

PLAN COMMISSION MINUTES - 9/16/09

Plan Commission Offices
Manitowoc City Hall

Regular Meeting
Manitowoc City Plan Commission
Wednesday
September 16, 2009
6:30 P.M.

I. CALL TO ORDER

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

II. ROLL CALL

Members Present

Steve Alpert
Jim Brey
David Diedrich
Maureen Stokes
Greg Minikel Representing Val Mellon
Dan Hornung
Justin Nickels

Members Excused

Jim Muenzenmeyer

Staff Present

David Less
Paul Braun
Michelle Yanda
Elizabeth Werdermann

Others Present

See Attached Sign In Sheet

III. APPROVAL OF MINUTES of the Regular August 12, 2009 Meeting.

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

IV. PUBLIC INFORMATIONAL HEARINGS

A. PC43-2009: Kerscher & Bucha /Ruzek, Inc.; Request for a Conditional Use Permit (CUP) Under Section 15.27(3)1. for a Wrecker Service Business as Part of Ruzek’s, Inc. Vehicle Repair Business at 734 N. 8th

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_____ Mr. Less explained that this request was from Attorney John Kerscher on behalf of Ruzek, Inc., the owner and operator of a vehicle repair facility at 734 N. 8th Street, who was requesting that the City grant a CUP under Section 15.27(3)1. of the Manitowoc Municipal Code for operation of a wrecker service along with their vehicle repair business. Mr. Less noted 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 noted that the subject parcel was described as Lot 1, and the east 49' of Lot 2, in Block 44 of the Original Plat, and measured 120' along N. 8th Street and 109' along Huron Street, or .30-acres in total. Mr. Less continued that the parcel included a single story building constructed and used as a gas station around 1961, and which measured 49' x 29' or approximately 1,421sf, and had 2 overhead garage doors on the east side of the structure.

Mr. Less explained recent ownership changes at the property, and commented that Thomas Duenkel had a Land Contract with Karl Krauss in 1992 which was never completed. Mr. Less continued that Ruzek, Inc. acquired the property from Thomas Duenkel in August, 2000, and that Ruzek, Inc. appeared to still be the owner of record, pursuant to a Land Contract dated June 30, 2005 and recorded in V. 2264, P. 470 on March 30, 2007. Mr. Less commented that the purchaser under the 2005 Land Contract was Jeffery Koller, who was required under the agreement to make payments through 2023, and added that this apparently did not happen, as a notice of Lis Pendens was filed in Circuit Court on May 14, 2009 for the foreclosure of the Land Contract.

Mr. Less stated that the property was originally operated as a gas station until around 1987 when it became used as an auto repair shop. Mr. Less noted that the subject parcel had an estimated fair market value of \$91,600 according to City Assessor records, and generated approximately \$1,800 in annual real estate taxes.

Mr. Less explained the surrounding land uses and zoning in the area, and noted further that the Ruzek property was zoned "B-3" General Business District which listed as a permitted use minor automobile repair. Mr. Less continued that this was an undefined term in the City's code, but added that staff was currently working on changes to the code that would include a definition of "minor automobile repair" as a facility used for the replacement or repair of any part that did not require removal of the

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engine head or pan, transmission or differential; and included incidental body and fender work, upholstery replacement, brake and muffler repair, tire changing services and sales, and tune ups, provided it was conducted within a completely enclosed building. Mr. Less continued that the "B-3" district listed as a conditional use a wrecker service in conjunction with the sale or rental of used vehicles.

Mr. Less noted that Section 15.03(95m) of the City's code defined a "wrecker service" as a business providing towing and temporary storage of disabled vehicles, typically the result of a collision or accident, with wrecked or inoperable vehicles removed from temporary storage after 5 days and placed into an enclosed building, taken to a junk yard, or to a body shop for repair. Mr. Less added that as no CUP had ever been issued for this property, the current usage of the property was not compliant with the "B-3" district regulations.

In closing, Mr. Less explained that notices detailing tonight's hearing were mailed from Planning on September 9th to property owners within 200' of the subject property. Mr. Less noted that he received phone calls on September 14th from:

Terry Hayes, 731 N. 8 th	Wished that the business operator had more respect for the neighborhood; operating from 5:30am - 10pm, 7 days/week; noise and foul language were cited as problems.
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Mike Cisler, 735 N. 8 th	Expressed concern with noise and foul language, and long hours of operation.
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Mr. Less added that he also received an e-mail letter from Mr. Cisler on September 15th, which again expressed his concern with noise, hours of operation, and the overall appearance of the property. Finally, Mr. Less noted that on September 15th, he received a note from Doug Mrotek, 733 N. 9th, which stated that he was not opposed to the issuance of the CUP.

Mr. Less stated that this property was identified as "commercial" in the City's 1999 comprehensive plan land use map, so the consideration of a CUP for the proposed use was consistent with the City's plan.

Mr. Brey asked if the prior owners of the property were violating the zoning ordinance?

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Mr. Less stated “yes”.

Mr. Diedrich asked if any citations had been issued to the previous owners?

Mr. Less explained that he did not research whether or not citations had been issued in the past.

Ms. Stokes stated that she was concerned with overall visibility for traffic moving eastbound on Huron Street, and noted that it was difficult to see vehicles moving northbound on 8th Street. Ms. Stokes added that vehicles were parked on the Ruzek property up to the lot line which created a vision problem. Ms. Stokes asked if a setback could be added into the conditions of the CUP?

Mr. Minikel commented that the vehicles parked on the 8th Street side of the subject parcel was the problem area.

Mr. Less stated that adding an addendum to the proposed CUP conditions for a vehicle setback was not a problem.

Mr. Hornung asked what would happen if the CUP was not issued?

Mr. Less replied that the business would not be permitted to operate at the site and perform its core business operations.

Emmett Wagner, 728 N. 8th, commended Mr. Ruzek on cleaning up the site, and noted that in the past, the trend appeared to be that for every 3 vehicles towed into the site, only 2 would be removed, and that over a period of time the site became a junk yard. Mr. Wagner stated that he was not clear on what rules and regulations would be in place for the Ruzek operation to be monitored under the proposed CUP?

Mr. Less explained the main elements of the proposed conditions that would be part of the CUP, including the annual compliance review in August, beginning in 2010.

Mr. Wagner commented that the only way the City would become aware of problems at the site would be if the neighbors complained and contacted the appropriate City department.

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Mr. Less stated that the role of the neighborhood in this CUP process was very important. Mr. Less continued that the City would rely upon a paper trail to determine if a CUP user has become problematic.

Terry Hays, 731 N. 8th, explained his concern was with the long hours of operation at the business. Mr. Hays added that other than this concern, he had no problem with Mr. Ruzek's operation.

Mr. Less explained the proposed hours of operation and noise limits were contained in the draft compliance conditions of the CUP.

Mike Cisler, 735 N. 8th, stated that he agreed with the prior speakers, and in general had no problem with the Ruzek operation. Mr. Cisler added that he was concerned with excessive noise coming from the property. Mr. Cisler acknowledged that the property had been cleaned up since Mr. Ruzek took over the ownership again.

Mr. Less commented that a copy of the draft CUP compliance conditions had been sent to Mr. Ruzek's legal counsel, which he assumed had been reviewed by counsel and Mr. Ruzek.

John Ruzek, 734 N. 8th, promised that he would follow the proposed restrictions in the CUP, and would take care of the visibility issue, the noise issue, would keep the site clean, and would close the garage doors to minimize noise problems.

Mayor Nickels asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend approval to the Council of the CUP and accompanying conditions, as presented.

Mr. Alpert commented that he felt the operating conditions were fair to the business operator and the neighborhood.

Motion by: Mr. Brey _____ 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, including an additional
setback requirement for vehicles along
8th Street.

B. PC45-2009: Voigt/Myrik Properties, LLC; Request for a Conditional Use Permit (CUP) Under Section 15.29(3)1. for Operation of a Tattoo and Body Piercing Business at 904 So. 8th Street

Mr. Less explained that this was a request from Shawna Voigt d/b/a Candy Apple Tattoo, as the lessee of a portion of the property located at 904 So. 8th Street, who was requesting that the City issue a CUP pursuant to Section 15.29(3)1. of the Manitowoc Municipal Code for the operation of a tattoo and body piercing business. Mr. Less noted that the CUP would allow for the operation of a tattoo and body piercing business under the "B-4" Central Business District zoning district regulations.

