

PLAN COMMISSION MINUTES - 12/16/09

Plan Commission Offices
Manitowoc City Hall

Regular Meeting
Manitowoc City Plan Commission
Wednesday
December 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
Dan Hornung
Jim Muenzenmeyer
Jim Brey
David Diedrich
Val Mellon
Justin Nickels

Members Excused

Maureen Stokes

Staff Present

David Less
Paul Braun
Michelle Yanda

Others Present

See Attached Sign In Sheet

III. APPROVAL OF MINUTES of the Regular November 11, 2009 Meeting.

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

IV. PUBLIC INFORMATIONAL HEARINGS

A. PC53-2009/PC28-2007: Orion Energy Systems, Inc.; Proposed Small

Wind Energy System on Woodland Drive Under Section 15.77 of
Manitowoc Municipal Code

Mr. Less explained that this was a request from Orion Energy Systems, Inc. as the managing member or parent of Great Lakes Energy Technologies, LLC, as the owner of record of the subject real estate between Woodland Drive and Mirro Drive, and more specifically identified as 2210 Woodland Drive in the City of Manitowoc. Mr. Less noted that Orion was the sole member and 100% owner of Great Lakes Energy Technologies, LLC, and that for purposes of this hearing, reference would be made to Orion as the petitioner.

Mr. Less continued that the specific request was to authorize the construction of a 20kw, 115' tall monopole wind turbine on the Orion property pursuant to Section 15.77, which was the City's Small Wind Energy Systems ordinance, and which had an effective date of September 23, 2008. Mr. Less advised that Orion proposed to place the single turbine adjacent to the rotary, and to the east of the entrance to its technology center.

Mr. Less noted that procedurally, Section 15.77(7) required the processing of an application under this section to be handled as a Conditional Use Permit (CUP) pursuant to Section 15.37(27). Mr. Less added 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 wind tower would be located on a 30.10-acre parcel identified as Lot 1 of a CSM (V. 24, P. 63), and that the proposed CUP area was surrounded on all sides by I-2" heavy industrial zoning and land uses.

Mr. Less then identified the regulatory framework for the siting of a wind tower in the City, noting first that this was a matter of legislative intent. Mr. Less noted that the statutory scheme for regulating the siting of wind towers was found in §66.0401 Wis. Stats. which was in effect, a legislative restriction on the ability of municipalities (ie. counties, cities, towns or villages) to regulate solar and wind energy systems. Mr. Less added that the statute was not superceded by municipal zoning or conditional use powers, and further: (i) denied the local community with the power to make its own policy regarding wind energy systems, and prohibited acting in a manner that would be in conflict with the statute; (ii) delegated the authority to the locality to execute and

administer the State's established policy of favoring wind energy systems; and (iii) required the locality to review and evaluate each system based upon its own merits (in other words, on a case-by-case basis, and not a one size fits all scheme). Mr. Less continued that State law barred local governments from placing any restrictions on wind or solar power systems, unless they satisfied at least 1 of 3 criteria: (i) that the restrictions served to preserve or protect public health or safety; (ii) that it did not significantly increase the cost of the system or significantly decrease the system's efficiency; (iii) that it allowed for an alternative system of comparable cost and efficiency.

Mr. Less then identified Chapter PSC 119 which detailed requirements for interconnecting distributed generation facilities with a capacity of 15mw or less. Mr. Less noted that under this body of regulation, the proposed Orion tower at 15kw would be classified as a "Category 1" facility.

Mr. Less then explained that at the County level, airport height limitation matters were covered under Chapter 11 of the County Code, and that the Board of Adjustments served as the County's version of a City's Zoning Board of Appeals in matters dealing with height limits in a 3-mile area around the airport.

