

PLAN COMMISSION MINUTES -7/15/09

Plan Commission Offices
Manitowoc City Hall

Regular Meeting
Manitowoc City Plan Commission
Wednesday
July 15, 2009
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

Members Excused

Justin Nickels
Dan Hornung

Staff Present

David Less
Paul Braun
Michelle Yanda
Elizabeth Werdermann

Others Present

See Attached Sign In Sheet

III. APPROVAL OF MINUTES of the Regular June 10, 2009 Meeting.

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

IV. PUBLIC INFORMATIONAL HEARINGS

A. PC31-2009: Felician Village, Inc.; Request for a Conditional Use Permit (CUP) Under 15.19(3)6. of Manitowoc Municipal Code for the Relocation of St. Mary’s Nursing Home to 1635 So. 21st, and to Expand The Court, 1903 Division

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Mr. Less explained that this was a request from Felician Village, Inc., for a CUP under Section 15.19(3)6. of the City’s municipal code for the relocation of St. Mary’s Nursing Home to 1635 So. 21st, and to expand “The Court”, a Residential Care Apartment Complex (RCAC) at 1903 Division by 16 units from 32 to 48 apartments. Mr. Less noted that references to Felician Village were intended to include not only Felician Village, Inc., but also St. Mary’s Home for the Aged, Inc.

Mr. Less continued 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 added 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 Felician Village was originally licensed as a 203-bed nursing home, and that today, it was licensed by the State (at this time) for: (i) 134 skilled care, nursing home beds; (ii) 48 CBRF units; and (iii) 32 RCAC units. Mr. Less continued that on the nursing home side, St. Mary’s represented 26.8 per cent of the 799 nursing home beds in the County, and added that this was a reflection of new nursing home industry trends that were leaning towards more managed care in a least restrictive, more home-like environment. Mr. Less noted that on the RCAC side, Felician Village represented over 18 per cent of the 174 RCAC units in Manitowoc County.

Mr. Less then provided some additional clarity to explain the differences between these types of assisted living facilities, and noted the following:

Nursing Home - a place where 5 or more persons who were not related to the operator or administrator resided, received care or treatment and, because of their mental or physical condition, required access to 24-hour nursing services. CBRF’s are regulated under Chapter DHS 132, and under ch. 50 Wis. Stats.

CBRF - a place where 5 or more adults, unrelated to the operator or administrator, and who did not require care above intermediate level nursing care resided and received care, treatment or services that were above the level of room and board, but that included no more than 3 hours of nursing care per week per resident. CBRF’s are regulated under Chapter DHS 83, and under ch. 50 Wis. Stats.

Residential Care Apartment Complex - a place where 5 or more adults resided that consisted of independent apartments, each of which had an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas, and that provided not more than 28 hours per week of services that were supportive, personal and nursing services. An RCAC does not include a nursing home or a CBRF, but may be physically part of a structure that is a nursing home or a CBRF. RCAC's are regulated under Chapter DHS 89, and under ch. 50 Wis. Stats.

Mr. Less continued that in February, 2008, Felician Village presented a new master plan to the Commission which, upon completion, would contain approximately 84 nursing home beds, 48 beds (up from 32) in a RCAC, and 32 (up from 16) CBRF units. Mr. Less commented that this 3-year project included the construction of approximately 130,000sf of new buildings, and added that the Commission went on record at their February 13, 2008 meeting endorsing the Felician Village 2008-2010 master plan. Mr. Less then identified the following other City actions taken related to Felician Village:

1. On March 16, 2009 the City Council: (i) granted an exception to the 2,500' separation provision under §62.23(7)(i)1. Wis. Stats. for the siting of a 32-bed CBRF at 1600 So. 18th for the frail elderly and elderly with dementia; and (ii) granted a CUP for the establishment of a 32-bed CBRF at 1600 So. 18th; and
2. In 2004, the City issued a CUP for the 8-person CBRF's at 1820 and 1920 Grand.

Mr. Less continued that to date, the City has approved a site plan for the CBRF and Village Square development as Phase I of the Felician Village master plan, and had subsequently approved the site plan for the construction of a single story, 38,000sf skilled care facility or nursing home, and a 17,500sf addition to the RCAC – both elements of the project which constituted Phase II of their plan, subject to the issuance of a CUP for those projects, and any compliance conditions related thereto. Mr. Less noted that Phase II included the demolition of the existing nursing home building excluding “The Towers” at the south end of St. Mary's, which would be demolished in the third phase of the project.. Mr. Less noted that the entire Felician Village property measured 22.78-acres.