Mr. Less noted 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 commented that the proposed operator of this tattoo/body piercing establishment was aligned with a Joseph Woodside, an employee/artist at Ancient Rites since 2005. Mr. Less explained that Ancient Rites Tattoo & Body Piercing, LLC was previously issued a CUP in March, 2009 for operation of a tattoo and body piercing establishment at 1802 Washington Street. Mr. Less added that Mr. Woodside had indicated in writing that Ancient Rites intended to close as its owners intended to retire.

Mr. Less then noted that Shawna Voigt has executed a lease with Myrik Properties, LLC for occupancy of approximately 800sf at 904 So. 8th, in a space located at the corner of Franklin and 8th Streets. Mr. Less added that the lease was dated August 24, 2009, and its term ran from September 1, 2009 through August 31, 2010.

Mr. Less continued that the planned operator intended to offer both tattoo and body piercing services to the general public, limited to persons aged 18+, or younger if parental consent was provided. Mr. Less continued that back in 2004, the City amended Chapter 15 regarding the operation of tattoo and body piercing operations by expanding the locational opportunities for these establishments in the City. Mr. Less continued that prior to 2004, tattoo and body piercing establishments were permitted by CUP in only the "B-1", "B-2" and "B-3" zoning districts, and were not permitted or conditionally permitted in any residential district, and in the "B-4", "C-1", "I-1" or "I-2" districts. Mr. Less noted that under the 2004 ordinance revision, these uses became

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conditionally permitted in the "B-1" through "B-4" zoning districts pursuant to the issuance of a CUP, and were expressly permitted in the "C-1", "I-1" and "I-2" zoning districts.

Mr. Less stated that regarding the proposed location of this business, the subject parcel, which was referred to as the "CUP Area", was being identified as the north 90 feet of Lots 1 and 2, Block 230, Original Plat, and was a parcel that, in total, measured 90' along So. 8th Street and 100' along Franklin Street. Mr. Less added that this information was provided in the petitioner's application.

Mr. Less commented that the property owner was Myrik Properties, LLC pursuant to a Warranty Deed dated March 1, 2002. Mr. Less added that the property was purchased for \$134,000, and generated approximately \$4,330 in annual property taxes, exclusive of special assessments.

Mr. Less explained that the licensing requirements for tattooists and body piercing establishments were specified in §252.23 and 252.24 Wis. Stats. respectively. Mr. Less continued that the Department of Health Services (DHS) was the responsible party for licensing and regulating these facilities, and that Chapter DHS 173.04 of the Wisconsin Administrative Code established the operating and licensing requirements for tattooists and body piercing establishments pursuant to §252.23 and 252.24 Wis. Stats. Mr. Less stated that the law required anyone operating as a tattooist or body piercer to be certified and licensed for their facility and person under this section. Mr. Less stated that in Manitowoc County, the County Health Department was the designated agent of the State, and as such, the State licensed practitioners and the County licensed establishments.

Mr. Less commented that the subject property was surrounded by various downtown business on all sides, and was located southwest of the Manitowoc Public Library. Mr. Less explained the surrounding zoning and land uses in the area, and again noted that the petitioner would have to first be licensed at its current location by the County Health Department.

In closing, Mr. Less stated that notices regarding tonight's informational hearing were mailed from Planning on September 9th to property owners within 200' of the proposed CUP area. Mr. Less continued that in response to the mailing, he did receive a telephone call from Lee Kummer on September 14th, the owner of various properties in

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downtown, who expressed concern that a tattoo parlor at this corner was not the highest and best use of the property, and that he was not enthusiastic about this use at the proposed location. Mr. Less continued that other than this reply, there were no other comments received in response to this mailing.

In closing, Mr. Less noted that the City's 1999 Comprehensive Plan identified the subject property as commercial, and as such, the proposed use was consistent with the City's current comprehensive plan.

Mr. Brey commented that in the past, there were concerns with a tattoo operation at the former Clark Oil gas station at Washington and So. 21st Street, and added that he had historically been concerned about this type of operation. Mr. Brey continued that in the case of Ancient Rites, they had been a good performer in the community. Mr. Brey added that loitering in front of these facilities would not be tolerated.

Mr. Less added that one of the conditions of the proposed CUP was an annual compliance review of this business operation in August, beginning in 2010.

Rick Klabunde, 904 So. 8th, identified himself as the property owner, and explained that the tenant appeared to be making a substantial effort to do a good job at the property. Mr. Klabunde explained with more precision the actual location of the proposed tattoo establishment in the building, adding that it was not at the corner of 8th and Franklin, and would be in the back of the building and not visible from 8th Street.

Mr. Less explained that the mapping he used relied on a drawing provided by the petitioner, and the lease.

Mr. Klabunde noted that the issue of loitering had already been discussed with the tenant.

Cherilyn Stewart, 707 Quay, identified herself as the Director of the Manitowoc Public Library, and expressed concern about the visibility of the proposed tattoo operation in relationship to the Library building, and the flavor it painted for downtown. Ms. Stewart added that the Library's childrens' room was at the corner, and the pre-school area was in the rotunda area. Ms. Stewart added that she would like to see downtown develop as more of a family-friendly area.

Joseph Dwayne Woodside, 1914 Clark, commented that he would be the lead tattoo artist at the proposed business, and that he had been a dedicated artist for the past 13 years. Mr. Woodside elaborated on the seriousness of his business, adding that he

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had won over 24 national awards. Mr. Woodside explained that he wanted his business to be a destination, and that he would not allow loitering. Mr. Woodside added that the business would be partitioned off from 8th Street. Mr. Woodside explained his malt shop and diner design theme that would be inside the business space, and continued that he wanted to set a higher standard with his business. Mr. Woodside described his various awards, and added that he was a custom and artisan tattooist.

Lee Kummer, 3300 Lindbergh Drive, stated that he was not anti-tattoo, adding that he owned several properties in downtown. Mr. Kummer added that it was tough to rent space in downtown, and was concerned that adding a tattoo parlor into downtown might make renting even more difficult. Mr. Kummer questioned if such a business was part of the strategy for downtown, and added that he did not feel a tattoo business was part of the right mix for the downtown. Mr. Kummer stated that he was not comfortable with the proposed use, and didn't think it would help downtown, or improve property value in the area. Mr. Kummer added that he felt downtown could be taking some steps forward, but added that he didn't believe this business was an appropriate part of the mix.

Jim Dabeck, 901 So 8th, stated that he was one of the owners of the Mad Hatter, and added that he had done business with Ancient Rites and Mr. Woodside over the past 4 years. Mr. Dabeck explained the cross over benefits of their business relationship. Mr. Dabeck commented that his business in the downtown was very lucrative, and added that he felt Mr. Woodside's business would be an asset to the downtown. Mr. Dabeck commented that much of the property in downtown was for rent, and that Mr. Woodside's business should be encouraged, not discouraged. Mr. Dabeck added that he felt Mr. Woodside would be an asset to the downtown area.

Mr. Hornung asked Mr. Less to clarify the location of the proposed tattoo business in relation to the childrens' room in the Library.

Mr. Less explained that the proposed business was located 1 block south of the Library rotunda at 8th and Quay Street.

Mayor Nickels added that the proposed business would not be at the corner of 8th and Franklin.

Mr. Diedrich noted that he was not opposed to the proposed use, but shared concerns for whether or not this business was a good match for the busiest corner in downtown. Mr. Diedrich added that he was having trouble supporting this proposal.

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Mr. Brey commented that he didn't think it was the Commission's job to legislate what was good or bad, or moral for downtown. Mr. Brey stated that he was supportive of the proposed CUP, and that his biggest concern was the loitering issue, but didn't see that happening in this circumstance. Mr. Brey stated that he would support the CUP.