Mr. Less continued that at the City level, small wind energy systems were regulated under Section 15.77, and were procedurally handled utilizing CUP procedures under Section 15.37(27). Mr. Less explained and compared the requirements under the City ordinance vs. the proposed Orion wind tower (identified in bold text below), and noted the following:

1. Maximum # of towers - **2. Request was for 1" tower.**
2. Maximum height - 425'. **Height of proposed tower was 115' to grade.**
3. Permitted Zoning - "I-1" and "I-2". **Zoning was I-2".**
4. Setbacks: 125% of tower height from: (i) public R/W (unless waived by City Council); (ii) overhead utility lines (unless waived by relevant utility); (iii) exterior boundary of all lots of record under same ownership (unless waived by affected land owner); and (iv) any other tower or structure. **The 125% factor was a minimum setback of 143.75' which was satisfied with the proposed location.**

At least 1,000' from the nearest residence, school, hospital, church or public library. **The setback requirements were satisfied with**

the proposed location.

5. Lighting - Unlit, unless required by FAA. **Not required by FAA.**
6. Lowest point of blade tip no less than 75' above ground clearance. **The blade diameter is 30.9', for a single blade length of 15.45'. The distance from the center of the rotor to the foundation is 98.2', and the ground clearance from the blade tip to the ground is 82.75' which exceeds the requirement.**

Mr. Less then provided the following chronology of key events related to the Orion application:

1. The Orion application was filed with the City on November 9th.
2. On November 11th, the City Clerk provided notice to various County entities.
3. The FAA on November 13, 2008 issued a Determination of No Hazard to Air Navigation for a tower that was originally planned for a height of 388'. This determination expires on May 13, 2010.
4. A new request for a determination based on the 115' tower was subsequently filed with the FAA. The FAA, on December 15, 2009, issued a Determination of No Hazard to Air Navigation stating: (i) the structure did not exceed obstruction standards and would not be a hazard to air navigation; and (ii) that markings and lighting were not necessary for aviation safety.
5. The County Board of Adjustment issued a variance to Orion from the literal interpretation of the Airport Height Limitation Zoning Ordinance (HALO) on February 16, 2009 for a tower with a height of 388' and that exceeded the HALO by 218 feet, based on findings that: (i) there was a 510' existing radio tower nearby

(approximately 1,485' from the proposed Orion tower); (ii) paint, markings and lighting requirements would be as specified by the FAA; and (iii) that the FAA had determined no adverse impact on the airport.
1. An intermodulation study was prepared on November 25, 2009 to determine if the proposed turbine would be problematic for pre-existing facilities. The study concluded that in the opinion of the

consulting engineer, the proposed turbine was not expected to produce interference for AM and FM broadcast facilities, television facilities, microwave facilities, 2-way and mobile facilities, and satellite services. The report concluded that the proposed wind turbine might have an effect on existing AM broadcast facilities, but it would be minor, and if it was found to be a problem, could be reduced by implementing a detuning scheme to correct resultant disturbances to AM antenna-radiation patterns.

Mr. Less then identified the various post CUP-approval requirements that were contained in Section 15.77: (i) that a fee payment be made to the Building Inspector for a building permit and a fee payment for the City tower installation, inspection and management services; (ii) that facility installation must occur within 24-months from the date a permit was issued, or the permit would expire; (iii) that for existing facilities, the permit expired if a wind tower system was out-of-service for 12 months; (iv) that the insurance certificates be delivered to the Building Inspector for worker s compensation, liability and property damage, and all risk property insurance for full replacement value; (v) that a facility inspection report be delivered to the Director of Building Inspection at least every 3 years; (vi) that the Building Inspector may inspect the tower annually; (vii) that if operation of a tower facility was discontinued, abandoned or terminated, the owner was required to send a notice to the Director of Building Inspection disclosing its intent to discontinue, abandon or terminate operation, and further that the owner was required to provide to the Director a copy of any notice the owner was required to send to the FCC or FAA; and (viii) that within 60 days after a facility would be discontinued, abandoned or terminated, that it be dismantled and removed, and the site restored.