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Mr. Less then explained that the skilled nursing home would downsize further to 84 beds –64 residents in their household model and 20 beds dedicated to rehabilitation. Mr. Less continued that the proposed nursing home and RCAC facilities were located at the northwest corner of the Felician property at Division and So. 21st, in Tract 2 of a CSM recorded in V. 28, P. 31, a CSM tract measuring just over 9-acres in area. Mr. Less added that the proposed CUP area measured 2.23-acres in area, and covered approximately 335 feet along So. 21st and 355' along Division, with the remaining CUP dimensions on the east and south sides of the CUP being irregular in shape.

Mr. Less then explained the surrounding land uses and zoning in the area, adding that the entire Felician Village property was zoned “R-6”.

In closing, Mr. Less advised that notices were mailed from City Planning on July 8, 2009 to property owners within 200' of the subject property, and that no calls had been received.. Mr. Less added that the City’s 1999 Comprehensive Plan identified this area as sewer residential, and stated that there were no apparent conflicts with the proposed CUP.

There was no public comment at the informational hearing.

Mr. Brey asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend approval of the CUP to the Council, subject to the conditions presented and on file in the City Planner’s office.

Motion by: Mr. Diedrich _____ Seconded by: Mr. Alpert
Moved that: the Commission recommend _____ Upon Vote: the motion was
Council acceptance of the Planner’s recom- approved unanimously.
mendation above.

B. PC34-2009: Lakeshore Unitarian Universalist Fellowship; Proposed
Conditional Use Permit (CUP) Under 15.15(3)1. of Manitowoc
Municipal Code for Establishment of a Church

Mr. Less explained that this was a joint request from the Lakeshore Unitarian Universalist Fellowship, Inc. as the contract purchaser, and the Christian Science

Society of Manitowoc, as the seller, of property at 620 Park Street. Mr. Less noted that the parties were requesting a CUP under Section 15.15(3)1. of the City's municipal code to authorize the location of a church at the Park Street property.

Mr. Less continued 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 added 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 explained that the subject parcel was identified as the W 18' of Lot 19 and all of Lot 20, Block 58, of the Original Plat of the City, and added that this was a parcel and a building that had been identified in the City's intensive historic resource survey done back in 1988. Mr. Less continued that "The First Church of Christ, Scientist" was constructed at 620 Park in 1917, that the building was constructed in a Neo-classical style, and was a contributing part of the area identified in the report as the "Union Street Historic District".

Mr. Less commented that the proposed CUP area measured approximately 120' on N. 7th and 78' along Park Street, and that the overall CUP area measured 9,360sf or .21-acres in area. Mr. Less stated that the property was exempt for tax purposes, and was zoned "R-4" Single and Two Family Residential which identified churches as a conditionally permitted use.

Mr. Less noted that The Lakeshore Unitarian Universalist Fellowship, Inc. was the contract purchaser of this property, and anticipated closing on the purchase of the real estate by mid-August. Mr. Less stated that the buyer and seller had executed a "Commercial Offer to Purchase" which specified closing on or before August 15th, and which was expressly conditioned upon securing financing, and upon receipt of a CUP by the City. Mr. Less continued that the Fellowship was currently operating out of a building located at 421 N. 8th Street, and would relocate its operation to the Park Street property. Mr. Less noted that the Fellowship had approximately 30 members at present. Mr. Less added that there was no off-street parking related to the Fellowship's location on N. 8th, but that it was likely that parishioners parked either on N. 8th or in the Bank First National parking lot.

Mr. Less detailed the existing 3-story building as having 2 useable floors and a functional basement, a sanctuary located on the first floor which measured

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approximately 31' x 40' and with seating capacity of approximately 100. Mr. Less continued that the second floor contained 5 rooms – 2, larger 31' x 13' and 31' x 14' rooms (reading/library room), and 3, smaller, 11' x 10' (office), 9' x 10' and 10' x 11'6" (education rooms). Mr. Less noted that there was also an unused third floor, and a basement which contained 2 bathrooms, along with a variety of rooms, plus a utility room.

Mr. Less noted that the Fellowship's current state of thinking regarding the building was that they planned to add a kitchen and additional bathroom facilities to the second floor of the building when the finances were right, and to make the building ADA compliant.