Mayor Nickels commented that he echoed Mr. Brey's commentary, and felt that the annual compliance review requirement was a good check and balance.

Mayor Nickels asked Mr. Less for his recommendation.

Mr. Diedrich stated that his comments were not to be construed in the negative regarding the business.

Mr. Less explained that he agreed with Mr. Kummer regarding the appropriateness of the business mix issue. Mr. Less noted that business mix was the driver that would make downtown successful or not, and it was the reason that rents in buildings and property values would increase. Mr. Less noted that in a conversation with Mr. Kummer, his frustration resulted from the absence of any feedback or direction from Mainly Manitowoc regarding business mix, and their failure to develop any programs designed to activate property owners into the Mainly Manitowoc organization. Mr. Less continued that he hoped at some time in the future, Mainly Manitowoc would provide the City with a business mix plan, along with a map or monopoly board that represented a consensus amongst business and property owners in the downtown, so as to assist the City in its deliberations regarding the appropriateness (or lack thereof) of issuing CUP's or special permits in the area for certain types of businesses. Mr. Less continued that such a road map would provide the City with a basis to evaluate future business requests in the area, but until that would happen, he didn't think there was a basis to deny the current request. Mr. Less noted that the issue of business mix was very important and was in the domain of Mainly Manitowoc, but, to date, it had not been dealt with.

Mr. Less recommended that the Commission recommend that the Council issue a 2009 CUP exclusively to Shawna Voigt d/b/a Candy Apple Tattoo for operation of a tattoo and body piercing establishment in a leased portion of the property identified as 904 So. 8th Street, and subject to the conditions provided to the Commission.

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Motion by: Mr. Brey _____ Seconded by: Mr. Minikel
Moved that: the Commission recommend _____ Upon Vote: the motion was
Council acceptance of the Planner's recom- approved 6-1. Mr. Diedrich voted
mendation above. against the motion.

C. PC46-2009/PC17-2005/PC7-2005: Allie; Request to Rezone a Portion of the Former Rahr Farm Property from "P-1" Conservancy District to "R-2" Single Family District

Mr. Less explained that this request was from Christopher C. Allie, the record owner of property located south of Michigan Avenue to the river, and east and southeast of Indian Bluff Estates Subdivision No. 1, who was requesting that the City rezone certain lands that were part of the old Rahr farm from "P-1" Conservancy District to "R-2" Single Family District for the potential location of 2 home sites. Mr. Less noted that the area proposed for rezoning was identified as a 5.69-acre area adjoining the east line of Indian Bluff Estates Subdivision No. 1, and extending in a northwest to southeast directional a distance approximately 530'.

Mr. Less stated that the proposed rezoning involved 2 parcels being part of Government Lot 3, and which were identified by tax #'s 824-301-010 and 824-301-011—the former parcel including the homestead constructed around 1880 on 11.62–acres. Mr. Less continued that this parcel was acquired by Mr. Allie from River Central, LLP in late April, 2006 for \$400,000. Mr. Less added that prior to that transfer, the same property was acquired by River Central, LLP from Lakeside Machine Shop, Inc. on the same day as the sale to Mr. Allie for \$237,000.

Mr. Less explained that the subject property was irregular in shape, and shared a common lot line with Indian Bluff Estates Subdivision No. 1 for just over 326'; then moved northeast along a line measuring 234'; then turned south for 239'; then turned east for 225'; then south to the river 345'; then along the river to the west approximately 317'; then north approximately 250' to the southeast corner of Lot 10, Block 4, Indian Bluff Estates Subdivision No. 1. Mr. Less stated that the parcel contained the former Rahr homestead site, where the petitioner was intending to construct 2 homes. Mr. Less noted that at present, no services extended into the proposed rezoning area, with those costs ultimately being at the property owner's expense.

Mr. Less noted that the subject property had several buildings which were observed to add little or no value to the property. Mr. Less added that the buildings were a single family 1.5-story older home, and a set of agricultural-use buildings which

serviced the use of the farmstead including a cattle barn, garage and shop building, as well as other storage buildings.

Mr. Less explained surrounding zoning and land uses in the area, and noted that under the existing "P-1" regulations, agricultural and non-residential buildings and structures were principal permitted uses, and that residential homes were not permitted. Mr. Less continued that under the proposed "R-2" district, single family residential development was permitted, as well as day care centers and community living arrangements for 8 or fewer individuals. Mr. Less added that conditionally permitted uses included churches, schools, bed and breakfast facilities, private clubs and lodges, and day care centers and community living arrangements for 9 or more individuals. Mr. Less noted that the "R-2" zoning required a minimum lot area of 8,400sf with a maximum lot coverage of 25 per cent.

Mr. Less elaborated that under the City's flood plain ordinance, the petitioner was required to file and request from the Federal Emergency Management Agency (FEMA) a "Letter of Map Amendment" to the National Flood Insurance Program maps to evaluate if the lot or building site was on natural ground that was higher than the base flood elevation shown on the Flood Insurance Rate Map (FIRM). Mr. Less continued that should this request to FEMA be approved, the effect would be to remove the area from the regulatory coverage under the national flood insurance program, and to modify the FIRM maps so that these lots were not covered by a Special Flood Hazard Area (an area that would be inundated by a flood having a 1 per cent chance of being equaled or exceeded in any given year – the base flood).

Mr. Less continued that additionally, the City's flood plain ordinance under Sections 15.49(1)(e)2 and 5 required a property owner to contact FEMA and file a "Letter of Map Revision" to remove, all or some part of the parcels from the flood plain. Mr. Less noted that FEMA and the DNR had to approve amendments to the flood plain boundary before any City Council approved amendment would become effective. Mr. Less added that the City was required to wait to act upon an ordinance for a zone change until it was in receipt of written confirmation of approval from FEMA and DNR.

Mr. Less stated that it has historically been the intent of the City to not encourage the removal of properties from the flood plain when it was not warranted by engineering and geo-technical analysis. Mr. Less continued that the City's position had also been to support those efforts to facilitate the rezoning of "P-1" areas to a higher and better use when certain areas proved to be developable, and their subsequent removals from the flood plain was approved as such by FEMA and DNR.

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Mr. Less explained that notices were mailed to property owners within 200' of the subject property on September 9th. Mr. Less continued that he had received a telephone call on September 11th from Bob Micheletti of the Rahr Malting Company, stating his opposition to the rezoning. Mr. Less noted that Mr. Micheletti had also provided a letter received today re-stating their opposition. Mr. Less added that he had also received a letter today from Phyllis Schippers, 815 Winnetka Court, stating her opposition to the rezoning, with the concern being the destruction of wildlife habitat along the lower bluff area at Winnetka Court. Mr. Less continued that he had also received a telephone call from Alderman Ray Geigel, who expressed concern that the proposed rezoning would be problematic in terms of development within the flood plain.

In closing, Mr. Less added that this request was consistent with the City's 1999 Comprehensive Plan that identified this area as sewer residential. Mr. Less stated that the update to the 1999 plan, to be adopted later in 2009, identified the proposed rezoning area as an "environmental corridor" in which stream beds, steep slope area, wetlands and flood plains were to be preserved. Mr. Less stated that the most recent draft of the Plan encouraged prohibiting development in mapped environmental corridors, unless:

1. The developer could determine the exact boundaries of the environmental corridor;
2. More detailed analysis revealed that the characteristics that were the basis for the environmental corridor designation were not present in the proposed development area; and
3. Approvals for development from appropriate agencies were in place (ie. FEMA and DNR)

Mr. Brey asked what would happen if the land was rezoned to permit the development, and then flooded? Mr. Brey questioned if the City would be liable as a result of changing the zoning?

Mr. Less stated that he did not believe the City would have liability, as the City didn't have unilateral authority to rezone the property, and the rezoning and development could occur only after approvals had been issued by both FEMA and the DNR.

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Phyllis Schippers, 815 Winnetka Court, clarified that she wanted to protect the bluff area, and was not concerned with the proposed buildings down below. Ms. Schippers identified the heavily wooded bluff, and stated that there was an abundance of wildlife in this area. Ms. Schippers continued that this wildlife corridor was part of a contiguous and larger natural area in the community with Schuette Park, and which continued north, to the west of Rheaume Park, north of Waldo boulevard. Ms. Schippers stated that she wanted the bluff to remain in conservancy zoning, and had no problem with developing the area below the bluff for housing.

