

PLAN COMMISSION MINUTES - 11/11/09

Plan Commission Offices
Manitowoc City Hall

Regular Meeting
Manitowoc City Plan Commission
Wednesday
November 11, 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 Muenzenmeyer
David Diedrich
Maureen Stokes
Greg Minikel representing
Val Mellon
Justin Nickels

Members Excused

Dan Hornung
Jim Brey

Staff Present

David Less
Paul Braun
Michelle Yanda
Elizabeth Werdermann

Others Present

See Attached Sign In Sheet

III. APPROVAL OF MINUTES of the Regular October 14, 2009 Meeting.

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

Seconded by: Ms. Stokes
Upon Vote: the motion was
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 - Request for Assignment of CUP to Spencer's Total Auto Repair & Towing LLC

Mr. Less explained that this was a request from Ruzek, Inc. and Dwayne "Spencer" Radaj, the latter which was the vendee or contract purchaser of property at 734 N. 8th Street under a Land Contract with Ruzek, Inc. Mr. Less advised that the specific request was for the City to assign its September 21, 2009 CUP issued to Ruzek, Inc. to Mr. Radaj, who would become the operator of a vehicle repair facility at 734 N. 8th Street. Mr. Less continued that they were requesting that the City grant the assignment of the 2009 CUP under Section 15.27(3)1. for operation of a wrecker service along with their vehicle repair business. Mr. Less noted that the assignment provision was identified as Section H. of the 2009 Ruzek, Inc. CUP.

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

Mr. Less explained that the issue for consideration tonight was whether or not to recommend to the Council the assignment of the previously issued CUP. Mr. Less continued that an assignment was the transfer of both contractual and property interests, to a new party or assignee. Mr. Less noted that in this instance, the proposed assignee (Radaj) would "step into the shoes" of the current assignee (Ruzek, Inc.) and become the new responsible party under this arrangement with the City. Mr. Less stated that Mr. Radaj would get the benefit of the rights granted to Ruzek Inc. under the CUP, as well as the burden of all the responsibilities listed in the CUP.

Mr. Less advised that Section H. of the 2009 CUP stated that any assignment or transfer of interest under the CUP first required approval of the City's Common Council, adding that the issue of whether or not to affirm the assignment was in the sole discretion of the City Council.

Mr. Less then provided a quick overview of the events that he was aware of, since the City issued the original 2009 CUP to Ruzek, Inc. 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; measured 120' along N. 8th Street, and 109' along Huron Street, or .30-acres in total; included a single story building constructed and used as a gas station around 1961 which measured 49' x 29' or approximately 1,421sf; and featured 2 overhead garage doors on the east side of the structure.

Mr. Less continued that the Ruzek property was zoned "B-3" General Business District which listed as a permitted use minor automobile repair—an undefined term in the City's code, but added that staff was preparing changes to the code that would define "minor automobile repair" as a facility used for the replacement or repair of any part that did not require removal of the engine head or pan, engine transmission or differential; but 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 an "automobile service station" was a permitted use in the "B-3" zoning district, without restriction, and then provided the definition for this use under Section 15.03(7) of the City's zoning ordinance. Mr. Less added that a wrecker service was not permitted outright in this zoning district, but was conditionally permitted if the CUP assignment would be approved. Mr. Less then provided the definition of a "wrecker service" under Section 15.03(95m) of the City's code.

Mr. Less noted that there were no restrictions regarding the current owner's ability to perform maintenance of property or equipment, or other property management activities as part of their normal and customary business operation. Mr. Less continued that the previously issued CUP to Ruzek Inc.: (i) authorized the wrecker and towing service; (ii) provided a definition and clear authorization to perform "minor auto repairs" inside the building; and (iii) did not authorize the sale of vehicles on the property. Mr. Less noted that the Ruzek Inc. CUP included a host of operating conditions associated with the conditionally permitted activities at the site, namely the wrecker/towing service, and the conduct of vehicle repair at the site.