Mr. Less then explained the surrounding land uses and zoning, and again noted that there was no off-street parking at the subject property, but there was also unlimited on-street parking, except for a "no parking" drop off area, along Park Street. Mr. Less continued that N. 7th Street did have a winter parking ban. Mr. Less added that the City's off-street parking requirement for a church was 1 space for each 6 seats, based upon maximum seating capacity.

Mr. Less commented that notices were mailed from City Planning on July 8th, and that he did receive a phone call from Connie Randolph, 602 Park Street, on July 13th. Mr. Less explained that she was not opposed to the proposed CUP. Mr. Less continued that Mr. Braun received a phone call today from Mrs. Schulze at 609 N. 7th Street, who resided directly north of the church, and that she and her husband most likely wouldn't be able to make tonight's meeting, and didn't have any problems with the proposed CUP being issued, or for the building being used as a church. Mr. Less continued that Mrs. Schulze expressed that the church had kept the building and grounds in good condition, and hoped the new church would do the same. Mr. Less added that she seemed to be fine with the issuance of the new CUP.

In closing, Mr. Less noted that the City's 1999 Comprehensive Plan identified this area as sewer residential, so there appeared to be no conflicts with the proposed use of the land.

Ms. Stokes asked if anyone knew how many attendees the Christian Science church had at present?

Mr. Less stated that he did not know.

Ms. Stokes stated that she resided in the area, and had not observed a parking problem related to the church.

Mr. Alpert asked if the church needed off-street parking?

Mr. Less stated that the church had to demonstrate that it had off-street parking options available, including on-street parking.

Dan Fischer, 5110 Expo Drive #207, provided some additional history on the property, noting that the building was built around 1891 by an iron foundry person. Mr. Fischer continued that the Christian Scientists took over the property sometime between 1916 and 1920.

Mr. Diedrich asked Mr. Fischer if he knew the number of participants at the Christian Scientist church?

Mr. Fischer replied that he believed that their numbers were dwindling over the years, and were less than 15 at present. Mr. Fischer noted that the Fellowship had an average attendance of around 21 on Sunday's over the past year.

Mr. Brey asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend approval of the CUP to the Council, subject to the conditions presented and on file in the City Planner's office.

Motion by: Ms. Mellon _____ Seconded by: Mr. Diedrich
Moved that: the Commission recommend _____ Upon Vote: the motion was
Council acceptance of the Planner's recom- approved unanimously.
mendation above.

V. REFERRALS FROM COMMON COUNCIL

A. PC29-2009: City of Manitowoc; Proposed Animated Sign in Washington Park Pursuant to Section 15.45(18) of Manitowoc Municipal Code

_____ Mr. Less explained the proposal to locate an animated sign in Washington Park, and to locate the proposed sign at the site of the current sign. Mr. Less reviewed the sign application with the Commission, as well as his recommendation. Mr. Less advised the Commission that they were authorized to issue special permits for animated signs.

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Mr. Less explained that this sign would be located in a "P-1" Conservancy District, and would require a waiver as it would qualify under Section 15.45(18)(c)11(A-C). Mr. Less added he was also recommending waiving of the \$125 special permit fee under Section 15.45(18)(b)1.A. as was specified in Section 15.45(18)(c). Finally, Mr. Less noted that he was recommending a waiver of the maximum sign size to allow for a 56sf sign, as the proposed sign did not require a permit under Section 15.45(9)(k), and was therefore not subject to the 24sf maximum sign size restriction in the "P-1" district regulations.

Ms. Stokes asked if the proposed animated sign would be located in the same location as the existing sign?

Mr. Less replied "yes", and noted that the Council had previously authorized funding for the sign from a room tax account.

Mr. Brey asked Ms. Mellon and Mr. Muenzenmeyer if they had any issues with the proposed sign?

Ms. Mellon stated that she had no problem, but wondered where the power would come from?

Mr. Muenzenmeyer replied that the sign already had power to it, and noted that he had no problem with the proposal.

Mr. Brey asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission approve the request for a fixed animated sign pursuant to its authority under Section 15.45(18)(e) of the Code as follows:

1. Authorize issuance of a special permit for the proposed sign, with the location of the sign in a "P-1" zoning district as specified in application, and based upon a finding that the sign met the requirement under Section 15.45(18)(c)11(A-C).
2. \$125 special permit fee under Section 15.45(18)(b)1.A. be waived as specified in Section 15.45(18)(c)11.

