



City of Manitowoc

900 Quay Street
Manitowoc, WI 54220
www.manitowoc.org

Meeting Minutes

Plan Commission

Wednesday, April 16, 2014

6:30 PM

Planning /Engineering Conference Room

Pursuant to Section 19.84(2) and (3) of the Wisconsin Statutes, notice is hereby given to the public, to the Herald-Times-Reporter, the official newspaper of Manitowoc, and to those news media who have filed a written request for this notice that a meeting of the above-referenced will be held at the date, time and location listed above.

The above governmental body will meet to discuss and possibly take action on the agenda items set forth below.

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

Present: 7 - Dave Diedrich, Jim Brey, Daniel Hornung, Mayor Nickels, Dan Koski, Dolly Stokes and Jim Muenzenmeyer

Absent: 1 - Steven Alpert

Staff Present: David Less, Paul Braun

Others Present: Frank Gehrke, George Cronk, Jeff DeZeeuw, John Hastreiter, Al Leist, Jason Sladky, Amy Frick Weigel, Gary Drzewiecki, Michael Miller, Steve Hendrikse, Chris DeCleene, Keith Hutterer, Cathy Sukowaty, Brad Erdmann, Mark Gotstein, Holly Gotstein, Angela & David Leonard, Richard Humpal

III. APPROVAL OF MINUTES

Moved by Dietrich, seconded by Stokes, that the Minutes be approved. The motion carried by the following vote:

Aye: 7 - Member Diedrich, Alderperson Brey, Member Hornung, Mayor Nickels, Member Koski, Stokes and Member Muenzenmeyer

14-650 Approval of the Minutes of the March 12, 2014 Meeting.

Attachments: 03-12-2014 plan commission minutes

IV. PUBLIC INFORMATIONAL HEARINGS

[14-654](#)

PC10-2014: Miller Conditional Use Permit for Home Occupation- Accessory Building at 954 S. 29th Street Pursuant to Section 15.030(1) of Manitowoc Municipal Code.

Attachments: [PC 10-2014 Miller CUP](#)

Mr. Less explained that this was a request from Michael Miller, as the owner of property at 954 So. 29th Street, who had filed an application for conducting a home occupation in an accessory building pursuant to Section 15.030(1) of the Manitowoc Municipal Code. Mr. Less noted that this section of the Code required such a use to be authorized by issuance of a Conditional Use Permit (CUP) pursuant to Section 15.370(27).

Mr. Less continued that in addition to the Commission and Council having 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, they also had to determine whether or not the proposed land use qualified as a home occupation in an accessory building, and if it was compatible with the neighborhood.

Mr. Less continued that this subject property was titled in the name of Michael and Jenny Miller, and was identified as Lot 30 and the N 10' of Lots 31 and 32, Block 1, C.N. Schmidt's Subdivision, and was further identified as tax parcel # 625-001-321. Mr. Less noted that the Miller's acquired title to this property in June, 2005, and added that this parcel was located on the west side of So. 29th, was rectangular in shape, and measured 60' of frontage on So. 29th by 100' of lot depth. Mr. Less noted that the property had split zoning with the south 10' of the lot being zoned "B-2" Neighborhood Business District, and the north 50' of the lot being zoned "R-4" Single-and Two-Family District. Mr. Less added that a home occupation in an accessory building was listed as a CUP under both district regulations. Mr. Less then noted that the property had an assessed value of \$116,000, and generated approximately \$2,450 in annual real estate taxes.

Mr. Less then explained that the property was comprised of a 2-story frame residence with approximately 1,568sf of total area, plus a detached garage measuring 24' x 30' that was constructed in 1998. Mr. Less stated that the subject parcel had residential land uses to the north and west, the Mark Rhein American Family Insurance agency to the south, and Roorbach's to the east.

Mr. Less commented that the proposed business to operate in the accessory building was a small engine repair service performing such functions as tune ups, carburetor reconditioning and engine services, as well as repair work on snow blowers, lawn mowers, chainsaws, and lawn and garden equipment.