Mr. Less advised that the City Council, on September 21st, issued a CUP to Ruzek, Inc. that included various compliance conditions, and that 17 days later, on October 8th, a Land Contract was executed by and between Ruzek, Inc. and Dwayne Radaj for the property in Block 44. Mr. Less continued that a previously issued Land

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Contract between Ruzek, Inc. and Jeffrey Koller appeared to be a closed matter, with the Circuit Court awarding a judgment in favor of Ruzek, Inc. for \$144,815.92 on September 25, 2009.

Mr. Less continued that on October 21st, he discovered the existence of the Ruzek, Inc.- Radaj Land Contract, as it had been recorded. Mr. Less added that at that time, he sent out an e-mail to a variety of parties including Attorneys Pat Dewane and John Kerscher, regarding the assignment issue, and noted that Mr. Radaj was not currently authorized to operate the wrecker service at part of his vehicle repair business. Mr. Less noted that on October 23rd, he heard from Angela Radaj and learned that she and her husband were also known as “Spencer”, and implied to him that the issue of the CUP was not clarified to them when they executed the Land Contract. Mr. Less added that on October 28th, the request for the assignment was filed with the Clerk’s office.

Mr. Less noted that notices detailing tonight’s informational hearing were mailed from the Planning office on November 4th to property owners within 200’ of the subject property. In closing, Mr. Less noted that this property was identified as “commercial” on the City’s 1999 comprehensive plan land use map, and was a land use consistent with the City’s draft 2009 comprehensive land use plan which was scheduled to be adopted in December.

Ms. Stokes asked about Section H. of the proposed CUP operating conditions, and noted the proposed change from 10’ to 5’ to the vehicle setback from the curb line requirement?

Mr. Less added that while Ms. Stokes was originally concerned with visibility on the Huron Street side of the property, the CUP actually had the vehicle setback along both the Huron and 8th Street sides of the parcel. Mr. Less noted that the owner had commented in writing that this requirement caused a decline in their ability to utilize their parking lot. Mr. Less explained that this proposed change was in response to the new owner’s request, and added that 5’ along both sides appeared a reasonable compromise.

Mr. Diedrich questioned Section I. of the proposed CUP, and asked about the suggested change in the hours of operation?

Mr. Less explained that this change came in response to a request from the new owner, and commented that his proposed change allowed the overhead doors to be open,

but was more restrictive in terms of the hours that the noise-producing activities could take place.

Mr. Minikel commented that he had discussions with the DPW, and noted that the vision corner at Huron and N. 8th had been used on occasion for snow storage, and was a vision obstruction in the past.

Mike Cisler, 735 N. 8th, commented that he had lived across the street from the subject property for 20 years, and had seen the lot full of wrecked cars, a lot full of cars for sale, a dog that killed a poodle, they were afraid for their own dog and children, and been exposed to excessive noise and swearing. Mr. Cisler continued that starting this summer, Mr. Ruzek began cleaning up the property because of the pending sale. Mr. Cisler noted that before tonight's meeting on the assignment of the CUP, the operator was open on Sunday, noise problems were occurring in excess of the 70db limit specified in the original Ruzek CUP, and that Mr. Ruzek knew that the CUP was not automatically transferrable, but moved ahead with his sale regardless. Mr. Cisler noted that Mr. Ruzek completed the sale, which was the third Land Contract (with the previous 2 failing). Mr. Cisler noted that he felt Mr. Ruzek would do whatever he wanted to do, whenever he wanted to do it, until something was done. Mr. Cisler was frustrated and asked what recourse they had if the CUP was not complied with?

Mr. Less explained that the CUP operating conditions would have to be followed. Mr. Less noted that in his proposed CUP operating conditions, he was holding Mr. Ruzek joint and severally liable along with Mr. Radaj, for performance under the proposed assignment. Mr. Less explained that Mr. Ruzek now had a reason to make sure that Mr. Radaj complied with the terms of the proposed assignment.

Mr. Cisler asked about a proposed change to the overhead doors.

Mr. Less explained the changes to when the overhead doors could be open, and noise-producing equipment operated. Mr. Less continued to explain the other proposed changes to the proposed assignment.