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3. Maximum sign size be waived to allow for a 56sf sign as the proposed sign did not require a permit under Section 15.45(9)(k), and was therefore not subject to the 24sf maximum sign size restriction in the "P-1" district regulations.
4. The Director of Building Inspection be authorized to issue the animated sign permit, subject to the above referenced conditions, as well as compliance with all relevant sections of Section 15.45.

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.

B. PC30-2009: City of Manitowoc; Proposed Chapel in Evergreen Cemetery

Mr. Less reviewed a site plan and design sketch for a proposed 20' x 20' open air, traditional stone chapel to be located in Evergreen Cemetery, south of Michigan Avenue, and approximately 300' south of the cemetery office. Mr. Less explained that the funding for this structure was coming from a \$30,000 bequest from the Donald Dow Charitable Residuary Trust, and added that this public project had been previously authorized by the Public Property and Safety Committee, and the Common Council.

Mr. Less recommended that the Commission recommend to Council approval of the planned location and architectural design of the proposed structure pursuant to its review under §62.23(5) Wis. Stats.

Ms. Stokes asked what would happen if the project cost was above \$30,000?

Mr. Brey commented emphatically that the project would not exceed \$30,000, or it would have to be scaled back.

Ms. Mellon reported that the bid advertisement was scheduled for July 21st, the bid opening would occur on August 12th, and hopeful awarding of the bids would occur at the August 17th Council meeting.

Additional discussion was held.

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

C. PC32-2009: City of Manitowoc; Proposed Land Sale in Manitowoc Industrial Park

Mr. Less explained that this was a request from Lee Troullier to purchase City-owned property located in the Manitowoc Industrial Park which was located north and east of a parcel owned by Clearview Partners LLC. Mr. Less noted that this land sale had not yet been considered by the Manitowoc Industrial Development Corporation, which has the responsibility to approve land sales in the City's industrial parks, and added that he would likely convene a meeting of the Corporation sometime in August. Mr. Less stated that this matter was before the Commission pursuant to its review authority under §62.23(5) Wis. Stats.

Commission members questioned how the property would be developed?

Mr. Less replied that no site plan had been filed to date, but added that the development would have to meet site plan review and requirements. Mr. Less recommended that the Commission recommend to the Council that they: (i) approve the land sale, subject to approval by the Industrial Development Corporation; (ii) authorize the City Planner to negotiate all final terms and conditions of the sale, to execute an Offer to Purchase with the buyer, to act as the City's agent to close the real estate transaction; and (iii) at the instruction of the City Planner, that the Mayor and Clerk be authorized to sign any documents necessary to complete the transaction.

Mr. Diedrich asked how access would be attained into the site?

Mr. Less replied that the issue of access would have to be worked out, and that the City had not seen any development plan for the parcel. Mr. Less added that any development on the parcel would have to meet City site plan requirements.

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

D. PC36-2009: Manitowoc County; Property Foreclosures in the City of Manitowoc

Mr. Less reviewed a communication from the Manitowoc County Treasurer regarding multiple parcels of real estate located in the City that were in the process of foreclosure. Mr. Less identified the parcels as the Granger and Meyer properties on N. 9th Street, north of Chicago, and the Bomba property on So. 7th, south of Marshall Street.

Mr. Less noted that he did not think there was any interest in the City in acquiring these parcels, and recommended that the Commission recommend to the Council that the communication from Manitowoc County be placed on file, and that no further action be taken on this matter.

Mr. Muenzenmeyer commented that regarding the Granger property on N. 9th, it had been condemned and razed, and that regarding the Meyer property to the south of the Granger lot, it would be padlocked tomorrow.

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

VI. OLD BUSINESS

A. PC5-2009: Burgarino; Discussion of Public R/W on So. 22nd Street - Update

Mr. Less introduced this issue again, and noted that there had been discussions held between legal counsels and Mr. Burgarino since the last Commission meeting at which this was discussed. Mr. Less added that Attorney David Pawlowski had asked him to place this item on tonight's agenda. Mr. Less noted that this matter had been discussed at several Commission meetings of late, and that the outcome was a recommendation and action by the Council, to authorize entering into a lease for a portion of the So. 22nd Street R/W.

David Pawlowski, 823 Marshall, identified himself as legal counsel for Tony Burgarino. Mr. Pawlowski updated the Commission on his recent involvement in this matter, adding that he had several conversations with the City Engineer, City Attorney and Planner. Mr. Pawlowski explained that Mr. Burgarino had scaled back his plans to improve the outside deck area from an original estimate of \$150,000 down to \$50,000.