Mr. Less stated that regarding tonight s meeting, notices of the informational hearing were mailed from Planning on December 9th to property owners within 200' of the Orion property. Mr. Less advised that he had received a telephone message on December 11th from Michael Sickinger, 2722 Woodland Drive, stating that he had no problem with the Orion proposal. Mr. Less continued that in addition to the December 9th notice , a separate notice was issued by the City on November 11th to satisfy the requirements under Section 15.77(7)(a) and (b)1. of the Code. Mr. Less explained that a copy of the Orion application, along with a copy of highlighted Sections 15.77(7)(a) and (b)1., and a cover letter from the Clerk s office which referenced this evening s informational hearing were sent to the Manitowoc County Airport Advisory Committee, Manitowoc County Airport, and Manitowoc Public Utilities. Mr. Less noted that under the Code, the City was required to provide to these entities a notice of the City s receipt of the wind tower application, and added that the Airport Advisory Committee had a 30-day period from the date of notice to file a written recommendation with the City Plan Commission on the proposal. Mr. Less added that the Code further stated that failure to file such a recommendation would be interpreted that the Advisory Committee did not oppose the proposed tower. Mr. Less advised that no such recommendation had been received to date.

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Mr. Less did note that he had received a letter from Woodland Dunes on December 15th indicating a tacit endorsement of the wind tower project. He added that the City's Building Inspection Department did issue Orion an early start footing and foundation permit on November 19th, which was limited in scope and did not authorize erection of a tower structure.

Mr. Less added that the Orion property was identified as industrial/business park in the City's 1999 comprehensive plan land use map, and in the City's 2009 comprehensive plan (to be adopted next Monday night), was identified as office/industrial and was deemed to be consistent with the City's plan.

In closing, Mr. Less stated that it was anticipated that Orion would be filing a second application for a second wind tower sometime in the future. Mr. Less explained that this tower would measure approximately 388' in height, and would be part of a partnership with Hyundai, as part of that company's efforts to site 7 towers in the U.S., with the Manitowoc location being number 7.

Mr. Brey asked if this matter had to go back to the County's Board of Adjustment?

Mr. Less stated that the approval granted was for a taller tower at the current proposed location, so there was no need to return this matter to the Board of Adjustment.

Mr. Brey then noted that he first learned last night that there were recent discussions regarding the potential siting of 2 wind towers in the Town of Two Rivers, to the north of the proposed Orion tower.

Mr. Less noted that he was not aware of the request, and added that the City's extraterritorial land use authority was not applicable in the matter of the tower's identified by Mr. Brey.

Mr. Alpert asked for clarification on the relationship with Hyundai.

Mr. Less explained that a future, proposed Orion tower would be part of a joint venture with Hyundai.

Michael Potts, Executive V.P, Orion Energy Systems, Inc., 2210 Woodland Drive, explained the Hyundai relationship, and noted that Orion had originally been collaborating with General Electric (GE) on providing a similar wind turbine in terms of

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height and output, but that GE had lost interest in the project when the wind industry momentum slowed last year. Mr. Potts continued that Orion was growing their relationship with Hyundai, and stated that while nothing was signed to date, it was trending positively.

Doug Lindsey, 13119 McGuire Road, Cato, WI, identified himself as the Dean of Agriculture, Trade and Industry at LTC, and stated that he represented LTC this evening. Mr. Lindsey stated that LTC and Orion had established a good partnership, and explained that LTC had a wind energy technology program. Mr. Lindsey commented that they were very excited and supportive of the growing partnership with Orion, and he strongly recommended approval of the CUP to Orion.

Mr. Potts explained that the turbine being considered this evening was 115' in height, and explained Orion's relationship with the turbine developer, Renewegy, LLC out of Oshkosh. Mr. Potts stated that this relationship would likely translate into more business and jobs for Orion. Mr. Potts further noted that Orion was trying to stimulate the growth of this start up company. Mr. Potts added that Renewegy was a Wisconsin company.

Jeff Ehlers, President, Renewegy, LLC, 3650 Jackson, Oshkosh, commented that they had been in business for about 1½ years, and that Orion was one of their field test sites for their new turbine. Mr. Ehlers explained that his company was working closely with the State of Wisconsin and LTC, as well.

Tony Fadden, 619 Pine, Manitowoc, commented that he was the vice-chair of the City's sustainability committee, and that they were supportive of the Orion project.