Mr. Less noted that the annual compliance review provision did not change from the original Ruzek Inc. CUP, and explained that it was beholden upon the neighborhood to be the eyes and ears of the City. Mr. Less continued that if there were CUP compliance issues, the neighbors should be in touch with the Director of Building Inspection and/or Police Chief, as a paper trail and documentation of complaints and

problems would be important in determining the City's position at the time of the annual compliance review.

Mr. Cisler continued that he knew that the issue of the overhead doors was a problem, and that to expect the operator to have them closed all the time unrealistic. Mr. Cisler added that the noise from the pneumatic tools was probably louder across the street at his property than in the Ruzek garage, as the noise tended to echo outward from the garage. Mr. Cisler acknowledged that this would be a business that made noise, and asked the owner (Radaj) to be considerate of that point.

Dwayne Radaj, 1615 Madison, explained that he would not be operating on Sunday, would try and close at noon on Saturday's, and added that he had heard nothing but positive comments regarding the condition and upgrading of the property from Police officers and neighbors in the area. Mr. Radaj acknowledged that the pneumatic equipment would not be fired up until after 10am under the proposed CUP.

Kory Dewane, address unknown, commented that he had been in the automobile business for many years, and they would try to keep everything inside. Mr. Dewane continued that they were trying to maintain professionalism at the highest level, and added that they were trying to keep everything confined in the shop, unless someone needed a quick tire change and the vehicle could not be put into a bay right away.

Mr. Less noted that the CUP was intended to be a compromise between the business and the neighborhood's need. Mr. Less continued that the CUP was a performance-based instrument, which could be legally enforced, and added that the burden of performance was on Mr. Radaj as the contract purchaser and operator of the property.

Mr. Radaj stated that he should not be punished for what Mr. Ruzek had done.

Mr. Cisler noted that the sale of vehicles on the property was prohibited under the proposed new CUP assignment conditions, even though vehicles had been for sale on the lot for the past 2 weeks.

Mr. Radaj explained that they had been in contact with Mr. Less who had explained what they could, and could not do at the property, as the CUP had not yet been technically assigned over to them.

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Mr. Muenzenmeyer commented that it was important to note that all work on vehicles had to take place inside of the building.

Terry Hayes, 731 N. 8th, stated that he had lived across the street for 19 years, and had voiced his concern at the previous CUP hearing. Mr. Hayes noted that Mr. Ruzek had lied to the group when the original CUP was being discussed. Mr. Hayes noted a history of non-compliance at this property, and acknowledged that it was not the current occupant's fault that Mr. Ruzek was a bad neighbor, but stated that if the new owner was going to be a good neighbor, it should begin tonight. Mr. Hayes stated that the residents in this area had been here for a long time, and that the new operator was new to the neighborhood. Mr. Hayes wanted to be clear that the residential property owners were not the bad guys in this scenario, and added that he just wanted to make sure Mr. Radaj followed the proposed CUP terms. Mr. Hayes continued that if the CUP terms would be violated, the operator would be back to the City next year to explain why they had to violate the provisions. Mr. Hayes felt there was nothing that could be done until 2010.

Mr. Less commented that the City's past practice was to give the holder of a CUP a substantial period of time to perform, or to not perform. Mr. Less continued that the proposed CUP was consistent with the majority of previously issued CUP's, and that the City relied upon the annual review mechanism as the vehicle to identify and correct issues related to CUP's.

Mr. Hayes stated that the operator should be entitled to that time, but wanted the terms and conditions of the CUP to be followed.

Mr. Alpert commented that it appeared that only a few weeks had lapsed between the issuance of the original CUP to Mr. Ruzek and the sale to Mr. Radaj.

Mr. Less stated that Mr. Alpert was correct.

Mr. Alpert felt that transferring land with a Land Contract without checking on these types of issues was a dangerous practice.

Mr. Less noted that the CUP was not a recorded instrument.

Mr. Cisler noted that he wanted Mr. Radaj's business to be successful.

