Jim Brey  
Jim Muenzenmeyer  
Dan Koski

Members Excused

Justin Nickels

Staff Present

David Less  
Paul Braun  
Michelle Yanda

Others Present

See Attached Sign In Sheet

III. APPROVAL OF MINUTES of the Regular August 14, 2013 Meeting.

Motion by: Ms. Stokes

Seconded by: Mr. Diedrich

Moved that: the minutes be approved as presented.

Upon Vote: the motion was approved unanimously.

IV. PUBLIC INFORMATIONAL HEARINGS

- A. PC21-2013: Zenith Properties LLC; Request to Rezone Property at Reed Avenue and N. 8<sup>th</sup> from "B-2" Neighborhood Business District to "B-3" "General Business District Pursuant to Section 15. 270 of the Manitowoc Municipal Code

Mr. Less explained that tonight's public informational hearing was in regard to a request by Jim Hamann d/b/a Zenith Properties, LLC regarding their property located at the southeast corner of Reed Avenue and N. 8<sup>th</sup> Street. Mr. Less advised that the petitioner was requesting that this 3.3-acre area be rezoned from "B-2" Neighborhood Business District, to "B-3" General Business District pursuant to Section 15.270 of the

PLAN COMMISSION MINUTES - 9/11/2013

Municipal Code. Mr. Less added that the rezoning was being used as a strategy to encourage the redevelopment of this underutilized shopping area.

Mr. Less commented that the proposed rezoning area was comprised of the following 6 tax parcels, all owned by Zenith Properties, LLC, and all being part of Lot 4 in the Subdivision of Part of the SW 1/4 and SE 1/4 of Section 17, Township 19N, Range 24E, in the City of Manitowoc:

1. 817-303-010
2. 817-303-011 (KFC)
3. 817-303-020 (Piggly Wiggly)
4. 817-303-030 (former United Laundry/coin op laundry)
5. 817-303-045 (former WisDOT DMV)
6. 817-303-050

Mr. Less explained that these parcels were owned by Zenith Properties, LLC by virtue of a Quit Claim Deed dated November 22, 2010 and recorded in V. 2617 at P. 471, which satisfied a Land Contract dated July 10, 2007. Mr. Less continued that these parcels collectively in 2013 had an assessed valuation for land and improvements of \$2,572,500, and generated nearly \$56,000 in annual real estate taxes. Mr. Less noted that for comparison purposes, in 2000, these same parcels were valued at \$1,776,900 and generated approximately \$42,700 in annual real estate taxes; an increase of approximately 31% over the past 13 years. Mr. Less did note that the Piggly Wiggly represented approximately 61% of the valuation increase in that 13 year period.

Mr. Less continued that the 6 parcels of land included in this rezoning included 37,673sf of building square footage comprised of the Piggly Wiggly (27,887sf), an active laundromat and a vacant United Laundries space (4,270sf), the vacant Department of Motor Vehicles (3,500sf), and KFC (2,016sf). Mr. Less noted further that there were also 139 off-street parking stalls scattered throughout the site, with 17 allocated to the KFC operation, 31 to the former WisDOT and laundromat operations, and 91 aligned with the Piggly Wiggly. Mr. Less added that approximately 15% of the building square footage on the subject parcel was currently vacant.

Mr. Less added that the Piggly Wiggly had been at this site since approximately 1953, and had undergone multiple facility additions, including a doubling of their square footage in 1997. Mr. Less stated further that the building housing the former United Laundries and WisDOT dated back to approximately 1962, with the DMV occupancy being since 1984, and the KFC in 1970.

Mr. Less continued that in 1976, there was a request from the owner at that time, Howard Hamann, to rezone a 3.5-acre area that included part of the subject property and a portion of the senior housing property to the south, generally along a line east of the east end of the Piggly Wiggly today, from a "B-1" Limited Business-Residential District and "B-2" Neighborhood Business District", to a "B-3" General Business District status, but that request was ultimately withdrawn as it had been determined that rezoning wasn't

## PLAN COMMISSION MINUTES - 9/11/2013

needed for a restaurant. Mr. Less continued that in 1977, there was a rezoning where the current Parkview Haven is located from "B-1" and "B-2", to what was referred to as "R-5" in 1977, and today is known as "R-6".