Mr. Less continued that to begin this review required an overview of a new section of the Code, which was adopted by Council on July 1, 2013, and became effective on July 9, 2013, and which created a new definition and category of home occupation conducted entirely within an accessory building, subject to issuance of a CUP. Mr. Less noted that while a home occupation on its own didn't require a CUP, allowing the use in an accessory building did. Mr. Less then explained that the home occupation in an accessory building had several requirements similar to the original home occupation definition, including conducting the business entirely within the structure, no employees, no outside storage, compatibility with the surrounding area, and limited hours of operation between 8am and 8pm. Mr. Less clarified that the new ordinance would allow usage of 100% of an accessory building, would limit the number of clients to a maximum of 10/day, would require that there was adequate off-street parking for the occupant of the principal residence, would prohibit exterior signage, and would require the property owner to make a reasonable effort to keep doors and windows closed during hours of operation, except for entering and exiting. Mr. Less continued that the ordinance also required that a request of this type be accompanied by a scaled site plan and floor plan which

identified the total square footage to be used by the business, a description of the proposed business and business activity, and the estimated number of clients visiting per day.

Mr. Less added that regarding the current request, the petitioner's application detailed the operation of "Manitowoc Small Engine", which, in addition to the functions mentioned earlier, would sell miscellaneous equipment parts. Mr. Less noted that the petitioner's application stated the following:

- 1) The business would occupy 90% or 650sf of the 720sf garage/accessory building;
- 2) There would be no exterior evidence of the business operation;
- 3) There would be no signage for the business;
- 4) There would be no employees;
- 5) The estimated number of clients/day was up to 3.
- 6) The hours of operation would be Monday-Friday, 9am - 5pm;
- 7) The business use would not generate excess levels of traffic; and
- 8) The garage would not be modified to accommodate the proposed business.

In closing, Mr. Less noted that notices were mailed from Planning to property owners within 200' of the subject property on April 9th regarding tonight's meeting, and that other than his receipt of a letter of support on April 15th from De Noyer's Woodworking & Improvement, 935 So. 29th, there were no comments received to date in response to the mailing.

There were no public comments made during the informational hearing.

Mr. Less noted that he had provided a draft of the proposed CUP compliance conditions to Mr. Miller and the Commission in advance of tonight's meeting.

Mr. Nickels asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend that Council grant the CUP under Sections 15.150(3)(j) and 15.250(3)(a) of the Code to Michael Miller d/b/a "Manitowoc Small Engine Repair Service", subject to the compliance conditions provided to the Commission and Mr. Miller, and on file in the Planning Department.

Moved by Hornung, seconded by Dietrich, that this Communication be recommended for approval to the Licensing, Permits & Inspections Committee. The motion carried by the following vote:

Aye: 7 - Member Diedrich, Alderperson Brey, Member Hornung, Mayor Nickels, Member Koski, Stokes and Member Muenzenmeyer

[14-465](#)

Communication from Tim Frey, owner of TLC Homes, Inc. requesting an exception to the 2500' rule for CBRF's for property on Paul Rd., recommending placing on file.

Attachments: [14-465.pdf](#)

[PC 13-2014 JHA Properties CBRF Exception](#)

Mr. Less explained that this was a request from Tim Frey as President of TLC Homes, Inc., which was a provider of group homes and associated services for challenged individuals, and who was requesting that the City grant an exception to the 2,500' spacing requirement under Wis. Stat. § 62.23(7)(i)1. to operate a Community Based Residential Facility (CBRF) for a maximum of 8 persons.

Mr. Less stated that the subject property was a vacant, rectangular shaped parcel of land on the east side of Paul Road approximately 300' south of where Joseph Road bisected Paul Road, and which was further identified as Lot 2 of a CSM recorded in V. 27, P. 151 (Tax Parcel # 812-304-021). Mr. Less noted that the parcel measured 99.92' along Paul Road, and has an average lot depth of approximately 203', for a total of 20,481sf or .47-acres. Mr. Less added that the underlying zoning of the parcel was "R-4" Single and Two Family Residential, and that the address of the subject parcel would be 2213 Paul Road.

Mr. Less explained the petitioner planned to construct a single story, vinyl sided, residential structure meeting the dimensional and setback requirements of the "R-4" zoning district, that would be fully wheel chair accessible and sprinklered. Mr. Less continued that the structure was proposed to:

- 1) Be a total square footage of 4,097sf, including a 384sf porch and 3,713sf first floor area;
- 2) Have 8 bedrooms (ranging from 118sf to 142sf), storage and bathroom facilities, along with a living room, kitchen and dining areas; and
- 3) On-site parking for 6 vehicles. Mr. Less stated that the development didn't include a garage, but added that there were no overnight or winter parking ban restrictions on either side of Paul Road.

Mr. Less detailed that in the "R-4" district, the size of the principal and accessory buildings were limited to 35% of a lot area, a 35' height maximum, a 25' front and rear yard setback, and 6' side yards. Mr. Less noted that the petitioner had been advised that he would be required to file a formal site plan for the project. Mr. Less continued that it was his understanding that the current plan was to complete construction in August, and to secure licensure from the State in September, with opening and occupancy of the facility in October, 2014.

