

PLAN COMMISSION MINUTES - 2/10/2010

Plan Commission Offices
Manitowoc City Hall

Regular Meeting
Manitowoc City Plan Commission
Wednesday
February 10, 2010
6:30 P.M.

I. CALL TO ORDER

The meeting of the City Plan Commission was called to order by Chairman Justin Nickels at 6:35 P.M.

II. ROLL CALL

Members Present

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

Members Excused

None

Staff Present

Paul Braun
David Less

Others Present

See Attached Sign In Sheet

III. APPROVAL OF MINUTES of the Regular January 13, 2010 meeting.

Motion by: Mr. Diedrich _____ Seconded by: Mr. Hornung
Moved that: the minutes be _____ Upon Vote: the motion was
approved as presented. approved unanimously.

IV. PUBLIC INFORMATIONAL HEARINGS

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A. PC3-2010/PC5-2009: City of Manitowoc; Proposed City-Initiated Vacation Under §66.1003(4) Wis. Stats and Official Map Amendment Under §62.23(6) Wis. Stats. for Portion of So. 22nd Street

Mr. Less explained that tonight's public informational hearing was in regard to a City-initiated amendment to the City's Official Map to eliminate a portion of So. 22nd Street R/W located north of Washington Street/USH151 pursuant to §62.23(6) Wis. Stats., and to concurrently discontinue or vacate a portion of the So. 22nd Street R/W located north of Washington Street pursuant to §66.1003(4) Wis. Stats. Mr. Less noted that this action was recommended by the Plan Commission at its January 13, 2010 meeting, and by Council action on January 18, 2010.

Mr. Less explained that the Official Map amendment and the R/W vacation were a modification of the width of So. 22nd Street related to the facility expansion project at Tony's Pizza, 2204 Washington. Mr. Less noted that the So. 22nd Street R/W was currently 80' in width, with the distance from curb face to curb face being 25' at the juncture of Washington Street and So. 22nd, and increasing to 33' as the street widened approximately 20' north of the north line of Washington Street.

Mr. Less explained that procedurally, the street vacation process was governed under §66.1003(4) Wis. Stats., and noted that the vacation proceedings had been City-initiated by virtue of its abutting ownership of the R/W to be vacated, and that this portion of the statute stated that there was no vacation petition requirement. Mr. Less continued, noting that the City had to prepare and record a "Notice of Lis Pendens", had to introduce a vacation Resolution, had to serve notice on to the property owners abutting that portion of the R/W proposed to be vacated, and had to hold a required public hearing that carried with it a requirement for publishing a Class 3 notice prior to the hearing date (held at least 40 days after the date the Resolution had been introduced). Mr. Less continued that once the public hearing was held, the Council could subsequently adopt the vacation Resolution. Mr. Less added that the proposed vacation under §66.1003(4) could become problematic if a written objection was filed with the City, either by an abutting property owner, or by the owners of more than one-third of the frontage of the lots and lands abutting the remainder of the public way within 2,650' of the ends of the portion to be discontinued and within the corporate limits of the City. Mr. Less noted that if this would happen, the vacation could be ordered only by the favorable vote of 2/3 of the City Council voting on the matter.

Mr. Less then explained that the Official Map process also required a public hearing with a Class 2 notice, adding that the vacation and Official Map hearing notices

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could be combined. Mr. Less then noted 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:

1. The "Notice of Lis Pendens" regarding the vacation proceedings was filed and recorded at the Register of Deeds on January 25th.
1. A Resolution for vacation, and an Ordinance for amending the Official Map was introduced at the February 1st Council meeting.
2. The property owners of all the frontage of the lots and lands abutting upon the area to be vacated (Tony Bugarino and the City) would have to be served with notice on or before March 5th.
3. The required public hearing regarding the vacation and Official Map amendment would be held on April 5th.
4. The vacation proceedings required that a Class 3 notice be published, and the Official Map amendment a Class 2 notice be published prior to the hearing, with the planned publication dates being March 15th, 22nd and 29th.
5. The Plan Commission would provide its final recommendations on the vacation and Official Map amendment at its April 14th meeting.
6. Final Council action on the vacation and the Official Map amendment could occur on or after April 19th.

Mr. Less continued that in this particular case, the City's zoning ordinance under Section 15.27(4)(b) regarding the "B-3" general business zoning district, stated that there was no setback required for buildings in this zone from the property line. Mr. Less noted that the east side of the building at 2204 So. 22nd was on the property line, and the deck structure invasive into the So. 22nd Street R/W, and as such, a non conforming building had been created.