Mr. Less advised Ms. Schippers that her communication had been forwarded to the Commission.

Al Schaus, 801 Winnetka Court, commented that his east lot line covered about 90 per cent of Mr. Allie's west property line. Mr. Schaus stated that he had no objection to housing being built below the hill, but was concerned with FEMA and the flooding question. Mr. Schaus questioned if FEMA would require that the structure be moved further up the bluff to safeguard from flooding in the future? Mr. Schaus noted that he had purchased his land for the view of the river bottom, and for privacy. Mr. Schaus added that if developed, the area along the bluff would need to be protected, and recommended that in order to protect the people living on top of the hill, a maximum elevation be set by the City for the proposed new home structures, and how close they could be to the top of the hill. Mr. Schaus was concerned that the proposed rezoning was just the beginning of expanded development that could ultimately extend to Michigan Avenue. Mr. Schaus stated that he was not opposed to the proposed development, but did not want the development of the area to expand towards Michigan Avenue.

Mr. Less identified on a map the proposed home site locations.

Tim Maatman, 815 Winnetka Court, expressed the same concern regarding protection of the bluff area, and added that the bluff hid the homes on the hill. Mr. Maatman expressed concern with the proposed rezoning, and felt that the potential was present for Mr. Allie to remove trees from this bluff area, and that this would be an aesthetic loss to the area. Mr. Maatman added that he would like to see the bluff and the line of trees remain in conservancy, but added that he had no problem with building homes below as described earlier.

Mayor Nickels asked if any of the owners on Winnetka Court had taken down trees in the bluff area to enhance their personal views?

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Mr. Maatman replied “no”, and that the trees were not on their property.

Mike Schaus, 819 Winnetka Court, stated that he had no problem with Mr. Allie constructing 2 homes below, and felt it would be an asset to the overall area. Mr. Schaus added that the condition of the bluff was his concern, and questioned if the zoning line could be moved to protect the bluff area?

Mr. Less stated that limiting the zone change to this smaller area was palatable, as it was the area where the buildings had been. Mr. Less added that to encourage the flood plain over the larger parcel could be removed was not something the City was interested in.

Mr. Schaus also questioned how utilities would be extended to the future home sites, and hoped this would not be an issue as well.

Ms. Schippers questioned if the zoning was changed, could it eventually be rezoned back to “P-1”? Ms. Schippers noted again the importance of the bluff as a feature in this area, and that there was sufficient room for the proposed buildings below the line of the bluff.

Christopher Allie, 3109 Waldo Boulevard, explained that the owner of the property prior to his purchase was Kevin Ramminger, who had planned for an 8-lot subdivision in the area. Mr. Allie noted that Mr. Ramminger had acquired the property from the Rahr’s, and that he had never met the Rahr’s. Mr. Allie continued that when he saw the subdivision plan, he paid a premium for the property so as to protect the land. Mr. Allie stated that it was his intent to preserve the property, and explained his plan to ultimately deed it over to his 2 sons. Mr. Allie emphasized that he was not developing the property to sell it, but to keep it in his family and would probably deed restrict it to accomplish this objective. Mr. Allie added that he could strip trees out of the hillside now if he wanted to, regardless of zoning, but he loved the trees. Mr. Allie again stated that he stepped in to stop the Ramminger plan.

Paul Steinbrecher, SMI, Inc., 102 Revere Drive, commented on the FEMA letter of map amendment, and noted that the process was not to remove land from the flood plain, but rather to correct the flood plain maps. Mr. Steinbrecher noted that only a portion of the proposed housing sites were in the flood plain, and that Mr. Allie could build at present without the map amendment. Mr. Steinbrecher added that receiving the approval from FEMA would make the overall development more desirable. Mr. Steinbrecher continued that regarding the bluff, there was a drop of approximately 50' in height off the back side of Winnetka Court. Mr. Steinbrecher added that the bluff was

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not very stable, and stated that in his opinion, he would discourage building on the bluff, because of its instability, and as such, should be viewed as unbuildable. Mr. Steinbrecher continued that regarding the sanitary sewer, there was an interceptor sewer that ran through the larger Allie property, and added that the owner could hook on to this interceptor sewer because of the elevation difference. Mr. Steinbrecher added that regarding water service, a line would be extended from the Delta and Ellis Street area. Mr. Steinbrecher added that plans for the extension of electric service were not clear at present. Mr. Steinbrecher concluded by noting that the planned building sites were the current location of the existing home and barns. Mr. Steinbrecher emphasized that they were not cutting into the bluff, and added that he was hopeful that the process with FEMA would be a simple one.

Mr. Allie commented on the letter sent by the Rahr Malting Company, expressing their opposition to rezoning. Mr. Allie continued that he felt that Mr. Less had documents in his file identifying the same parties supporting rezoning in order to secure a higher appraised value for the property.

Mr. Maatman stated that he wasn't concerned with the area under Mr. Allie, but expressed concern about who might be the future owners of the property, and what their plans might be for the larger area.

Mr. Allie replied that he had no intention of disturbing the bluff, and that this property would be staying in his family. Mr. Allie added that he was contemplating adding in a right of first refusal as a restriction against the property, so as to make sure no one outside his family could become a future owner.

Mr. Minikel asked if there was a height limit in the "R-2" zoning district?

Mr. Less replied that the height maximum was 35'.

Mr. Minikel noted that it would likely be a major problem to try and build into the bluff area with the existing slopes.

Mr. Hornung commented that he was not in favor of this rezoning, and felt that areas zoned "P-1" should remain as such, and once rezoned, would never revert back to the "P-1" status. Mr. Hornung added that he felt this was an important environmental corridor.

Mr. Minikel asked if the boundaries of the proposed rezoning area could be changed?

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Mr. Less stated that they could be changed during the rezoning process, up until the ordinance would be adopted by the Council. Mr. Less stated that the only action for tonight was to recommend the Council calling for the required public hearing.

Mr. Alpert asked if just rezoning the home sites would constitute a spot zone?

Mr. Less replied that he did not believe it would be a spot zone, and added that rezoning the smaller area where the homestead had been located to accommodate newer housing structures would not be inconsistent with the historic land usage of the area, and the comprehensive plan or surrounding area. Mr. Less added that in this case, limiting the rezoning area might be part of a solution.

Mayor Nickels asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend to Council that it instruct the Clerk to call for a public hearing on this matter, and that it be referred back to the Commission for a final recommendation after the hearing, once a determination from FEMA and DNR were provided to the City in writing.

<u>Motion by:</u> Ms. Stokes	_____	<u>Seconded by:</u> Mr. Brey
<u>Moved that:</u> the Commission recommend	<u>Upon Vote:</u> the motion was	
Council acceptance of the Planner's recom- mendation above.	approved 5-1. Mr. Hornung voted against the motion. Mr. Diedrich abstained.	

D. PC47-2009: Bytof Limited Family Partnership/Coldwell Banker; Request for Special Permit for Creation of Parking Lot in Residential District - Lots 17, Block 255, Original Plat

Mr. Less explained that this was a request from Coldwell Banker on behalf of the Bytof Limited Family Partnership, the underlying owner of property at Washington and So. 25th Street. Mr. Less stated that Coldwell Banker was requesting 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.

Mr. Less explained that Section 15.43(11) authorized the issuance of a special permit by the Commission 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 request, Coldwell Banker, on behalf

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of the Bytof property at 2406 Washington, was requesting a special permit to develop a 5-stall parking lot to the north of their property under Section 15.43(11). Mr. Less continued that the subject property at which the parking lot would be developed was legally described as Lot 17, Block 255 of the Original Plat, measured 50' x 110' (5,500sf), and was zoned "R-4" Single and Two Family Residential District. Mr. Less added that the subject property (Lot 17) was owned by "Bytof Limited Family Partnership" pursuant to a Warranty Deed dated December 28, 2007.