Mr. Pawlowski then noted that his client was now in favor of a new “Sidewalk Privilege Agreement” (SPA), and wanted to clean up the myriad of issues related to his client’s property. Mr. Pawlowski commented that Mr. Less had drafted a recommendation on this matter, and asked him to share it with the Commission.

Mr. Less recommended that the Commission recommend that the Council approve a new direction as specified below that would supersede and replace its previous action and directives to lease the R/W, and for the City Attorney to work with the property owner to implement the following:

1. Property owner, at owner’s expense, to have an engineering firm:
(i) prepare a boundary survey of his property along the Washington Street frontage to identify the precise location of all existing private improvements and encumbrances that were located within the Washington Street R/W; and (ii) prepare a legal description for the private improvements that clarified and legally described their location in the Washington Street public R/W.
2. To deal with the issue of the nonconforming status of encumbrances on both the Washington and So. 22nd Street sides of the property, the City Attorney and City Planner would be authorized to negotiate and prepare a new SPA to supersede and replace previously executed SPA’s, and to authorize the property owner’s existing deck and other private encumbrances to be located in the Washington Street and So. 22nd Street R/W as per the legal descriptions to be provided by said engineer for both R/W’s.
3. Authorize the Mayor and Clerk to sign the new SPA on behalf of the City at the instruction of the City Attorney.
4. The new SPA would, at minimum, include: (i) a statement that the SPA was authorized pursuant to §66.0425 Wis. Stats.; (ii) that the City has agreed to not exercise its rights under this statute for a period of 15 years from the effective date of the new SPA; and (iii) that the new SPA would be recorded at the owner’s expense.
5. On or before the execution of the SPA by the City and the property owner, the owner would file with the City Clerk either :

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(i) a petition to rezone his property to "B-3"; or (ii) as an alternative to rezoning, the property owner would petition the City for approval to locate a parking lot in a residential zoning district under 15.43(11)—this latter procedure was not necessary if the rezoning would be successful. The property owner would be responsible for payment of all fees related to the rezoning procedure.

Mr. Pawlowski explained that his client was in agreement with a 15 year "no action" period outlined in Mr. Less' recommendation, and explained that his client had recently received a notice from the City regarding planned improvements and assessments at So. 22nd Street. Mr. Pawlowski continued that he was not aware of anything in the City's 10 year capital plan suggesting further changes to So. 22nd Street, and felt that 15 years was a reasonable compromise. Mr. Pawlowski noted that his client needed assurances that his investment would be worthwhile, and felt that the 15 year "no action" period was reasonable.

Mr. Brey stated that he appreciated Mr. Bugarino's spirit of cooperation, and noted that he was still in favor of selling the land to Mr. Bugarino, and suggested going longer than 15 years on the "no action" period. Mr. Brey asked why Mr. Bugarino was now accepting the 15 year "no action" period?

Mr. Pawlowski stated that it had to do with his client's age and projected working career, coupled with the fact that the useful life of the deck was probably around 15 years.

Tony Bugarino, 2204 Washington explained that the reduced cost of the deck was part of his consideration, and added that he was not willing to gamble \$150,000 on a deck.

Mr. Pawlowski stated that the scale of the deck had been reduced, and felt again that a 15 year period was an appropriate compromise to balance City issues with the concerns of his client.

Mr. Brey stated that his preference was for the City to sell the property

Mr. Pawlowski again stated that the 15 year period was acceptable.

Mr. Muenzenmeyer asked Ms. Ruenzel what she thought about this change? Mr. Muenzenmeyer stated that he did not know what the design plans for the \$50,000

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deck looked like, and was not comfortable with approving this arrangement without knowledge of the planned construction detail.

Mr. Less stated that the SPA would include a requirement that the detail of the construction be submitted to the City first, for approval, before moving forward with any construction, and that this construction detail could be an exhibit attached to the SPA.

Mr. Pawlowski concurred.

Mr. Braun referenced a recently filed site plan for the proposed parking lot to the west of the restaurant, and noted that the south half of the lot was concrete and the north half was gravel. Mr. Braun stated that the gravel lot was not in compliance with City code, and noted that there were fencing issues to be dealt with.

Mr. Less stated that this was not an SPA agreement item, and would have to be dealt with separately, and advised that the parking lot discussion was a code compliance issue.