Karen Szyman, Executive Director of the Chamber of Manitowoc County, 1515 Memorial Drive, read a letter of project support to the Commission.

Mayor Nickels asked Mr. Less for his recommendation.

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

Mr. Diedrich asked if FM service would be impacted by the proposed tower?

Mr. Less stated that the FM signal would not be impacted by the tower.

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Mr. Hornung noted that FM was located on Viebahn.

Mr. Diedrich asked about item G of the proposed CUP terms regarding Woodland Dunes participation in the process, and asked what would happen if they did not come to an agreement?

Mr. Less replied that the CUP was absent specifics in that regard, and wanted that item to serve as a statement of intent vs. a regulation for performance.

Ms. Mellon asked how the tower would be removed if it was ultimately abandoned?

Mr. Less explained that those provisions were already contained in Section 15.77 of the City's Code.

Additional discussion was held regarding the interfacing between Orion and MPU.

<u>Motion by:</u> Mr. Brey_____	<u>Seconded by:</u> Mr. Alpert
<u>Moved that:</u> the Commission recommend _____	<u>Upon Vote:</u> the motion was approved by
Council acceptance of the Planner's	a vote of 6-1. Mr. Diedrich voted
recommendation above.	against
	the motion.

B. PC51-2009: Great Lakes Energy Technologies, LLC/Orion Energy Systems Inc.; Petition for Direct Annexation - Woodland Drive No. 2

Mr. Less introduced this matter, and noted that it had been previously reviewed by the Commission.

Mr. Braun detailed the proposed annexation of lands abutting Woodland Drive.

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Mr. Braun noted that the land proposed to be annexed measured 1.40-acres in area, contained no electors, and would be given an I-2" heavy industrial, temporary zoning designation. Mr. Braun added that the City was waiting to receive a letter from the Wisconsin Department of Administration regarding their review of the annexation. Mr. Braun noted that Orion would be looking to place an animated sign on their property that was part of the land to be annexed, and which was prohibited by the Town.

Mr. Braun recommended that the Commission recommend to Council approval of the annexation, adoption of the annexation ordinance and resolution, and that the temporary zoning for the annexed lands be established as I-2".

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

V. REFERRALS FROM COMMON COUNCIL

A. PC5-2009: Bugarino; Discussion of Public R/W on So. 22nd Street -
Proposed Modification to 2009 Sidewalk Privilege Agreement

_____ Mr. Less updated the Commission on this matter, and noted that he was not clear what was occurring with this property. Mr. Less commented that it appeared that the original construction project, which was essentially the deck improvement on the east side of the Tony s Pizza building and which was the impetus for the most recent Sidewalk Privilege Agreement (SPA), was being expanded with additional improvements planned to the north of the building. Mr. Less continued that these changes would likely cause the SPA to be amended, and added that there was still a rezoning, and a parking lot in a residential zoning district issues to be ultimately resolved. Mr. Less noted that he thought this matter had been addressed in the most recent SPA, but it appeared to not be the case at present.

Mr. Less then stated that he would explain what he thought might be going on at this property, but added that he didn t know for sure. Mr. Less then provided Commission members with a copy of a revised boundary survey dated November 11, 2009, which was prepared after the SPA was executed. Mr. Less explained that he had

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color coded the boundary survey map with red being the area covered under the current SPA, the yellow being a proposed new deck structure north of the current building, and blue being the area under a proposed revision to the SPA. Mr. Less continued that there were still multiple issues to be resolved including how to handle SPA deadlines that were approaching, to figure out the exact post-SPA improvements being planned at the property, the timing for the improvements, and any impacts upon the public right-of-way.

Mr. Less noted that the colored boundary survey identified a proposed new enclosed 20' x 33.33' deck area to the north of the existing building, and added that the site plan section of the City's Code included a waiver provision for requiring site plans for developments less than 1,000sf in area.