Mr. Less noted that collectively, the 6 parcels included in the proposed rezoning area together were nearly rectangular in configuration, and had 420' feet of frontage on N. 8<sup>th</sup> Street, and 457.26' of frontage on Reed Avenue. Mr. Less then explained the surrounding zoning and land uses in the area.

Mr. Less noted that under the existing "B-2" Neighborhood Business District, permitted uses included automobile service stations, banks, candy stores, a variety of retail stores, professional and business offices, adult day care centers and community living arrangements for not more than 15, as well as sit down and carry out restaurants not exceeding 2,000sf in gross leasable area; and that conditionally permitted uses included shopping centers, day care and community living arrangements for 16+, tattoo and body piercing establishments, farmers' markets, and transitional housing facilities.

Mr. Less continued that under the proposed "B-3" General Business District, permitted uses included all types and kinds of retail, all types of restaurants, as well as any uses permitted in the "B-2" district; and that conditionally permitted uses included private clubs and lodges, amusement establishments, and conditional uses permitted in the "B-2" district.

Regarding conformance with the City's Comprehensive Plan, Mr. Less noted that the City's 20-year land use map identified the proposed rezoning area as "General Business", which the plan described as an area for commercial and retail at a neighborhood scale or at a larger community scale. Mr. Less continued that the policies under this land use category included encouraging smaller occupancies, enhancing building materials and design of facilities, and for the larger site as a whole, developing it in a unified manner similar to what would be done with a planned unit development. Mr. Less added that a guiding theme of the plan was to encourage infill and redevelopment of older centers, and to convert existing centers into new and more productive uses. As such, Mr. Less continued, he viewed the proposed rezoning as being consistent with the City's Comprehensive Plan, explaining that this area suffered from a shifting commercial market to the west, and the City's hope was that rezoning to a "B-3" would allow the area to be re-discovered, and accommodate a more diverse palette for land uses. Mr. Less then noted that recognizing that zoning dealt with the appropriateness of land uses in a particular location, the proposed zoning and land use were deemed consistent with the City's plan. Mr. Less did note that this parcel would be a good candidate for a future planned unit development.

In closing, Mr. Less noted that Planning did mail notices to property owners within 200' of the proposed rezoning area on September 4<sup>th</sup>, and that other than a phone call from a property owner questioning if their property was impacted by the rezoning, there were no comments received in response to this mailing.

PLAN COMMISSION MINUTES - 9/11/2013

Jay Muchin, 712 N.11<sup>th</sup>, explained that he owned a duplex at 1342-44 N. 8<sup>th</sup>, and had no objection to the rezoning. Mr. Muchin continued that he felt that the area was more correctly described as a neighborhood more so than the more urban “B-3” zoning, and noted that over the years there had been requests related to his side of 8<sup>th</sup> Street to loosen the zoning to encourage greater flexibility in land use, and were denied. Mr. Muchin stated that he was in favor of them being rejected, and added that he wanted the City to remember that while he was fine with this proposed rezoning, he didn’t want to see more flexibility used in other areas, as he felt the other areas could lose their neighborhood appeal.

Steve Rezachek, 1407 N. 6<sup>th</sup>, commented that he was not in favor of the rezoning, and expressed concern that undesirable uses such as a tavern or adult entertainment facility could then locate at the property. Mr. Rezachek stated that they lived directly across the street from the property, and added that they have learned to live with the traffic at night at KFC.

Dan Wetzel, 1408 N. 6<sup>th</sup>, stated that he was not against the rezoning, but felt that the area was more of a neighborhood business district. Mr. Wetzel asked if the property was rezoned to “B-3”, what would stop non-neighborhood uses from locating in this area, or those uses permitted in a “B-3” not traditionally located in a neighborhood? Mr. Wetzel stated that he was not clear what the property owner was looking for with the rezoning to “B-3”.