Mr. Muenzenmeyer suggested that this item be included with the overall recommendation to Council on this matter, but not to include it in the SPA.

Mr. Less stated that Mr. Bugarino needed to continue working with Mr. Braun to resolve the fence issue. Mr. Less continued that it was not germane to the SPA, but that he would include a notation in the Commission's report to the Council to advise them that this area would be brought into conformance with requirements under Section 15.37(2) governing site plans in the City.

Mr. Bugarino agreed to continue working to remedy the parking lot and fence issues.

Juliana Ruenzel, City Attorney, commented that she was okay with the SPA, and felt that the 15 year "no action" period was reasonable, and added that her only concern was with any plans that the Engineering Department might have for the R/W. Ms. Ruenzel noted that originally she and Mr. Less agreed that a new SPA would be the best way to proceed in this matter.

Ms. Mellon stated that she didn't have any plans to change the direction of the street at this point, and would not consider that, unless the neighborhood demanded a change.

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Additional discussion was held.

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

B. PC52-2006: FY2007 Comprehensive Planning Grant - Multi-Jurisdictional Project with Manitowoc County:

1. Update - Manitowoc County Planning Advisory Committee (MCPAC)

Mr. Muenzenmeyer commented that there was no update, and reported that multiple meetings with the City of Two Rivers to discuss potential boundary conflicts had been cancelled by the City of Two Rivers.

No action was taken.

2. Vandewalle Update

Mr. Braun stated that he had sent an e-mail to Commission members this past Thursday that included as an attachment, the final draft of the comprehensive plan, the final draft of the Expo Grounds study, and the final draft of the downtown river corridor study. Mr. Braun noted that the Commission had previously seen these documents, and requested comments to be returned to him by August 17th.

Mr. Braun then provided Commission members with a copy of the Vandewalle memo regarding development codes, as well as the Vandewalle baby boomer analysis. Mr. Braun explained that these were not time sensitive documents as they would not be part of the comprehensive plan. Mr. Braun asked the Commission to review these documents, and to provide him with comments on or before August 17th.

Mr. Braun then explained that a single open house on the comprehensive plan, Expo Grounds, and downtown/river corridor studies would likely be held sometime in September, and that the public hearing on this matter would likely be held before the Common Council in November.

Additional discussion was held. No action was taken.

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C. PC6-2009: Reinertson; House Moving Application Under Section 15.37(3)

_____Mr. Less advised the Commission that Mr. Muenzenmeyer had sent an e-mail to Mr. Reinertson requesting an update, and that there was no change in status on this anticipated project. Mr. Less asked Mr. Muenzenmeyer if this item could now be removed from the Commission agenda?

Mr. Muenzenmeyer stated “yes”.

Mr. Less recommended that the Commission recommend to Council that the original Reinertson request be placed on file, with no further action required.

Motion by: Mr. Muenzenmeyer _____ Seconded by: Mr. Diedrich
Moved that: the Commission recommend _____ Upon Vote: the motion was
Council acceptance of the Planner’s _____ approved unanimously.
recommendation above.

VII. NEW BUSINESS

A. PC33-2009: Degener/Bartow Builders; Erosion Hazard Area at 1311 Michigan Under Section 15.37(23) of Manitowoc Municipal Code

Mr. Less explained that this was a request that emerged out of a recent Zoning Board of Appeals (ZBA) meeting on June 18th regarding a parcel of property at 1311 Michigan, and advised that the owner was seeking issuance of a temporary permit from the Commission pursuant to the City’s erosion hazard ordinance which was most recently modified and effective December 9, 2008, and which added territory to “erosion hazard areas” (EHA), including the parcel at 1311 Michigan. Mr. Less displayed pictures of the subject property and the erosion hazard area.

Mr. Less stated that the City established an EHA by ordinance adoption back in 1980, and then noted that the current Municipal Code provided the following definitional and procedural guidance regarding an EHA:

“15.03(36) - Erosion Hazard Area. Any area so designated on the "Comprehensive Zoning Ordinance Zoning District Map" which is prone to or has a history of moderate to severe erosion and is or potentially is a

threat to adjoining property. The Plan Commission must approve any cutting, filling or development in an erosion hazard area before any development occurs.

15.37 (23) - Erosion Hazard Area, Permit to Cut, Fill or Develop.