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Mr. Minikel asked Mr. Less if an issue would arise related to the CUP, would he send out or make contact with the holder of the CUP, so that the issues would not be a surprise to the holder of the CUP when the annual compliance review took place?

Mr. Less stated that he typically would keep the holder of a CUP advised if problems were brought to his attention, but added that this was more of a courtesy and not any kind of requirement.

Mr. Diedrich stated that he had been on the Plan Commission for the past 13 years, and felt that when issues did arise, they were handled appropriately.

Mr. Less recommended that the Commission recommend approval of the assignment, subject to the terms and conditions as prepared and on file in the Planner's office.

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

V. REFERRALS FROM COMMON COUNCIL

A. PC1-2009: Northland Associates, LLC; Quit Claim Deed to the City of Manitowoc for .192-Acres for Twin Ponds Drive

_____ Mr. Less explained the Quit Claim Deed for lands located at the terminus of Twin Ponds Drive in Silveridge Subdivision. Mr. Less noted that this Deed was related to a previously approved CSM, and recommended that the Commission recommend that the Council approve and accept the deed.

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

B. PC1-2009/PC53-2004: Spartech, CMD, LLC; Release of Easement in Tract 2.2 for Storm Sewer Purposes at So. 30th Street

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Mr. Less explained that the Release of Easement was for a 10' wide storm sewer easement on the Spartech property located north of Division Street and east of So. 30th. Mr. Less stated that a month or so earlier, the City had received a 25' wide easement which was located further to the west and abutting So. 30th Street. Mr. Less noted that the 10' wide easement was no longer need.

Mr. Minikel explained that the City had received a new easement that was located within the 25' wide building and parking setback area to install a storm sewer to the new storm water pond in that area. Mr. Minikel stated that the easement to be released was not being used anymore.

Mr. Less recommended that the Commission recommend that the Council approve and accept the Release of Easement.

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

VI. OLD BUSINESS

- A. 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 there was no action to be taken on this matter tonight, as they were still waiting to receive approval from FEMA of the proposed flood plain map amendment.

No action was taken. _

VII. NEW BUSINESS

- A. PC51-2009: Orion Energy Systems Inc.; Proposed Annexation at Woodland Drive - Woodland Drive No. 2

Mr. Braun provided Commission members with a summary sheet explaining a proposed annexation, and commented that if received positively tonight by the Commission, the plan would likely move forward with a proposed petition for

annexation of territory into the City being filed for land along the west side of Woodland Drive, adjacent to the Great Lakes Energy Technologies, LLC (Orion Energy Systems, Inc.) property. Mr. Braun noted that no petition had been filed with the City at this time, and explained that there would be 4 jurisdictions impacted by this annexation—the cities of Manitowoc and Two Rivers, and the towns of Two Rivers and Manitowoc.

Mr. Braun explained that the planned petitioner wanted to wait until the Woodland Drive re-surfacing project had been completed, and that ultimately, the petitioner wanted to annex the strip into the City, and to install an animated sign on Woodland Drive to announce the entrance into their technology center. Mr. Braun noted that tonight’s discussion was to see if the Commission was receptive to the proposed annexation, adding that this would be a unanimous approval annexation, which was procedurally less complex than other direct annexation procedures.

Mr. Braun stated that Engineering and MPU had provided him comments in response to the proposed annexation concept.

Mr. Minikel noted that Ms. Mellon had previously participated in meetings with Greg Buckley, City Manager for the City of Two Rivers, and with Gary Kennedy, Manitowoc County Highway Department. Mr. Minikel continued that this group had talked about the City of Two Rivers plowing from STH310 to the north line of the Koenig & Vits property line, and that the City of Manitowoc would plow to the south of that line to Memorial Drive. Mr. Minikel stated that annexing whatever the City could get at this time was the best way to proceed, and felt that the annexation boundary should extend up to the east R/W line of Woodland Drive.

Mr. Braun explained how the annexation proceedings would occur, and asked for a head nod from the Commission should a petition be delivered to the City.

Additional discussion was held regarding the County re-surfacing project.