Mr. Less continued that the existing Coldwell Banker parcel at 2406 Washington was identified as Lots 20, 21 and 22, Block 255 of the Original Plat, measured 100' x 170' (1,7,034sf), was zoned "B-3" General Business District, and was owned by "The Bytof Family Limited Partnership". Mr. Less added that these combined parcels were owned pursuant to a Warranty Deed dated December 21, 2007.

Mr. Less noted that to be more precise, the proposed special permit would cover an area at the southeast corner of Lot 17 measuring 50' x 19', and would provide for 5 new parking stalls, plus a 5' wide handicap access aisle. Mr. Less added that the new parking lot would be accessible only through the existing parking lot, and there would be no public R/W access. Mr. Less noted that it was the owner's long range plan to demolish the home on Lot 17.

Mr. Less explained that Lot 17 (935 So. 25th) currently was a 1½ story, 3-bedroom frame home measuring approximately 825sf in area, and which included a detached garage and a wooden deck attached to the home. Mr. Less added that there was a slight landscaped area to the south of the home including a line of 5 cedars on roughly 8' centers that extended to the east as far as the edge of the deck. Mr. Less noted that the parcel at 925 So. 25th had a current fair market value of \$73,200 according to City Assessor records.

Mr. Less explained surrounding zoning and land uses, including the Coldwell Banker building with its adjacent 22 vehicle parking lot to the south and double truck billboard.

Mr. Less explained that the City's off-street parking requirement for the Coldwell Banker development was: (i) a minimum of 5 spaces, plus; (ii) 1 additional parking space for each 300sf of gross floor area (net public space) over 1,500sf, plus; (iii) 1 additional parking space for each 2 staff members working the same hours. Mr. Less noted that Coldwell Banker currently housed 31 employees (including 27 real estate agents working a variety of non-traditional hours) in their 5,122sf building. Mr. Less estimated, based on City code (and assuming that none of the building was

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determined to be “non public” space such as basements, storage rooms, utility and rest rooms which would reduce the square footage calculation), that the parking associated with this building would be, at minimum, 33 spaces.

Mr. Less added that under Section 15.43(11), the parking lot had to meet certain conditions in order to comply with this section of the code:

1. Accessory to a use in an adjacent “B”, “C” or “I” zoning district (the adjacent Coldwell Banker property was zoned “B-3”).
2. Parking lot shall not extend more than 150' into the residential zone (the property extended only 19' into a residential zone).
3. Parking lot to be used solely for the parking of passenger vehicles.
4. No commercial repair work or service of any kind was permitted to take place in the parking lot.
5. No sign of any kind, other than those designating entrances, exits and conditions of use would be maintained in the parking lot.
6. No charge would be made for parking in the parking lot.
7. Parking would be permitted only between the hours of 5AM - 11PM, and would be closed at all other times.
8. Each entrance and exit to and from the parking lot would be at least 20' distant from any adjacent property located in a residential zone.
9. Plan Commission could modify these requirements, where desirable.

Mr. Less continued that the parking area would also have to comply with the requirements under Section 15.43(12), and noted the following:

1. The area would have to be hard surfaced and striped.

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2. The parking lot would have to be site screened on the north and west side from the residential structure.
3. No part of the parking lot could be within 10' of the dwelling unit.
4. If lighted, it has to be directed away from the adjoining residential use.

Mr. Less then explained that the proposed parking lot would also have to meet requirements of Section 15.69; and the owner would have to execute a site plan performance agreement and fulfill letter of credit requirements under Section 15.37(2)(h).

In closing, Mr. Less noted that notices were mailed to adjacent and abutting property owners on September 9th, and that no comments were received. Mr. Less added that this area was identified as “sewered residential” in the City’s 1999 comprehensive plan, and as such, this improvement appeared to be consistent with the plan and land use for this area.

Mayor Nickels asked if 935 So. 25th would be demolished?

Mr. Less stated that demolition was part of the owner’s long range plan. Mr. Less added that if Coldwell Banker in the future wanted to expand the parking lot on Lot 17, they could only after issuance of another special permit, and in conformance with Section 15.43(11).

Mr. Brey asked about the ownership of the underlying properties.

Mr. Less stated that the owner of the parcels abutting Washington Street was “The Bytof Family Limited Partnership”, whereas the owner of Lot 17 was “Bytof Limited Family Partnership”; similar, but not the same ownership entity. Mr. Less stated that this was an issue that would have to be clarified before the project could proceed.

Mr. Brey stated that his concern had to do with tearing down the home, and questioned that if it wasn’t demolished in the future, who would purchase this lot once the parking lot was installed and with no back yard? Mr. Brey stated that he wanted to hear from the neighborhood on this issue.

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Mr. Diedrich commented that as it was under the same ownership as the parcel to the south, it would be the owner's problem.

Mr. Hornung questioned the difference in the underlying ownership of the parcels?

Mr. Less stated that he would require a legal opinion or equivalent documentation to demonstrate that the 2 entities were identical in terms of their underlying ownership, or if different, that a lease or easement was in place to allow for Coldwell Banker to move forward on this project.

Mr. Minikel asked how far the parking lot could be extended into the residential neighborhood?

Mr. Less replied that the extension could be up to 150' into a residentially zoned area.

Laura Blunk-Wagner, 929 So. 25th, commented that she owned the property to the north of the subject property. Ms. Blunk-Wagner added that Century 21 was in a similar situation, with an empty home next to their business to the west. Ms. Blunk-Wagner commented that she was concerned that the block was being converted to a parking lot, and that this would diminish the wildlife in these areas. Ms. Blunk-Wagner added that she had already observed this to be the case in this area due to the 2 real estate offices. Ms. Blunk-Wagner stated that she would be performing base line studies on wildlife in this area, and felt this was a big issue. Ms. Blunk-Wagner noted that she was concerned with the destruction of 2 homes in her neighborhood, and a decrease in area property values.

Mr. Less re-stated that the only consideration this evening was for the parking lot to be located in the small area, and noted that in cases where parking became invasive to residential properties (such as in the case of Holy Family Memorial expansion), it was not unusual that part of the negotiation was inclusion of a substantial landscape buffer. Mr. Less continued that there would be much more to be discussed if a subsequent request was made in the future to expand this parking area further.

Richard Wagner, 929 So. 25th, explained that his property was on the low side of Lot 17, and was concerned that drainage from the future parking lot would negatively impact his property. In particular, Mr. Wagner questioned where snow would be stored, and whether or not the melt off of the snow would drain on to his property. Mr. Wagner noted that there were snow problems last year, and that the drainage from Coldwell

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Banker and other adjacent properties drained in to his property. Mr. Wagner suggested that Coldwell Banker should have the snow removed from their property, instead of expanding a parking lot.

Mr. Less noted that Coldwell Banker could not legally drain their lot on to the lot of another. Mr. Less explained that the site plan process would include a review of site drainage, and again stated that off-site drainage was not permitted.

Kevin Miller, 502 Huron, identified himself as the Manager at Coldwell Banker, and explained that part of the request had to do with the snow issue from last year. Mr. Miller continued that his office added 7 new agents last year, and explained the need for additional parking. Mr. Miller acknowledged that the additional parking was needed to offset areas lost to snow storage, and stated that he understood Mr. Wagner's concerns as well. Mr. Miller stated that he did not intend on pushing snow closer to the Wagner property, but couldn't guarantee eliminating Mr. Wagner's concerns, and added that he would have to get back to Mr. Less on the title discrepancy. Mr. Miller added that it was their intent to ultimately demolish the home, and noted that the tenants had been made aware of what was going on. Mr. Miller added that at this time, they did not have a need for the additional space, and enjoyed the rental income from the home.

Mr. Steinbrecher commented that he had designed the parking lot for Coldwell Banker, and explained that the new, hard surfaced parking area would be tipped back to the south towards an existing inlet. Mr. Steinbrecher added if snow was pushed beyond or to the north of the new hard surfaced lot, it would drain towards Mr. Wagner's property, but that would be unlikely to occur as the project would have to have a site screen constructed to prevent snow from going on to the Wagner's property.