Mr. Less then described the approximate 6' x 6' area identified on the new boundary survey map, that would have to be added into a revised legal description in the SPA in order to accommodate the proposed decking and overhang improvements. Mr. Less noted that it was not clear if the decking structure was problematic, as it was on the Bugarino property, and that any encumbrances on to the City property would be covered under the SPA.

Mr. Less then made reference to the newest SPA which included certificate of insurance requirements (which he was not aware if the City had received to date), as well as various events of default, including: (i) a January 5, 2010 deadline for either filing an application for rezoning of the Bugarino property, or a request to locate a parking lot in a residential zoning district to the north of his building; plus (ii) completion of all site plan requirements related to SP10-2009, which was the parking lot to the west of the business, and which was partially finished. Mr. Less concluded that this was the array of facts that he was aware of, and restated that amending the SPA's legal description appeared to resolve the issue of the proposed deck. Mr. Less added that these matters needed to be resolved promptly, noting that completion of the parking lot to the west could not be completed until later in 2010 due to the weather. Mr. Less continued that the issue of whether or not to require a site plan was still unaddressed, and added that he was not aware of the waiver being authorized, as the Code required the Planning Department, after consultation with the City Engineer and Director of Building Inspection, to issue such a waiver to the site plan approval requirements. Mr. Less added that he had hoped Mr. Bugarino would have been present this evening so that everyone could better understand his plans.

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Mr. Brey asked if Mr. Burgarino was aware of tonight's meeting?

Mr. Less stated that Attorney Dave Pawlowski, as Mr. Burgarino's counsel, had received a copy of tonight's agenda. Mr. Less asked Mr. Muenzenmeyer to provide whatever information he could to this discussion.

Mr. Muenzenmeyer commented that he had requested the new boundary survey and legal description, and identified the 6' x 6' area beyond the boundary of the current SPA that Mr. Burgarino was planning on improving. Mr. Muenzenmeyer continued that in his discussions with the City Attorney, the preference of the Attorney was to wait until the improvements were completed, and to then adjust and amend the SPA to reflect what was actually constructed. Mr. Muenzenmeyer stated that he felt this was wise, as the project was continuing to change. Mr. Muenzenmeyer added that the enclosed deck was not being constructed as identified on the boundary survey, and that Mr. Burgarino was planning to construct a 640sf garage/party room to the north. Mr. Muenzenmeyer continued that the complication he ran into was that the proposed building's roof structure would extend over the public R/W, and that he advised Mr. Burgarino that he would not allow him to build a new building in the public R/W. Mr. Muenzenmeyer continued that Mr. Burgarino stated that he would again ask the City to sell the land to him, which was his current written request to the Council.

Mr. Brey stated that the project seemed to have changed again since Mr. Burgarino's last letter was filed with the Council. Mr. Brey noted that the last time he talked with Mr. Burgarino, his plan was to build on to the back of his property, and not purchase any City-owned property.

Mr. Muenzenmeyer stated that Mr. Burgarino could build his building currently, and had a building permit in hand.

Mr. Less questioned if the proposed garage/party room structure would still be invasive into the R/W?

Mr. Muenzenmeyer replied no, and that he previously had made reference to it not being as drawn, because the enclosed area would not be as large as identified on the new boundary survey.

Mr. Less again asked if the private improvements would be invasive to the

public R/W?

Mr. Muenzenmeyer replied that the associated handicap ramp would be in the R/W and not the building.

Mr. Less stated that he felt this matter could be cleaned up with a revision to the SPA, and if the City wanted to go that way, for the Council to authorize the correct parties to work out another amendment to the SPA.

Mr. Less explained that the City could not sell public R/W unless it had been formally vacated. Mr. Less added that the street area could not be leased for private purposes as well, and continued that if the Council's appetite was to vacate the R/W to accommodate the private development, then he would recommend vacating the western 12' of So. 22nd Street R/W, with the City to sell its portion (6' that would revert back to the City) to Mr. Burgarino upon completion of the proceedings. Mr. Less explained the complexity of this process, adding that his preference was to amend the SPA once the construction project was complete.

Mr. Hornung asked what the parking requirement was for the Burgarino property, and questioned why the parking lot issue had not been addressed, and questioned how the proposed party room would impact overall parking at the site?