Jim Hamann d/b/a Zenith Properties, LLC, 3441 Barkwood Lane, stated that WisDOT had now moved out, and it was difficult to find renters. Mr. Hamann continued that he was hopeful that an office would locate in the area. Mr. Hamann added that the KFC would also be moving, but was emphatic that he would not allow an adult entertainment business to locate on the property. In closing, Mr. Hamann stated that he honestly didn’t know what businesses might locate in this area, but added that this rezoning would give them more options.

Mr. Less asked Mr. Hamann if there had been any discussions with Piggly Wiggly about expansion of their store?

Mr. Hamann stated no.

Mr. Brey asked Mr. Less for his recommendation on this matter.

Mr. Less recommended that the Commission recommend that Council instruct the Clerk to call for a public hearing (to be scheduled for October 21st), and further provide their final recommendation to approve the rezoning upon completion of the hearing.

Mr. Hornung asked if the “B-3” would impact the Piggly Wiggly?

Mr. Less stated that there would be no change to their operation.

PLAN COMMISSION MINUTES - 9/11/2013

Mr. Hornung asked if outside storage would be permitted in the “B-3” district?

Mr. Muenzenmeyer replied that outside storage of merchandise would be permitted as a conditional use in the “B-3” district.

Additional discussion was held.

Motion by: Mr. Diedrich

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

Seconded by: Ms. Stokes

Upon Vote: the motion was approved unanimously.

B. PC14-2013: Community Bible Church, Inc.; Proposed Amendment No. 1 to a 2013 Conditional Use Permit (CUP) – Request to Expand the CUP Area to Include the Property at 709 So. 28<sup>th</sup> Street for Operation of a School Pursuant to Sections 15.150(3)(b) of Manitowoc Municipal Code

Mr. Less explained that this was a follow up to a matter that had been previously before the Commission in July, and was subsequently approved on July 15<sup>th</sup> by Council. Mr. Less stated that the current request was from Pastor Guy Corrigan representing the Community Bible Church and Life Academy, a private Christian school at 2711 Wollmer Street, who was requesting an amendment to the July 15<sup>th</sup> CUP approved by Council which authorized the operation of a church and school at 2705 and 2711 Wollmer. Mr. Less continued that the Pastor’s request was to amend the CUP area to include the property at 709 So. 28<sup>th</sup> for operation of a school under the “R-4” zoning district regulations.

Mr. Less noted that the CUP was to be considered in accordance with Section 15.370(27) of the Manitowoc Municipal Code, and that under those procedures, 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 stated that the subject parcel was also identified as Tax Parcel #260-003-050, and was legally described as Lot 5, Block 3 of Factory Heights Addition. Mr. Less continued that this parcel was acquired by the Community Bible Church in July, 1989, in satisfaction of a Land Contract dating back to March, 1988.

Mr. Less noted that the current proposed amendment to the CUP was related to onerous code compliance requirements for usage of the Church basement for a school. Mr. Less continued that the basement of the Church, accessible by a narrow set of stairs, had accessibility issues. Mr. Less added that the Church basement had a large open area, a small office area, and separate male and female bathroom facilities, which were not ADA compliant. Mr. Less added that usage of the Church basement for a school under

## PLAN COMMISSION MINUTES - 9/11/2013

the 2013 CUP was problematic, as it would require a sprinkler system be installed at an estimated cost of \$25,000. Mr. Less continued that the stairs leading to and from the basement did not exit to grade. Mr. Less added that the sanctuary on the main floor of the Church was a large, single room being used for school purposes (3<sup>rd</sup> grade through 6<sup>th</sup> grade), and was in compliance with access requirements.