Mr. Minikel asked if curb and gutter would be installed in the new parking area?

Mr. Steinbrecher stated "no".

Mr. Less made the following additional points:

1. While this parking lot could fit into this lot, he felt it would have the effect of reducing the future resale value of this lot.
2. Issuance of a special permit tonight was in no way to be interpreted as an implied approval or vesting of rights regarding any further modifications to Lot 17 under Section 15.43(11).

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3. As long as there was no new lot of record being created, technically the lot size of Lot 17 was not decreased, and therefore not an issue of conformity to City code. While he would like to discourage this use, he saw no basis upon which to deny this request.

Mr. Less then recommended to the Commission that it approve the special permit under Section 15.43(11), subject to the following:

1. Confirmation that the ownerships as described above were an alter ego arrangement, or provide a lease agreement showing authorization for cross usage.
2. Completion of the project, in total, on or before September 16, 2010.
3. The site plan would be subject to compliance with all conditions under Sections 15.37(2), 15.43(11), 15.43(12) and 15.69; and subject further to compliance with conditions of the approved site plan #16-2009.

Mr. Hornung asked what the site requirement would be if the home was razed?

Mr. Less explained that this item was currently located in Chapter 16, and at present, the code did not call for any post-demolition plan to explain how the property would be reclaimed or put back together. Mr. Less continued that the code changes he was presently working on included a provision for approval of a post-demolition site plan for an impacted site. Mr. Less concluded that by the time Coldwell Banker got around to demolishing the home, they would be required to provide a post-demolition site plan.

Mr. Alpert commented that he was in support of this proposal, as he wanted to encourage the growth of an on-going and growing business, and did not feel that the parking lot was a serious encroachment. Mr. Alpert stated that he was in favor of this project.

Mr. Brey noted that he was concerned with the encroachment issue into the neighborhood, and was not in support of the proposal. Mr. Brey stated that he was also aware of the snow removal problems in the past. Mr. Brey credited Coldwell Banker with trying to remedy last year's snow problem.

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Mayor Nickels noted that he wanted to see business expand, but would rather take this issue up as a whole, and wanted to be able to assure property owners around the area that it wouldn't be an albatross for their block. Mayor Nickels added that he wanted to view this area as a whole in the future.

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 5-2. Mayor Nickels and
mendation above. Mr. Brey voted against the motion.

- E. PC48-2009: Kirchner/Buchko SC / Zetley Real Estate Co., LLC; Request for a Conditional Use Permit (CUP) Under Section 15.27(3)1. for a Temporary Sale of Used Automobiles at Holiday Inn Parking Lot

Mr. Less explained that this was a request from Attorney Basil Buchko, Jr., on behalf of the Van Horn Automotive Group, requesting that the City grant them a CUP under Section 15.27(3)1. for operation of a temporary sale of used automobiles at the Holiday Inn parking lot.

Mr. Less noted 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 proposed subject parcel, being the Holiday Inn property located between I-43, Calumet Avenue/USH151 and So. 44th Street had a lengthy legal description, and so for brevity, he identified the property as #835-402-020-1. Mr. Less noted that this parcel measured approximately 10.42-acres, and was currently titled in the name of Zetley Real Estate Co., LLC; had an estimated fair market value of \$6,553,900 according to City Assessor records; and was zoned "B-3" General Business District.

Mr. Less stated that the specific request from Mr. Buchko was for the Van Horn Automotive Group to conduct a used automobile sale covering a 10-day period in October, in the parking lot of the Holiday Inn; in an area measuring approximately 470' abutting Calumet Avenue by 135' of lot depth.

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Mr. Less noted that Section 15.27(3) detailed conditional uses in the "B-3" zoning district, and specifically referenced Subd. 1. which read "Wrecker service, sale or rental of used vehicles after approval of the site plan by the Plan Commission." Mr. Less explained that he believed this was the section that the petitioner was relying upon as the basis of their request. Mr. Less elaborated that this section of the code was amended in 1995 to read as it did at present, noting that the 1995 ordinance change included amending Section 15.27(3)1. by adding the term "wrecker service," in front of "sale or rental of used vehicles..."

Mr. Less continued that Section 15.31(2)15. in the "C-1" zoning district read "Open sales lots." Mr. Less noted that the terms "sale or rental of used vehicles" and "open sales lots" were not defined in the City code.

Mr. Less again noted that the Kirchner/Buchko request on behalf of the Van Horn Automotive Group was to sell used vehicles from the Holiday Inn parking lot. Mr. Less noted that as far back as 2002 up until 2009, this land use at the Holiday Inn property had been quietly not objected to in the past by the Building Inspection Department, without any requirement for CUP compliance. Mr. Less stated that this previous behavior should not in any way be construed as some tacit or implicit approval by the City, or as some kind of vested right (or any kind of secured right of present or future enjoyment) for these types of sales to occur at this particular site. Mr. Less noted that the fundamental question to be addressed was whether or not the proposed auto sale should be considered within the meaning of Section 15.27(3)1. or Section 15.31(2)15.

Mr. Less continued that this was problematic as the code did not define either "sale or rental of used vehicles" or "open sales lots". Mr. Less explained that his feeling was that in the absence of definitional guidance in the code, he had to rely on a more common sense interpretation to determine a framework for making a decision in this matter. Mr. Less stated that in his opinion, there was a difference between "sale or rental of used vehicles" and "open sales lots", with the former suggesting a bonafide car dealership that utilized all or a portion of a building for the display, sale, rental or lease of vehicles, and the latter being land devoted to the display of goods for sale, rent, lease etc. which was not enclosed within a building.

Mr. Less added that it appeared that Building Inspection's knowledge of these sales in 2002 and 2003, and the fact that no CUP's were requested or authorized, suggested a historically creative interpretation of City code. Mr. Less added that actions by the Director of Building Inspection in 2009 suggested a now different interpretation of the code, which appeared to be consistent with his distinction above.

Mr. Less then noted the following:

1. The code was clearly ambiguous in distinguishing between what was meant by, and the intent of the terms “sale or rental of used vehicles” and “open sales lots”. Therefore, the literal interpretation of the code was not applicable.
2. As these terms were not defined in the City’s code, de facto, the City should rely on their common or ordinary meaning in determining if a distinction existed or not.
3. The manner in which land uses were identified numerically in the City’s zoning code as permitted or conditionally permitted uses, has been consistently interpreted to be read in their totality.
4. Whether the City Council could issue a CUP for the proposed Van Horn sale depended entirely on the explicitness of the underlying zoning code; if the code specifically listed a proposed land use activity as a conditional use for a particular zoning district, then the City may issue a CUP accordingly. If the code didn’t list the proposed activity, the City could not issue a CUP.

Mr. Less noted that on September 5th, he sent an e-mail to Attorney Buchko requesting that he provide the City with a copy of the property owner’s written authorization to use their property for this sale, and for a map identifying that portion of the parking lot where the proposed sale would take place. Mr. Less continued that as of now, he received only a generic map depicting the proposed auto sales area, but had not received written approval from the property owner. Mr. Less noted that in lieu of the latter, he did receive a written communication from Attorney Buchko this morning representing that the general manager of the Holiday Inn, on behalf of the owner, had no problem with siting the car sale at the Holiday Inn.

Mr. Less explained the surrounding land uses and zoning.

Mr. Less added that notices detailing tonight’s hearing were mailed from City Planning on September 9th to property owners within 200' of the subject property. Mr. Less noted that he received copies of various communications from Attorney Pat Dewane, Jr. regarding this matter, which expressed opposition to the proposal.

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In closing, Mr. Less noted that this property was identified as “commercial” in the City’s 1999 comprehensive plan land use map, so the consideration of a CUP for the proposed use was consistent with the City’s plan.

Mr. Alpert made reference to a legal opinion provided by the City Attorney which explained that the City could not authorize a CUP for the proposed auto sale. Mr. Alpert noted that according to the opinion, the sale could take place on property zoned “C-1”.

Ms. Stokes noted that she felt the proposed car sale would be out of place, out of character, and was not needed as there were plenty of used car lots around the City. Ms. Stokes advised that she would vote against the proposed CUP.