Mr. Muenzenmeyer stated that Mr. Burgarino needed to be involved in this discussion in order for this process to work, and noted that regarding the off-street parking issue, he would have to calculate the parking needed for the existing and proposed buildings.

Mr. Hornung stated that he didn't understand why Mr. Burgarino was building a 640sf structure, and the parking requirements had not been addressed.

Mr. Muenzenmeyer stated that he felt the building was being constructed to respond to the anti-smoking laws in WI.

Mr. Hornung asked what that had to do with parking requirements?

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Mr. Muenzenmeyer stated that it had nothing to do with off-street parking.

Mr. Diedrich commented that the cart was being put in front of the horse in this situation, and asked if there would be a loss of parking spaces from the 640sf building?

Mr. Muenzenmeyer added that the Burgarino site would lose 3 parking spaces as a result of the proposed garage/party room.

Mr. Less added that while the Burgarino site was not losing much off-street parking, the above noted overarching issues remained.

Mr. Diedrich asked how long the vacant parking lot issue to the west of the business had been relevant?

Mr. Braun stated that this parking lot had been half completed since this past summer.

Mr. Hornung asked if the Council would take action on the Burgarino communication without a recommendation from the Commission?

Mr. Less stated that the Council could take action, but added that the request was not clear.

Mr. Hornung suggested that Mr. Burgarino be invited to attend the January Commission meeting to determine project status.

Mr. Less explained that regarding the parking area to the north, Mr. Burgarino needed to file the request for rezoning, or for a parking lot to be established in a residential zoning district, and that he needed to simply make the request to the City Clerk by the January 5th date.

Mr. Muenzenmeyer suggested that staff sit down with Mr. Burgarino before January 5th to review the relevant issues.

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Ms. Mellon commented on a drainage problem in the parking lot, and that it could be remedied by having the owner tie into the new storm sewer in So. 22nd Street. Ms. Mellon stated that she would like to see this connection happen.

Mr. Muenzenmeyer stated that Mr. Burgarino now had a chance to hook up to the storm sewer, whereas he did not have this opportunity in the past.

No action was taken, but the Commission did encourage and direct the City Planner, City Attorney and Director of Building Inspection to work with the property owner to clarify all relevant issues, and to determine if further changes to the SPA were needed, or if another approach to remedy this situation was required.

Mr. Alpert commented that as a building permit had been issued for the party room, that construction could continue.

Mr. Muenzenmeyer stated that Mr. Burgarino had been issued the building permit in November.

B. PC24-2009: Salzberg/Stewart; Sidewalk Privilege Agreement for Property at Northwest Corner of Waldo Boulevard and Fleetwood Drive

Mr. Less explained that the Sidewalk Privilege Agreement (SPA) regarding the property at the northwest corner of Waldo Boulevard and Fleetwood Drive needed to be revised. Mr. Less noted that the SPA was prepared in response to a previously issued Plan Commission report at the time the property was owned by Richard and Darla Klassen, and that the property was now owned by Harold Salzberg and Cherilyn Stewart.

Mr. Less recommended that the Commission recommend that the Council not adopt or enter into the SPA, and that the document be placed on file, as a replacement SPA would be resubmitted to Council to finalize this transaction.

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

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- C. PC1-2009: Great Lakes Energy Technologies, LLC; Quit Claim Deed to the City of Manitowoc for .45-Acres for Woodland Drive purposes

Mr. Less explained a proposed deed for dedication of a portion of Woodland Drive that was owned by Great Lakes. Mr. Less recommended that the Commission recommend approval and acceptance of the deed by the Council.

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

- D. PC56-2009: Dermatology Associates of Wisconsin, S.C. - Request to Place Fill on City-Owned Property in Block 175 of Original Plat Pursuant to Section 15.37(6) Manitowoc Municipal Code

Mr. Less explained that this matter was in regard to the granting of authorization to temporarily store fill on City-owned property in Block 175 of the Original Plat, or on other City-owned property, from the Dermatology project. Mr. Less noted that this action had been previously approved by Council on December 7th, subject to its approval by the Commission under Section 15.37(6) of the City Code. Mr. Less added that the Council report authorized certain actions to take place which were included in the recommendations outlined in the December 7th report, and that authorization to proceed with implementation of the recommendations, was predicated upon approval by the Plan Commission of this matter, pursuant to Section 15.37(6).