Mr. Less then commented that the property included a 1-story residential structure measuring 24' x 28' (672sf) which was built around 1937, and a detached 1 car garage. Mr. Less continued that the house contained a main floor which had a kitchen (used as a classroom for kindergarten through 4<sup>th</sup> grade), a living room which was another classroom, a bathroom, and 2 bedrooms—1 used for storage and 1 not used at all. Mr. Less continued that there was also an unfinished basement used for utilities and storage, and noted further that the door separating the main floor from the stairs leading to the basement would have to be segregated with a door. Mr. Less added that both exits from the house did exit to grade.

Mr. Less continued that the Church's original plan was to use this house for residency for a teacher at the school, and noted that the house was currently vacant, that the Church had recently evicted 8 people that were living there, and that if the CUP amendment was approved, the home would be used for a school for kindergarten. Mr. Less added that the square footage in the house would be roughly equivalent to the square footage in the Church basement area that they couldn't use. Mr. Less noted that there were currently 6 students enrolled.

Mr. Less noted further that as the 2013 CUP approved the operation of a school only through the end of 2014, he knew the Church was exploring other possible locations for locating the school to a more permanent site.

Mr. Less added that the subject parcel was rectangular in shape with 50' of frontage on So. 28<sup>th</sup> Street, and a lot depth of 111.33', for a total area of 5,566sf or .12-acres. Mr. Less continued that when added to the current CUP area, this lot would increase the CUP area to 27,833.5sf or .64-acres. Mr. Less clarified that Lot 5, like the other lands included in the current CUP area, was zoned "R-4" Single and Two Family Residential District, which required a CUP under Section 15.150(3)(b) for usage of the site as a school. Mr. Less noted that the property was currently assessed at \$57,800 by the Assessor which reflected the value of the single family home on the property, and which generated just over \$1,200 in annual real estate taxes.

Mr. Less then explained that under the current "R-4" zoning district, permitted uses included single and 2 family residential, along with community living arrangements and day care facilities for not more than 8 individuals, and vacant lot residential gardens. Conditionally permitted uses include churches, schools, hospitals, private clubs and lodges, domestic violence centers, and community living arrangements for 9 or more individuals.

PLAN COMMISSION MINUTES - 9/11/2013

In closing, Mr. Less noted that notices were mailed from Planning to property owners within 200' of the subject property on September 4<sup>th</sup>, with the only feedback being a contact with Jeff Griebeling, 729 So. 28<sup>th</sup>, who stopped into Planning on September 6<sup>th</sup>. Mr. Less noted that Mr. Griebelin expressed concern with child safety in the area, and told him that he had observed kids playing soccer in the green area south of the Church, and felt it was a matter of time before something could happen to a child considering the traffic in the area. Mr. Less added that this was the only response received.

Pastor Guy Corrigan, 2709 Clark, commented that in response to the concern expressed above, the children were playing soccer under his supervision with instructions to not go into the street, and that when their ball went into the street, he went and retrieved it. Mr. Corrigan then noted that this discussion was about 6 children, and added that the Church was actively looking for an alternative site for the school.

Mr. Brey commented that he didn't see the safety issue as being any greater in this case vs. others, and saw no difference in the children playing at this school, or at any other public park or school playground. Mr. Brey asked Mr. Less for his recommendation.

Mr. Less noted that he had sent the amended compliance condition document to the Commission members and Pastor Corrigan prior to the meeting, and subsequently recommended that the Commission recommend to Council that it approve Amendment No. 1 to the CUP under Section 15.150(3)(b) for operation of a school at 729 So. 28th, subject to the amended compliance conditions on file in his office.

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.

V. REFERRALS FROM COMMON COUNCIL

- A. PC1-2013: Manitowoc Cinema, LLC; Quit Claim Deed to the City of Manitowoc for .17-Acres for So. 44<sup>th</sup> Street Purposes

Mr. Less described the above referenced deed.

- B. PC1-2013: Summit Pond, LLC; Quit Claim Deed to the City of Manitowoc for .04-Acres for So. 19th Street Purposes

Mr. Less described the above referenced deed.