Mr. Diedrich asked why the zoning would be “temporary”?

Mr. Less explained that lands annexed into the City were given “temporary” zoning status until the land was rezoned in accordance with the rezoning statute that required a formal public hearing as part of the process. Mr. Less continued that the City-wide rezoning that was done approximately every 10 years would clean up those parcels that had been annexed and had “temporary” zoning.

Commission members stated that they supported the annexation, should a petition be filed, and instructed Mr. Braun to work with the petitioner to expedite this process.

Additional discussion was held. No action was taken.

B. PC52-2009: Dermatology Associates of Wisconsin, S.C. - Project Update and Discussion of Underground Utilities

Mr. Less explained this planned project, and commented on that portion of the City's municipal code (established in 1999) dealing with underground utilities in the downtown (Section 15.37(28)), and noted that under this section, new utilities were to be placed underground, unless the Commission and MPU granted an exception and waived that requirement.

Mr. Minikel commented that MPU had provided a price quotation for removing a section of overhead electric lines and replacing them underground in the area of N. 9th and York; and for the upgrading of street lighting at Maritime Drive (N. 8th - N. 10th), a section of N. 9th, and a section of the 800 block of York Street. Mr. Minikel noted that Comcast wanted to add and extend a 6ct fiber line from the corner of N. 9th and Chicago to the Dermatology office on York Street, which would require connecting the line to the existing MPU pole, and that Ms. Mellon had authorized that work to move forward on a "temporary" basis, and signed a permit for Comcast to go on to MPU's poles. Mr. Minikel explained that the logic behind supporting the Comcast request was that it would be temporary, and that if the MPU lines were buried in the future, Comcast would likewise bury their line. Mr. Minikel noted that the total price quotation was approximately \$226,000. Mr. Minikel stated that this issue would have to be considered by the Streets Committee.

Mr. Less recommended that the Commission go on record confirming Ms. Mellon's action, and that it was in favor of exempting the ordinance under Section 15.37(28) of the City's municipal code on a temporary basis to accommodate the Dermatology project.

Motion by: Mr. Muenzenmeyer _____ Seconded by: Ms. Stokes
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. Mr. Muenzenmeyer noted that he attended the last MCPAC meeting, last month, and that an open house to review the County's comprehensive plan was scheduled for November 19th in the Council Chambers at City Hall.
2. Mr. Minikel asked about the status of the proposed County communication building. Mr. Muenzenmeyer replied that the project bids exceeded the budget, so the project was being re-bid.
3. Mr. Braun commented that the public hearing on the City's comprehensive plan was scheduled for December 7th, with Common Council adoption planned for December 21st.

No action was taken on these matters.

B. Certified Survey Maps (CSM):

1. Kumbalek; Proposed CSM in SE¼ of NE¼ Sec. 18, T.19N., R.23E., Town of Manitowoc Rapids

Mr. Braun explained a proposed CSM for property located south of Hilltop Road and west of N. Union Road. Mr. Braun noted that the owner wanted to split off and sell a 6-acre parcel from a larger 40-acre parcel. Mr. Braun explained that this request had been reviewed by this Commission back in 2003, at which time it was approved conditionally, and included a recommendation that the entrance into the parcel be relocated to the south. Mr. Braun continued that tonight's request reflected the 2003 approval and recommendation, and added that an access easement would be required along the driveway into the parcel. Mr. Braun noted that the County had no issues with the proposed CSM, and added that the CSM would include verbiage regarding the City's Official Map and R/W dedication for N. Union Road. Mr. Braun recommended approval of the CSM.

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C. Summary of Site Plans 10/11/09 - 11/14/09:

1. SP19-2009: Troullier, 4401 Custer - Storage Building and Beauty Salon (approved).
2. SP20-2009: Dermatology Associates of Wisconsin, 801 York - New Construction (approved).
3. SP21-2009: Aldi Foods, 4111 Harbor Town Lane - New Construction (approved).

IX. ADJOURNMENT

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

Respectfully Submitted,

David Less
Secretary