Mr. Less recommended that the Commission approve the request for the temporary storage of fill or related materials as outlined in the original December 7th report.

Motion by: Mr. Hornung _____ Seconded by: Mr. Diedrich
Moved that: the Commission recommend _____ Upon Vote: the motion was approved

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Council acceptance of the Planner s recommendation above. unanimously.

Additional discussion was held regarding this project. Mr. Less explained that it was likely that the same lead and arsenic contaminants would be found in surrounding blocks in the downtown.

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 this matter had been carried on the Plan Commission agenda for the past few months, and that the City had been waiting to receive approval from FEMA of the proposed flood plain map amendment. Mr. Less reminded Commission members that this was for a portion of property located south of Michigan Avenue, southeast of Winnetka Court, and north of the Manitowoc River, and was part of Mr. Allie s request for rezoning a portion of the property from P-1" Conservancy District to R-2" Single Family District for the potential location of two (2) home sites at the former Rahr farm. Mr. Less added that there was no opposition present at the Council public hearing, and that the matter was referred back to the Commission for final review and recommendation.

Mr. Less explained that the Commission had previously noted that it would not take action of the rezoning proposal until the outcome was known as to whether or not the Federal Emergency Management Agency (FEMA) and Department of Natural Resources (DNR) were supportive of a proposed Letter of Map Amendment (LOMA). Mr. Less reported that DNR, on October 22nd, advised SMI, Inc., that they had no sign off responsibility related to LOMA s, and that FEMA, on December 8th, issued a letter approving a LOMA for removal of certain lands out of the floodplain and within the proposed rezoning area.

Mr. Hornung expressed concern with how utility services would be extended to the Allie property?

Paul Steinbrecher, SMI, Inc., 102 Revere Drive, commented that the sanitary

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sewer ran through the property, and that water would be extended from the southwest to the Allie property, and felt that Mr. Allie owned all of the abutting properties.

Mr. Hornung expressed concern that some property owners could be financially impacted by extension of the water main.

Mr. Steinbrecher stated that Mr. Allie owned to the end of the existing water line.

Mr. Less noted that he felt the extension of the water main would likely be done under PSC rules and at the developer's expense, much like the extension of the water main out to Silver Ridge Subdivision.

Mr. Hornung asked if MPU would bear the cost of the water main for property owners already served?

Mr. Less replied no if the extension was via PSC rules.

Mr. Steinbrecher stated that the extension would occur under MPU's Plan E where the developer paid all the costs, and that it would be the only way MPU would let the extension proceed.

Mr. Muenzenmeyer noted that regarding other LOMAs in the City, there would be several re-validated with the new mapping.

Mr. Steinbrecher stated that there was no difference for the Allie LOMA between the old and new proposed mapping.

Mr. Less recommended that the Commission recommend approval of the rezoning to the Council from P-1" to R-2".

Motion by: Mr. Brey _____ Seconded by: Mr. Muenzenmeyer
Moved that: the Commission recommend _____ Upon Vote: the motion was approved by a

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Council acceptance of the Planner s _____ vote of 5-1. Mr. Diedrich abstained from recommendation above. _____ voting. Mr. Hornung voted against the _____ motion.

VII. NEW BUSINESS

A. PC54-2009: McMahon/Dewey Properties LLC; Affidavit of Correction for CSM at Harbor Town Lane (Aldi)

Mr. Less explained that this was a request from McMahon Engineers on behalf of Dewey Properties, LLC, regarding property in Harbor Town Center that was described in a 2005 Certified Survey Map (V.25, P. 63), and that the issue was for execution of an Affidavit of Correction to remove a 50' wide highway setback line.