- C. PC1-2013: Popp Enterprises, LLC; Quit Claim Deed to the City of Manitowoc for .27-Acres for So. 19th Street Purposes

Mr. Less described the above referenced deed.

PLAN COMMISSION MINUTES - 9/11/2013

- D. PC1-2013: CR Mini Storage LLC; Quit Claim Deed to the City of Manitowoc for .18-Acres for So. 26th Street Purposes

Mr. Less described the above referenced deed.

- E. PC1-2013/PC7-2013: City of Manitowoc; Quit Claim Deed to Kevin and Wendy Ramminger for .03-Acres for Former Broadway Street Right-of-Way

Mr. Less described the above referenced deed, and then recommended that the Commission recommend to Council approval of items A.-E. above.

Motion by: Mr. Diedrich

Seconded by: Mr. Muenzenmeyer

Moved that: the Commission approve the Planner's recommendation above for items A.-E. above.

Upon Vote: the motion was approved unanimously.

- F. PC22-2013/PC20-2013/PC13-2013: SMI; Correction Instrument – Vacation of Easement at So. 19<sup>th</sup> Street

Mr. Less explained that this was a Correction Instrument (CI) to be filed to remove a 6' wide easement abutting So. 19<sup>th</sup> Street and related to the Popp/Vandermause project at So. 19<sup>th</sup>. Mr. Less recommended that the Commission recommend to Council that it: (i) approve the CI pursuant to Wis. Stat. § 236.295; (ii) authorize the City Clerk to have the subdivider or its agent, SMI, record the CI; and (iii) include a reference to the CI (being recorded as a separate instrument) on to the new Certified Survey Map that will then have to be recorded by the subdivider or its agent, SMI.

Motion by: Mr. Hornung

Seconded by: Mr. Diedrich

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

Upon Vote: the motion was approved unanimously.

VI. OLD BUSINESS

- A. None

VII. NEW BUSINESS

- A. PC23-2013: Manitowoc Lutheran High School (MLHS); Discussion of Potential Rezoning of Select Area for Future Telecommunication Facilities

Mr. Less explained that there was no action to be taken this evening on this matter, and that it was just for discussion. Mr. Less then talked about recent discussions regarding AT&T's desire to construct a telecom facility at the MLHS property. Mr. Less advised the Commission that the original discussions were with a telecom consultant for a telecom facility at the NE corner of the property at Wildwood and Westwood. Mr. Less noted that at a recent meeting on-site, he had told the MLHS people and their legal counsel,

PLAN COMMISSION MINUTES - 9/11/2013

David Pawlowski, that the original idea was a non-starter, and that an alternative location behind the school building and parking lot was a better location for the proposed 100' x 100' area. Mr. Less explained that this would require rezoning under the City's ordinance to authorize the tower siting.

Mr. Brey questioned if the City could still regulate the zoning requirements for telecom facilities in light of recent State law changes?

Mr. Less replied that the 2013-15 WI Budget pre-empted local regulation of cell towers, but not zoning itself, the authority for which was with the federal telecom act of 1996. Mr. Less continued that the State law changed the application procedures to be followed locally, the information required in an application, and the timeframes for local approval of applications.

Mr. Diedrich asked what zoning would be required for a telecom facility?

Mr. Less stated that the 100' x 100' area would have to be zoned to "I-1", and added that he had not received any information from the consultant regarding the availability of other towers, or why the MLHS site was so essential to their system. Mr. Less continued that when he met in the field with MLHS personnel, he told them that he would be okay with rezoning this small area, and would take it to the Commission tonight just to advise you of the current discussions underway. Mr. Less added that he didn't know if the consultant and MLHS would come to any agreement on this site.

Mr. Diedrich asked if this would be a spot zoning?

Mr. Less replied that he could see how this might be interpreted as such, but felt that considering where the site was located and its singular purpose, it was facilitating the location of a structure, and not any other kind of land use. Mr. Less stated that he felt this location was less offensive than locating it just south of Wildwood Drive.

Mr. Hornung questioned if the County shops might be an alternative location?