Mr. Less noted the Plan Commission had been considering this matter for over a year, and that the initial remedy sought was to execute a new "Sidewalk Privilege

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Agreement” (“SPA”) in October, 2009 pursuant to §66.0425 Wis. Stats., to replace pre-existing SPA’s. Mr. Less continued that the new SPA was designed to wrap around an existing 48' x 11.6' wooden deck that was built in excess of the dimensional specifications authorized in the previous 2 SPA’s which went back to 1998. Mr. Less explained that since executing the 2009 SPA, a 600sf 3-season, or garage party room had also been constructed on private property to the north of, and abutting the deck structure, but not within the public R/W. Mr. Less noted that the outer edge of the deck structure was approximately 4' from the inner edge of the public sidewalk at its base, and approximately 3' at its top, and was not invasive to the sidewalk. Mr. Less noted that the area to be vacated and removed from the Official Map did not include the existing public sidewalk.

Mr. Less noted that in addition to the SPA, the Commission gave some consideration to leasing or selling the public R/W, but learned that except for temporary uses which did not interfere with public travel, a municipality had no authority to lease or sell the surface of a public R/W. Mr. Less continued that after considerable discussion by the Commission, it was concluded that vacating the west 12.5' of the south 22nd Street R/W beginning 18' to the north of the north R/W line for Washington Street, and a contemporaneous removal of the same area from the Official Map, would be the most effective solution to this situation, would eliminate the non-conforming status of the private improvements, and would ultimately place the entire array of improvements on the Bugarino property under his ownership.

Mr. Less continued that the So. 22nd Street R/W at 80' in width, was larger than other parallel R/W’s in the area, including So. 23rd, 24th and 25th, which were 66' wide R/W.

Mr. Less noted that in the case of this proposed vacation and Official Map amendment and vacation, the portion of So. 22nd Street to be vacated was rectangular in shape, and measured 12.5' in width by 132' in length, along the west side of So. 22nd Street, beginning 18' north of the north R/W line of Washington Street-- an area measuring 1,650sf in area or .037-acres. Mr. Less continued that the area proposed for vacation and removal from the Official Map, abutted the Bugarino property which was .64-acres in area, and was legally described in total, as Lots 18-21, Block 253 of the Original Plat. Mr. Less noted that Lots 18 and 19 abutted the area proposed for removal

from the public R/W. Mr. Less then explained that the Bugarino property contained multiple-- zoning districts: (i) Lot 18 (“R-4”); (ii) Lots 19-20 (“B-3”); and (iii) Lot 21 (“B-1”).

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Mr. Less continued 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, and noted further that the City would retain all easement and utility rights incidental to the vacated R/W which were in place prior to the official vacation of the R/W.

Mr. Less then noted that regarding tonight's informational hearing, notices were mailed on February 3rd to property owners within 200' of the ends of the proposed vacation and Official Map amendment. Mr. Less explained that Mr. Braun had reported to him that he had received the following comments in response to the mailing:

1. Someone from the Nicole Carmody residence, 1009 So. 22nd Street called and had general questions regarding the project. He didn't express any comments in favor, or against the project, but just wanted to know what the mailing was about.
2. Russell Wachholz, 2201 Washington telephoned and had general questions regarding the project, didn't express comments in favor or against project.
3. A resident on So. 21st Street telephoned, but didn't want to give their name. They had general questions about the project and wanted to make sure the vacated R/W was not given to Mr. Bugarino. Mr. Braun explained the vacation process to this person, and advised that the City portion of the vacated R/W would be sold to Bugarino based on a value determined by the City's Assessor and Attorney.
4. A So. 22nd Street resident called and didn't want to give their name. This individual didn't have any major issues regarding the vacation and Official Map process, but talked at length about how the conversion from a 2-way to a 1-way street occurred, and that

the entire street conversion was wrong. This person also noted that Tony's delivery drivers frequently exited on to So. 22nd Street from the parking lot north of the restaurant, and traveled in the wrong direction on the 1-way street.

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5. See Yee Thao, 913 So. 23rd Street stopped in the Planning office, and had general questions regarding the vacation and Official Map process, but did not have any comments for or against the project.

In closing, Mr. Less stated that the proposed vacation and Official Map amendment of a portion of So. 22nd Street R/W would provide a real estate remedy to the problems related to improvements constructed in the public R/W. Mr. Less stated that this remedy was consistent with the City's 2010 Comprehensive Plan which identified this area as "general business". Mr. Less added that the only action to be taken by the Commission this evening was to recommend that the Council instruct the Clerk to call for the required public hearings, including the publication of all required legal notices.

Mr. Less recommended that the Commission recommend to Council that they instruct the City Clerk to call for the required public hearings.

There was no public comment at the informational hearing.