Mr. Less explained that the Affidavit was required under §236.295(1)(a) Wis. Stats. to remove a 50' wide setback limitations imposed by WisDOT s TRANS 233 regulations which were in effect at the time the CSM s was recorded, but which had been subsequently found by Wisconsin courts to be invalid with respect to regulating any land division other than a subdivision.

Mr. Less recommended that the Commission recommend to Council approval of the Affidavit, with the appropriate City officials authorized to execute the document on behalf of the City.

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

B. PC55-2009: Dermatology Associates of Wisconsin, S.C. - Request for Temporary Fiber Optic Line in Downtown District Pursuant to Section 15.37(28) Manitowoc Municipal Code

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Mr. Less explained that this was a request from Dermatology Associates under Section 15.37(8) of the City's Code to allow for a temporary placement of an overhead utility line to accommodate a temporary rental arrangement for the company. Mr. Less noted that MPU was supportive of this request.

Mr. Less recommended the granting of the exception under Section 15.37(8) for a temporary placement for Dermatology Associates.

Ms. Mellon commented that she wanted to make sure under clearance requirements were met with the new line.

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

VIII. MISCELLANEOUS

A. Manitowoc County Activities:

1. Mr. Brey noted that at last night's County Board meeting, the County's Comprehensive Plan was adopted.

No action was taken on this matter.

B. Certified Survey Maps (CSM):

1. PC50-09: AF Realty Manitowoc, LLC/City of Manitowoc; Proposed CSM Being Pt. Lot 12 of Hinckley's Subd. Located SE¼ of NE¼ Sec. 31, T.19N., R.24E., City of Manitowoc

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_____ Mr. Braun explained that this parcel of land was located on So. 10th Street, and was the former Super Valu property to be acquired by the City for siting of a storm water pond. Mr. Braun noted that the CSM was to combine 2 separate parcels into a single tract of land. _____

Motion by: Mr. Hornung

Seconded by: Mr. Diedrich

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

Upon Vote: the motion was approved unanimously.

2. Regional Real Estate, LLC Proposed CSM being a resurvey of Lot 1 of a CSM recorded in V. 21, P.11, SE¼ of SW¼ Sec. 8, T.19N., R24E., City of Manitowoc

Mr. Braun explained a proposed lot split of property located east of Wild Oak Drive and north of Albert Drive in the City. Mr. Braun stated that the property owner, Kevin Neelis, wanted to split what was currently a single tract of land, into 2 parcels for financing purposes, with the existing apartment buildings to be located on the southernmost tract, and the northern tract to be vacant and the future home of a third apartment building. Mr. Braun noted that there were easements required, along with establishment of a common access point for the parcels.

Motion by: Mr. Alpert

Seconded by: Mr. Muenzenmeyer

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

Upon Vote: the motion was approved unanimously.

3. Madson/Siebold; Proposed CSM in the SE¼ of NE¼ Sec. 36, T.19N., R.22E., Town of Cato

Mr. Braun explained a proposed CSM located west of Range Line Road, and south of USH151. Mr. Braun stated that there were 3 owners involved including the WisDOT, and noted that Mr. Madson would be acquiring the WisDOT parcel of land, and would also purchase a portion of the Lloyd Siebold property to the east to square off his parcel. Mr. Braun continued that these 3 pieces would be combined into a single

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new tract for Mr. Madson, and added that he wanted documentation that Mr. Madson had received a deed to the WisDOT property before processing and finalizing the CSM. Mr. Braun noted that the County did not have any problems with the proposed CSM.

Motion by: Mr. Hornung

Seconded by: Mr. Brey

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

Upon Vote: the motion was approved unanimously.

C. Summary of Site Plans 11/5/09 - 12/9/09:

1. SP22-2009: Regional Real Estate, LLC, 1921 Wild Oak Drive - New Construction (approved).
2. SP23-2009: St. Paul Evangelical Lutheran Church, 2601 So. 10th - Building Addition (pending).

IX. ADJOURNMENT

The meeting was adjourned at 7:40 P.M.

Respectfully Submitted,

David Less
Secretary