The Plan Commission shall consider and may approve detailed engineering plans for the erection of structures, for the removal or fill or storage of topsoil, sand, gravel, or other material in an erosion hazard area. Approval shall be by temporary permit issued upon approval of the City Plan Commission and/or City Planner and on condition and satisfactory documentation such action will not have any adverse effect upon surrounding properties.”

Mr. Less continued, that the new territory, which included the subject parcel, was added into the EHA district which was characterized by steep topography, and because of extreme grades, might be prone to damage from settling and the natural process of soil movement down these steep slopes. Mr. Less noted that by being proactive in this area, the City hoped to better control development on sites that were more susceptible to erosion, and to minimize the potential for personal and property damage related to erosion problems. Mr. Less explained that the subject parcel, currently zoned “R-4”, at 1311 Michigan was acquired by the current owner, Jennifer Degener, in late September, 2008, and was legally described as:

Fractional lots Numbered 15, 16, 17 and 18, Block 15 of the Original Plat of the City of Manitowoc lying southerly of the southerly line of Michigan Avenue, and subject to various exceptions.

Tax #000-015-160

Mr. Less noted that the front yard setback in an “R-4” zoning district was 25'.

Mr. Less continued that the agent for the property owner, Brandon Bartow, had filed a request for a zoning setback variance back on May 28th to seek relief so as to construct a 24' x 24' garage to the west of the principal residence within the front yard setback area. Mr. Less noted that as the south side of the property was heavily wooded and dropped off towards Spring Street, the structure could not be moved back further. Mr. Less continued that the front line of the new garage structure would be only 13.6' off of the Michigan Avenue R/W line, where the front yard setback required in the “R-4” district was 25'. Mr. Less added that a site plan for the proposed garage dated July 2nd was filed with the Building Inspection Department on July 2nd, and contained a note

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on the foundation plan that “although advised, soil testing not performed”. Mr. Less made the following points for the record:

1. That no geo-technical report had been prepared by a professional engineer including an evaluation of the site’s inherent erosion hazards, site stability and proposing mitigation measures sufficient to avoid on-site and off-site erosion hazards.
2. That no geo-technical report had been prepared to support the design of the foundation, below-ground wall and floor slab construction, soil bearing capacities, as well as a comprehensive subsurface analysis that reflects the proposed building elevations and location.

Mr. Less explained that the petitioner had described that the existing 1-car garage (19' x 19') to the east of the residence (a portion of which was located on a portion of a 163' long, 10' wide strip of City-owned property being the South 10' of Lot 17 and the east 13' of Lot 18 abutting Spring Street) would be removed within 60 days of the date the new garage was completed. Mr. Less advised that the ZBA granted the appeal, subject to the issuance of a temporary permit by the Plan Commission under Section 15.37(23) for the disruption of the erosion hazard area.

Mr. Less then noted that the 1884 residence on this lot was identified in the City’s 1988 intensive historic survey as a contributing structure in a proposed Michigan Avenue Historic District, and was identified as the residence of Joseph Rucek.

Mr. Diedrich asked if the existing home was in the City R/W?

Mr. Less stated “yes”, and then presented his recommendation for approval of the temporary permit, which read as follows:

1. The property owner would make every effort to design and construct the garage structure so as to complement the historic character and nature of the abutting principal residence.
2. Contemporaneous with the Building Inspector issuing a building permit for the structure within the EHA, the City would authorize the City Planner or City Attorney’s office to prepare, and the

property owner and City to sign, an Affidavit to be recorded at the property owner's expense. This Affidavit would, at minimum, include:

- a. A legal description and tax identification number of the property;
- b. The owner's or owner's agent would represent and warrant that:
 - (1) the property includes lands within the EHA;
 - (2) the owner had undertaken appropriate inquiry into the suitability of the property to support the proposed development, including a review any boundary, topographic or geo-technical surveys authorized by the owner and prepared for the property (if any), and the owner was fully aware of, and determined that all soil and subsurface conditions were adequate and could support the construction of the proposed development;
 - (3) the owner had determined that utilities in sufficient capacity and quantity could be provided to the proposed development at reasonable costs of installation;
 - (4) the owner agreed to hold the City harmless, and pay all costs and expenses for any on-site or off-site erosion damage problems arising out of any work of any type or kind conducted on the property; and
 - (5) the owner would, at owner's expense, be responsible for correcting to the City's sole satisfaction any off-site erosion or land disturbance actions occurring as a result of owner's work in the EHA.