Mr. Minikel noted that there was no parking on So. Frontage Road or on Calumet Avenue, which could pose an overall parking problem for the area on a Friday and Saturday if the Holiday Inn was busy.

Dick Kornely, 823 Sequoia Court, stated that he was the owner of First Chrysler and located 1/4-mile from the Holiday Inn. Mr. Kornely noted that he had millions invested in his vehicle inventory, and stated that within a mile radius of the Holiday Inn, there were 6 used and new car dealerships. Mr. Kornely commented that the Van Horn Group was not a business of the community, was not spending tax monies in the City, and was not local to Manitowoc. Mr. Kornely requested that the City not grant the CUP.

Eric Sitkiewitz, 517 So. 26th, explained that he was the sales manager at First Chrysler, and commented that Van Horn held a similar sale at the Holiday Inn during County Fair week. Mr. Sitkiewitz added that Van Horn was told to leave the Holiday Inn site by the City for lack of authorization to have the sale, but didn’t. Mr. Sitkiewitz stated that citations were ultimately issued. Mr. Sitkiewitz added that Van Horn went back on their word to leave in the absence of City authorization.

Steve Lauson, 4916 Remiker Lane, stated that he owned Maritime Ford, and was not sure of the relevance that the Van Horn dealership specialized in branded title vehicles, manufactured buy back and lemon law vehicles. Mr. Lauson noted that local taxpayers should benefit from special permits, and to issue a permit in this case would fly in the face of the “buy local” mantra. Mr. Lauson suggested nefarious sales techniques used by Van Horn.

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Dean Graunke, 4626 Calumet, explained that he had been at his current location for 20 years, and did not feel the proposed Van Horn operation was a good fit for the zoning or the area, and added that because of excessive traffic, was concerned that the frequency of accidents in that area could increase.

Dale Kocourek, 4000 Grand Avenue, explained that he was the general manager at Pietroske's, and that his employer and others present this evening were larger taxpayers in the area. Mr. Kocourek commented that he felt the Van Horn group had targeted Manitowoc for this sale, and would eat into their revenue base. Mr. Kocourek advised that allowing Van Horn to come into Manitowoc would open the door to others to sell in the City. Mr. Kocourek added that WI had regulations regarding these types of sales, and that car dealerships had to have a building, address and a parking lot. Mr. Kocourek continued that the reason for the law was so that a consumer would have the ability to go back to a bonafide dealer if there were problems with the vehicle after the purchase.

Mr. Brey questioned if a statute would over ride any local decisions?

Attorney Basil Buchko, 614 N. 6th, Sheboygan, explained that he represented the Van Horn Group, and commented that the statute expressly permitted off-site sales, adding that it was a practice done throughout the State, and notably in WI. Mr. Buchko commented that it was done previously in Manitowoc by Dave Heather, and was specifically permitted by statute. Mr. Buchko explained that the Van Horn Group was a dealership group comprised of 3 dealerships, and added that this was not a group that specialized in salvage title buy backs, even though they did sell some. Mr. Buchko noted that salvage title vehicles were appropriately marked, and added the sale in Manitowoc would come mainly from the Van Horn Hyundai lot. Mr. Buchko added that they did not deal in salvaged titles.

Attorney Pat Dewane, 927 So. 8th, stated that he was representing several car dealerships and citizens in Manitowoc, and made reference to various filings to the City including a petition signed by approximately 75 individuals which identified opposition to the proposed CUP. Mr. Dewane then made reference to the City Attorney's legal opinion on this matter, stating that he agreed with the opinion. Mr. Dewane commented that the petitioner was well aware that they had no right to be requesting what they were requesting. Mr. Dewane read from the City Attorney's legal opinion.

Mr. Buchko commented that attorney opinions were just opinions, and that he was here because he disagreed with the interpretation of the ordinance. Mr. Buchko noted that he believed that his client had the precedent to operate in Manitowoc, and

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explained that in defense of his client's action a month ago, his client was not aware of the zoning at the Holiday Inn. Mr. Buchko reminded Commission members that Mr. Heather held his sale not once, but twice. Mr. Buchko continued that his client was unaware of the CUP issue when the previous incident occurred, and he tried to relocate his client's sale to the Penguin property and then to the WG&R property. Mr. Buchko added that these sites did not pan out either, and felt that his client's ability to locate to either of these locations was undermined by the bullying of others. Mr. Buchko acknowledged that his client made a mistake by trying to have an off-site sale without going through the procedural aspects of City ordinance requirements, and did what they could do to comply. Mr. Buchko again stated that he totally disagreed with the interpretation of the ordinance.

Mr. Sitkiewitz explained his version of the matter at the Penguin property, and rhetorically apologized for following up with a local property owner. Mr. Sitkiewitz stated that he was just following up on calls that he received during the verbal discourse.

Mr. Kornely stated that the real issue began when the Holiday Inn allowed past off-site sales, and added that the Van Horn Group was simply taking profits out of the City. Mr. Kornely continued that at the time of Dave Heather's second sale at the Holiday Inn, he objected and the City, at that time, told Heather that he had to move. Mr. Kornely continued that at that time, the general manager at the hotel was told that the off-site car sale was not legal on their property, so the Holiday Inn was aware of this when they rented the area to Van Horn. Mr. Kornely commented that the profits from this type of sale would be leaving the community, and that such a sale was not a benefit or a necessity to the community. Mr. Kornely then explained the history of off-site sales regulations in WI, adding that they were not designed to cherry pick sales out of a particular community.

Mr. Lauson commented that his recollection was that Dave Heather was the first to try such a sale at the Holiday Inn in 2003, and was subsequently asked to leave, and did not come back.

Mr. Dewane re-stated that in his opinion, the request for a CUP was not proper.

Mr. Buchko noted that he felt the proposed auto sale was specifically permitted.

Mayor Nickels asked Mr. Less for his recommendation.

Mr. Less recommended that the Council deny authorizing the CUP for the following reasons:

V. REFERRALS FROM COMMON COUNCIL

- A. PC44-2009/PC32-08/PC38-03/PC56-97: SMI, Inc./Menard, Inc.; Easement Modifications at 5120 Calumet Avenue

Mr. Braun explained the various changes requested at the Menard property located east of Dufek Drive which were facilitated by their current expansion. Mr. Braun added that a site plan for the Menard project had been approved recently, and that the required actions would include releasing, re-establishing and relocating easements across the property. Mr. Braun reviewed the various easements being considered, and noted that impacted utilities had all provided written approval of the proposed modifications.

Mr. Less stated that he had no problem with the request, and recommended that the Commission recommend approval of the proposed changes to the Council, subject to the following: (i) authorize and instruct the City Attorney to work with SMI and/or Menard, Inc. to draft, negotiate and have executed the required easement document(s) to make the changes requested; (ii) authorize the Mayor and City Clerk to sign any documents related to these easement changes; (iii) that the documents be recorded by the City Clerk at the property owner's expense; and (iv) that the property owner be instructed to authorize a certified engineer to prepare a correction instrument pursuant to §236.295 Wis. Stats. for the modifications of the easements requested, with the Council to approve the correction instrument prior to the instrument being recorded at the property owner's expense.

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

- B. PC1-2009: Prowls; Quit Claim Deed to the City of Manitowoc for .159-Acres for So. 34th Street Purposes

See D. below.

- C. PC1-2009: Pech; Easement to the City of Manitowoc for .029-Acres for Storm Sewer Purposes at Brookfield Circle

See D. below.

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- D. PC1-2009: Spartech CMD, LLC; Easement to the City of Manitowoc for .238-Acres for Storm Sewer Purposes

Mr. Less explained the above described deed and easements. Mr. Less recommended that the Commission recommend that Council approve and record the deed and easements identified in B. - D. above.

Motion by: Mr. Hornung _____ 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.