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

- B. PC4-2010/PC5-2009: Burgarino; Request for Special Permit for Creation of Parking Lot in Residential District Pursuant to Section 15.43(11) of Manitowoc Municipal Code - Lot 18, Block 253, Original Plat

Mr. Less explained that this request was from Attorney David Pawlowski, Salutz & Salutz Law Offices, on behalf of their client, Tony Burgarino, owner of Tony's Pizza at 2204 Washington Street. Mr. Less stated that the request was for approval to establish an off-street parking lot on residentially zoned land pursuant to Section 15.43(11) of the Manitowoc Municipal Code. Mr. Less noted that this was not a proposal to change the underlying zoning of the proposed parking area, but rather to validate an existing land

use. Mr. Less added that the request emerged out of a 2009 Sidewalk Privilege Agreement ("SPA") requirement to file a request for the special permit with the City, which had been accomplished.

Mr. Less explained that Section 15.43(11) authorized the issuance of a special

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permit to allow for a parking lot to locate in a residentially zoned area, when the parking lot was to be used in connection with an adjoining “B”, “C” or “I” zoning district. Mr. Less continued that in this case, the special permit was to confirm the land use of an area currently being used as a parking lot, but for which a special permit had never been requested or issued.

Mr. Less noted that the proposal was to authorize the existing surface parking lot to the north of the Tony’s Pizza building under Section 15.43(11), and noted that Tony’s Pizza restaurant building and parking to the west was located on Lots 19 and 20, Block 253 of the Original Plat (and was zoned “B-3” General Business District), and the subject parking lot area was located to the north and was legally described as Lot 18, Block 253 of the Original Plat (and was zoned “R-4” Single and Two Family Residential District). Mr. Less then noted that Lot 18 was acquired by Mr. Burgarino in 2 separate transactions: (i) the W 42' Lots 18 and 20, Block 253 in 1997; and (ii) the E 68.09' Lot 18, all Lot 19, and E 18' Lot 20, Block 253 in 1992.

Mr. Less then explained that under Section 15.43(11), such an off-street parking lot could not extend more than 150' into a residential zoning district, and that in this case, the full depth of Lot 18, the lot for which the special permit would be issued, was 50', and that Lot 18 measured 50' x 109', or a total area of 5,450sf or .12-acres.

Mr. Less added that the 3 parcels (Lots 18, 19 and 20) that comprised the restaurant, off-street parking area to the west, and the proposed special permit area, had a collective estimated fair market value of \$248,800. Mr. Less then explained the zoning and land uses surrounding the proposed special permit area, and added that there was also site screen fencing in place along the north side of the proposed special permit area abutting Lot 15, and along the west side of the parking lot abutting Lot 17.

Mr. Less then detailed the off-street parking demographics for Tony’s Pizza, and noted that under the City’s off-street parking code, 56 off-street parking spaces would be required. Mr. Less noted further the following:

1. The business employed approximately 4 full-time and 34 part-time employees.
2. The entire off-street parking area for Tony’s had a capacity of 40 vehicles.
3. The seating capacity at Tony’s was approximately 150, including the newly constructed 3-season room.

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4. Based on a gross floor area of 3,208sf, including the 600sf 3-season room, the parking requirement for the business was approximately 56 spaces, which appeared to be easily satisfied between the existing off-street parking area, and in excess of 60 on-street parking spaces on Washington Street, So. 22nd and So. 23rd.

Mr. Less added that under the code, the parking lot was to be open between the hours of 5am and 11pm. Mr. Less continued that in the case of Tony's Pizza, the business' hours of operation varied over the course of a week between 3:00 P.M. and 1:00 A.M.

Mr. Less then detailed the compliance requirements under Section 15.43(11), and noted that the existing parking lot operation complied with all requirements, with a single exception. Mr. Less explained that the hours specified in the code were more restrictive than Tony's hours of operation. Mr. Less did note that the Commission could modify these requirements where desirable.

In closing, Mr. Less advised that notices were mailed to adjacent and abutting property owners on February 3, 2010, and that no comments had been received in response to the mailing. Mr. Less ended his comments by noting that the special permit area was identified as "general business" on the City's 2009 comprehensive plan future land use map, and that the issuance of a special permit would be consistent with the plan and land use for this area.

Mr. Brey commented on the discrepancy in hours of operation under the code vs. the business.

Mr. Less stated that his recommendation included a modification to that specific section of the code, so that the special permit area could operate in line with the business' hours of operation.

Mr. Brey then asked if the garbage dumpster at the northwest corner of the parking lot was site screened on all sides?

Tony Bugarino, 2204 Washington, explained that the dumpster had been sight screened on all sides.

Mr. Brey commented that several years ago, he had received complaints from some area residents about blowing garbage, but that he had not had complaints over the

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last few years.

Mr. Less recommended that the Commission approve the special permit for Lot 18, Block 253 of Original Plat subject to conditions under Section 15.43(11), and that pursuant to Section 15.43(11)(j), the Commission modify the hours that the parking lot shall be open under (g) to 1:00am.