- c. The City would represent and warrant that it:
- (1) had issued a temporary permit under 15.37(23) based upon representations and warranties by the owner or owner's agent;
 - (2) had not performed any independent boundary, topographic or geo-technical survey for the property (if any), and that the determination that all soil and subsurface conditions are adequate and support the construction of the proposed development is expressly that of the owner or owner's agent; and
 - (3) the City's issuance of a temporary permit under 15.37(23) would in no way be implied as a representation or warranty by the City as to the condition or suitability of the owner's property to support the proposed development, or its compliance with any other federal, state or local laws or regulations, environmental or otherwise.

Mr. Less stated that he wanted to make it clear that should an erosion problem occur, the consideration to approve the temporary permit was based upon information provided by the owner, and it was the owner's decision to proceed with the project.

Brandon Bartow, Bartow Builders, 32 Albert Drive, commented that the intent was to improve this property, and added that he had taken out a \$60,000 building permit for the property. Mr. Bartow explained that the new garage location would resolve many problems with the existing garage on the property. Mr. Bartow did note some concern with the indemnification recommendation, and felt that anything within the construction site was appropriate. Mr. Bartow questioned where the owner/builder would lose their liability?

Mr. Less stated that he would have a map for attachment to the affidavit that outlined the area covered under the indemnification, but noted that it would be any damage directly caused by any land disturbance and/or construction activity at the subject property. Mr. Less added that if there was damage, and it was related to the construction at the subject property, it would be the owner's responsibility to restore the damaged area. Mr. Less noted that he wanted to protect the City in this matter, as the

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City was relying on the representations of the owner in this case, and was not basing its decision to issue the permit upon any City verification of foundation or soil conditions, and the like.

Mr. Bartow asked how the existing garage tear down should be handled as it would be on City-owned property, and if the City had any special requirements for that item?

Mr. Less replied that Mr. Bartow should work with Mr. Muenzenmeyer for guidance in that area.

Mr. Muenzenmeyer commented that the disturbed area would have to be restored so that it didn't increase erosion.

Ms. Mellon questioned whether or not the City should close off Spring Street to traffic while the tear down was underway?

Mr. Muenzenmeyer noted that he did not think that was necessary.

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

B. PC35-2009: Lehman; Proposed Animated Sign at 1440 So. 39th Street Pursuant to Section 15.45(18) of Manitowoc Municipal Code

Mr. Less explained a request for siting a fixed animated sign on the west side of So. 39th Street, north of Calumet Avenue/USH151. Mr. Less identified the existing sign on the property, the proposed replacement, animated sign, and stated that he had no problem with the proposal, and recommend the following actions to the Commission:

1. Authorize issuance of a special permit for the proposed sign, with the location of the sign as specified in the application.
2. Maximum animated sign size to be waived to allow for a 33sf sign as proposed, as the animated portion of sign exceeded 30 per cent of the total sign square footage; this waiver being based on 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. The Director of Building Inspection be authorized to issue the animated sign permit, subject to the above referenced conditions, as well as compliance with all relevant sections of Section 15.45.

Mr. Muenzenmeyer stated that he had no problem with the proposed sign.

Ms. Mellon concurred.

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.

VIII. MISCELLANEOUS

A. Manitowoc County Activities:

1. None

B. Certified Survey Maps (CSM):

1. Dewey Properties, LLC; Proposed CSM Rec. V. 28, P. 21, Being Redivision of Lot 2 of a CSM Rec. V. 27, P. 241-243, Located in SE¼ of NE¼ Sec. 35, and W½ of NW¼ Sec. 36, T.19N., R.23E., City of Manitowoc

_____ Mr. Braun explained a proposed CSM for lands in Harbor Town located west of Charcoal Grill, between Calumet Avenue/USH151 and Harbor Town Lane. Mr. Braun explained that the existing parcel would be split into 2 parcels for future development. Mr. Braun recommended approval of the CSM.

Additional discussion was held.

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Motion by: Mr. Diedrich

Seconded by: Ms. Mellon

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 6/4/09 - 7/8/09:

1. SP9-2009: Orthopaedic Associates Land and Building LLC, 501 N. 10th - building addition (approved).
2. SP10-2009: Burgarino/Tony's Pizza, 2204 Washington - new parking lot (approved).
3. SP11-2009: Custer Village LLC, 5141 Expo Drive - Garages (pending).

IX. ADJOURNMENT

The meeting was adjourned at 8:05 P.M.

Respectfully Submitted,

David Less
Secretary