Mr. Muenzenmeyer commented that it would be nice to have a study done so as to better understand the needs of the cell tower providers, and to identify suitable future sites for collocations.

Mr. Brey stated that he was under the impression that with the changes to the State law, these telecom facility could go anywhere they wanted.

Mr. Diedrich commented that this would be true if the site was zoned correctly, but as it wasn't zoned correctly, the City still maintained some level of control of the process.

Mr. Less agreed with Mr. Diedrich's comments, and added that some of the information required to be provided under State law was information as to why collocation

PLAN COMMISSION MINUTES - 9/11/2013

was not an option, and to clarify that there was a gap in their coverage. Mr. Less again stated that he had not received any information from the consultant on this topic.

Mr. Hornung stated that he was reticent to rezone based on the level of information known at this time.

Mr. Muenzenmeyer commented that he felt more thought should go into the collocation discussion.

Mr. Brey stated that there was nothing to respond to until an actual application was filed with the City.

Mr. Hornung stated that the consultant would need to do their due diligence to address why the telecom facility was needed at this location.

Mr. Diedrich stated that he would not be comfortable with rezoning that 100' x 100' area.

Mr. Less stated that he would provide Mr. Pawlowski with feedback from this discussion, and that in the absence of a compelling argument, the Commission was not inclined to support this rezoning proposal. Mr. Less added that he had told Mr. Pawlowski that there was no action to be taken by the Commission at this time.

Mr. Koski stated that spot zoning would open a can of worms.

Additional discussion was held.

No action was taken.

B. PC24-2013: Investors Community Bank; Determination of City Interest in Property at West Custer – Tax Parcel #827-303-141

Mr. Less explained the proposed location of this property that was the topic of a discussion he had with Dan Lalko, Investors Community Bank. Mr. Less noted his interest in the property was its potential usefulness in any future wetland mitigation or banking opportunities for the City, assuming the land could be secured by the City at no cost. Mr. Less noted that he had sent an email to Mr. Koski and Greg Minikel on this site and changes to Wisconsin's wetland regulations under 2011 Wisconsin Act 118, and asked them to give this idea some thought. Mr. Less added that according to Mr. Lalko, the bank was also talking with Jim Morrow regarding the site.

Mr. Koski commented that they discussed this idea, and felt that the site would not be of use to the City, and that any potential benefits from a future wetland mitigation effort would be minimal as this was an existing wetland.

Mr. Less stated that he would share these comments with Mr. Lalko.

No action was taken.

VIII. MISCELLANEOUS

A. Manitowoc County Activities:

1. None

B. Certified Survey Maps (CSM):

1. Kluenker; Proposed CSM in the SW¼ of NW¼ Sec. 11, T.19N., R23E., Town of Manitowoc Rapids

Mr. Braun explained the proposed CSM located north of Homestead Road/CTH “P” and east of Wagon Wheel Road, and advised that the owner wanted to split off from a larger parcel measuring approximately 38.86-acres, the house and garage in the southwest corner of the property into a tract measuring approximately 1.7-acres. Mr. Braun noted that he would require identification of the Official Map for Homestead Road/CTH “P” (100’) and Wagon Wheel Road (90’) on the CSM. Mr. Braun recommended approval of the CSM, subject to County and Township approvals.

Motion by: Mr. Hornung

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

Seconded by: Mr. Alpert

Upon Vote: the motion was approved unanimously.

C. Summary of Site Plans 8/8/2013 – 9/4/2013:

1. SP17-2013: Maritime Ford, 1401 Franklin – Parking Lot Reconstruction (approved)
2. SP18-2013: Americollect, 1851 Alverno – Parking Lot Addition (approved)
3. SP19-2013: Popp Enterprises, LLC/Vandermause, 1945 Dewey – New Construction (approved).

PLAN COMMISSION MINUTES - 9/11/2013

IX. ADJOURNMENT

The meeting was adjourned at 7:15 P.M.

Respectfully Submitted,

David Less  
City Planner