Motion by: Mr. Brey _____ 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. PC8-2010/PC61-2008: City of Manitowoc; Release of Easement on Lot 1 of CSM Rec. V. 28, P. 73 Located East of So. 30th Street

Mr. Less explained that this "Release of Easement" was related to a December, 2008 land sale of 3.877-acres to the City for a storm water pond. Mr. Less then recommended that the Commission recommend to Council approval of the "Release of Easement" with one (1) document correction to be made: (i) the name of the grantee should be corrected to read "R & J Property Management LLC".

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

A. PC1-2010: Garceau Properties, LLC; Easement to the City of Manitowoc for Storm Sewer Purposes Located West of So. 41st Street

Mr. Less explained a proposed "Easement" agreement related to a future storm water pond to be located south of Custer Street and west of So. 41st Street. Mr. Less recommended that the Commission recommend approval of the agreement to the Council, with one (1) document correction to be made: (i) the name of the grantor should be corrected to read "Garceau Properties, LLC".

_____ Mr. Brey asked Ms. Mellon about the status of a potential easement across the Drumm property to a planned future pond in the Manitowoc Industrial Park?

Ms. Mellon explained that it appeared that the Drumm easement was not going to be attainable.

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

VI. OLD BUSINESS

A. None

VII. NEW BUSINESS

A. PC9-2010: Creative Sign/Rob's Family Market, Proposed Animated Sign at 2330 Menasha Avenue pursuant to 15.45(18) of the Manitowoc Municipal Code

Mr. Less reviewed a request for issuance of a special permit to authorize the construction of a fixed animated sign on to the existing ground sign at Rob's Family Market on Menasha Avenue. Mr. Less reviewed the details of the request, and noted that he felt it met the requirements under the City's animated sign ordinance. Mr. Less explained that he had no problem with the proposed animated sign, and recommended that the Commission:

- A. Authorize the issuance of a special permit, with the location of the sign as specified in the attached application.
- B. Waive the sight distance requirement under Section 15.45(18)(g)2.A. between any existing single and two family residential land use (2301 Menasha) as measured from the edge of a proposed animated sign to the lot line of such a residential land use.
- C. 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.

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 stated that he had a concern as the sign was within 150' of a residential home to the south.

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Mayor Nickels commented that the 150' was barely invasive to the residential property.

Mr. Muenzenmeyer asked when the City would say “no” to a sign request?

Mr. Diedrich commented that he was not concerned with this sign, as the sign followed sight lines, and didn't appear to be in the direct line of sight of the residential property to the south.

Mr. Muenzenmeyer asked Mr. Less if he had received any input from the neighborhood regarding the sign?

Mr. Less explained that area property owners were not contacted regarding these animated sign requests. Mr. Less added that the airport, Kwik Trip and United One Credit Union already had animated signs, and did not feel there was a basis for denial of the request from Rob's Market. Mr. Less continued that he felt that animated sign would be an enhancement to the overall visual character of the existing ground sign.

Mr. Muenzenmeyer asked if this was a new sign to be installed?

Todd Thomas, Creative Sign Company, 505 Lawrence, DePere WI, explained that this was a sign originally sold to a Green Bay customer which was used for about 8 months, and was subsequently purchased by Rob's Market at a considerable discount. Mr. Thomas added that the sign was high end, full color, and fully programmable. Mr. Thomas added that the owner did not intend to run the sign 24-hours/day, 7-days a week, and wanted to be a good neighbor.

<u>Motion by:</u> Ms. Stokes _____	<u>Seconded by:</u> Mr. Hornung
<u>Moved that:</u> the Commission recommend _____	<u>Upon Vote:</u> the motion was
approval of the Planner's recommendation above.	approved 7-1. Mr. Muenzenmeyer voted against the motion.

VIII. MISCELLANEOUS

A. Manitowoc County Activities:

1. None

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B. Certified Survey Maps (CSM):

1. William Harder/Robert Popp; Proposed CSM in the NE¹/₄ of NE¹/₄ Sec. 17, T.19N., R.23E., Town of Manitowoc Rapids

_____ Mr. Braun explained a proposed CSM located north and west of CTH “JJ”, and west of Friday Street. Mr. Braun noted that the owner wanted to split off and create a new 6-acre parcel, culled out of a larger 28-acre parcel of land. Mr. Braun stated that he had no issues with the proposed lot split, and would require showing the Official Map R/W for Friday Street, as well as identification of a 25' wide drainage easement on the CSM. Mr. Braun recommended approval.

Motion by: Mr. Diedrich

Seconded by: Mr. Alpert

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

Upon Vote: the motion was approved unanimously.

C. Summary of Site Plans 1/7/2010 - 2/4/2010:

1. None

IX. ADJOURNMENT

The meeting was adjourned at 7:05 P.M.

Respectfully Submitted,

David Less
Secretary