VI. OLD BUSINESS

- A. PC40-2009: Kopidlansky/Hoffman; Request to Rezone Property at 2410 N. Rapids Road From "C-1" Commercial District to "I-1" Light Industrial District

Mr. Less provided an update to the proposed rezoning on N. Rapids Road, and noted that the public hearing had been recently held before the Council. Mr. Less added that at the informational hearing before the Commission and at the Council public hearing, there was public concern with the breadth of permitted uses that could occur under the proposed "I-1" zoning. Mr. Less stated that he was in favor of this rezoning, and supported the idea of revitalizing a vacant building. Mr. Less did note that there were references made by the petitioner regarding a potential deed restriction earlier in the proceedings.

Attorney Tim Salutz, Salutz Law Offices, 823 Marshall, explained that he was counsel to Mr. Kopidlansky. Mr. Salutz provided Commission members with a copy of a draft deed restriction. Mr. Salutz explained the contents of the deed restriction, which would in effect limit the use of the subject property, and advised the Commission that the concerns of the neighbors had been addressed. Mr. Salutz continued that the contents of the restriction had been reviewed by the neighbors, and that there were no objections received. Mr. Salutz added that he would record the restriction against the title of the property, once it was acquired by Mr. Koplidansky.

Mr. Less asked Mr. Salutz if the closing would take place by the end of September, and if the other contingencies identified in the Offer to Purchase had been satisfied, except for the rezoning contingency?

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Mr. Salutz stated that all of the contingencies, except zoning, had been met, and that they were prepared to close on September 30th.

Mr. Brey commented that the matter of the deed restriction had been referenced and identified at the public hearing before the Common Council. Mr. Brey complimented Mr. Kopidlansky on his integrity throughout this process.

Mr. Hornung commented that he felt the rezoning was consistent with the area.

Mr. Less recommended that the Commission recommend to Council approval of the zone change.

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

- B. PC29-2007: Lattrell/Hartfield; Request for an Adaptive Reuse Conditional Use Permit (CUP) Under Section 15.37(29) of the Manitowoc Municipal Code for 424 N. 7th (Conversion of Former Church to a Restaurant/Banquet Facility) and 418 N. 7th Street - Annual Compliance Review

Mr. Less explained that this was an annual compliance review in accordance with Section 10. of the CUP. Mr. Less advised that the property had continued to degrade and that there was little improvement made since the CUP was last extended a year ago. Mr. Less added that the current CUP continued through December 31, 2009.

Commission members discussed whether or not to terminate the CUP at this time (which would require an informational hearing at the October meeting), or to let the CUP expire and not renew it past the end of 2009. Commission members opted to let the CUP terminate at the end of 2009.

Mr. Less recommended that the Commission advise the Council that it had completed its compliance review, and that its recommendation to Council was for the CUP to be allowed to expire at the end of 2009 without renewal.

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

C. PC42-2009/PC62-2004: Hacker; Annexation Discussion at West Custer and Edgewood Lane

Mr. Braun explained that this was a continuation of a discussion over the past few months at prior Commission meetings. Mr. Braun stated that the Hacker property was located on the south side of West Custer, and advised that Mr. Hacker had talked with adjacent property owners, Olson and Wampler, and that neither party was interested in annexing into the City.

Mr. Less stated that the lesson was to not detach property.

Mr. Less noted that the position of the Commission the last time this matter was reviewed, was that they would be supportive of annexing only the Hacker property, if no other property owners would join in an annexation.

Commission members confirmed that position of support, and asked Mr. Braun to contact Mr. Hacker on this matter.

No action was taken.

D. PC49-2008: City of Manitowoc; GIS Needs Assessment - Review of Final Plan

Mr. Less explained that under separate cover, he had provided a copy of the GIS Plan to Commission members, and recommended that the Commission recommend that the Council adopt this plan as guidance for GIS-related investments over the next 5 years.

Mr. Brey commented that he would abstain from voting on this matter, and would vote on the Council floor.

Mr. Hornung commented that he was supportive of the need for GIS, but was not in favor at this time of additional hiring of a permanent, new position.

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Mr. Less stated that he understood this position, and wanted the endorsement to begin moving forward. Mr. Less added that he wanted to move forward with the job training and technology components of the program.

Mr. Diedrich noted that he had the same concern as Mr. Hornung regarding the hiring component, and felt that the staffing question should be left up to the appropriate City officials.

Mr. Minikel commented that the City needed to make sure the hardware and personnel were in place to maintain the GIS system into the future.

Mr. Hornung commented that if GIS was used effectively, it would save time and money, and should not cost time and money, and added that the GIS program could become a cost savings to a point that a GIS Coordinator position could be funded some time in the future.

Mr. Braun noted that the linkage between MPU and the City needed to be addressed, and cited the absence of a dedicated IT person for City Hall departments.

<u>Motion by:</u> Ms. Stokes	<u>Seconded by:</u> Mr. Alpert
<u>Moved that:</u> the Commission recommend	<u>Upon Vote:</u> the motion was
Council acceptance of the Planner's	approved 6-0. Mr. Brey abstained.
recommendation above.	

E. PC23-2009: Wisconsin Waterfront Grant / Riverwalk Planning Grant

Mr. Less reminded Commission members that their agenda packets contained a copy of the Manitowoc riverwalk design guidelines document. Mr. Less noted that while no action was to be taken at tonight's meeting, Commission members should review the document for the October 14th meeting, at which time they'd conduct a final review of the plan. Mr. Less continued that at the October meeting, the Commission would be asked to recommend adoption of the plan to the Council.

Mr. Diedrich asked for a summary of the document to be prepared.

Mr. Hornung noted that it was an easy read, and added that his only concern was that the plan included a reference to a proposed development to the west of the Maritime Museum.

No action was taken.

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

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

Mr. Braun explained that the County would be requesting an extension from the State for completion of their plan, as the County had to wait for the various townships to complete their respective plans.

Mr. Less provided Commission members with copies of 2 previously issued e-mails containing a schedule and key dates for comprehensive plan approval actions to be taken over the next few months. Mr. Less advised that the October meeting would also include a final review of the complete comprehensive plan, and at that same meeting, the Commission would be asked to: (i) adopt the plan via resolution; and (ii) forward a report to Council recommending adoption of the plan, and calling for a public hearing on the plan in accordance with State Statute.

No action was taken.

2. Vandewalle Update.

Mr. Braun then noted that an open house on the Vandewalle comprehensive plan, and Kindness riverwalk plan was scheduled for September 23rd, 5-7pm in the Council Chambers.

No action was taken.

VII. NEW BUSINESS

A. None

VIII. MISCELLANEOUS

A. Manitowoc County Activities:

1. None

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with the proposal. Mr. Braun explained various dedications and petitions that would be required, and added that the ownership of the area would have to be clarified. Mr. Braun noted that the owner wanted to create 2 lots of record out of a single lot at the west terminus of Twin Ponds Drive, west of Crossing Meadows Drive. Mr. Braun stated that he had no problem with the proposed split, but had to confirm the underlying owner of the property as either "College Glen Developers, LLP" or "Northland Associates, L.L.C." Mr. Braun added that there was also a strip of land owned by Bill Fessler in this area that would have to be included in the CSM. Mr. Braun discussed the future City park and connecting pedestrian ways.

Jeff DeZeeuw, 4529 Andrea Court, stated that the 2 lots would be part of the third phase of Silveridge.

Mr. Less stated that the CSM to be created would have to be part of the future plat.

Mr. Minikel asked if laterals were already installed into the 2 proposed new lots?

Mr. Steinbrecher stated "no", and then explained the status of other utilities in the area.

Mr. Less also asked Mr. Steinbrecher if he was familiar with the new changes to the Wisconsin prevailing wage law and its impact on Chapter 236, and if he had advised his clients of this change?

Paul Steinbrecher, SMI, Inc., 102 Revere Drive, stated that he was not familiar with the changes.

Mr. Less suggested that he take a look at the changes to the law which were included in the new State budget.

William Fessler, 5629 Calumet Avenue, asked about the status of the park design in Silveridge?

Mr. Braun explained that a design had been created in collaboration with the Parks Department, and had been forwarded to Dan Wergin. Mr. Braun noted that the future park design was modeled after Fleetwood Park.

Mr. Fessler asked if the City could install some means of identifying the park area in the field?