Mr. Less continued that Mr. Frey was also the sole member of JHA Properties, LLC, which was the owner of the subject property by virtue of a Warranty Deed dated April 1, 2014. Mr. Less noted that the property had been previously owned by Jack and Anne Linn, and added that it was his presumption that JHA, as the property owner, would construct and lease the facility back to TLC Homes, Inc. as the operating entity.

Mr. Less then went on to explain that a CBRF was included in the definition of a "Community Living Arrangement" under Wis. Stat. § 62.23(7)(i), and was specifically defined under Ch. 50 "Uniform Licensure" as a facility for 5+ adults who were not related, and did not require care above intermediate level nursing care and other services that were above the level of room and board, but included no more than 3 hours of nursing care per week per resident. Mr. Less noted that CBRF's were further regulated under DHS 83 which detailed regulations and standards for the care, treatment and services, as

well as the health, rights and welfare of residents of a CBRF.

Mr. Less continued that TLC was requesting that the City grant an exception to the 2,500' provision contained in Wis. Stat. § 62.23(7)(i)1. which stated that the City may, at its discretion, grant an exception to this statute to permit a CLA to locate within 2,500' of an existing CLA. Mr. Less noted that the proposed CBRF was located approximately 1,180' from the Azura Memory Care center on Menasha Avenue which was a CBRF for 9 people suffering from advanced aged, dementia and Alzheimers, and approximately 2,025' from a 4-person AFH located on Kimberly Circle (TLC Kimberly Circle) for developmentally disabled, emotionally disturbed and traumatic brain injured persons. Mr. Less stated that as of January 1, 2014 there were 24 CBRF's and 7 AFH's dispersed throughout the City, and that TLC Homes, Inc. operated 3 CBRF's and 3 AFH's in the City:

CBRF	AFH
Fleetwood Drive	Expo Drive
So. 24th	Menasha
E. Cedar	Kimberly Circle

Mr. Less stated that it was his understanding that the Paul Road facility would be replacing an existing facility located at 716 So. 24th, where TLC assumed the operations of this CBRF from Holiday House, and which had an initial licensure date of October 28, 2013.

Mr. Less continued that for the Paul Road facility, the proposed 8-person CBRF would house individuals working at Holiday House, with all referrals to this location coming from the Lakeland Care District (a regional long term care district providing family care program services in Manitowoc, Fond du Lac and Winnebago Counties). Mr. Less added that individuals at Paul Road would be both male and females aged 18 and older, which were developmentally disabled or suffered from traumatic brain injuries, with the facility operated consistent with TLC supervision and management practices, and would be staffed with additional staffing on duty in mornings and evenings.

Mr. Less noted that the subject parcel was currently zoned "R-4", had an estimated fair market value of \$30,300, and generated approximately \$681 in real estate taxes. Mr. Less added that surrounding land uses were residential, with the lot immediately south being vacant, and with the surrounding zoning being "R-4". Mr. Less did note that under the "R-4" zoning, a CLA for 8 or fewer individuals was a permitted use, and didn't require a Conditional Use Permit (CUP).

Mr. Less continued that the purpose of the 2,500' spacing requirement was to disperse CLA's throughout the community, and to avoid over intensifying the location of such person's into limited geographic areas. He added that CLA's were regulated under Wis. Stat. § 62.23(7)(i) which included the following provisions:

- a) (7)(i)1. in regard to the 2,500' separation requirements for CLA's and that an agent of a CLA may apply for an exception to this requirement, and the exception may be granted at the discretion of the City;
- b) (7)(i)2. in regard to population density requirements; and
- c) (7)(i)3. in regard to entitling a CLA to locate in any residential zone without restriction (as to the number of CLA's), without being required to obtain "special zoning permission", except for the annual review provision under (7)(i)9. of the statute.

Mr. Less added that CBRF's were further regulated by the State's Department of Health Services (DHS), were required to meet the certification requirements under Wisconsin Administrative Code DHS 83, that the Division of Supportive Living was responsible for the licensing of all CBRF's in Wisconsin, and that no CBRF's could operate unless they have been certified to do so by DHS.

Mr. Less then detailed some of the requirements for operation of a CBRF which included: (i) filing of a program statement with the State that detailed evidence of financial ability to operate, a fire evacuation plan, and resident rights and grievance policies; (ii) providing evidence that the applicant for licensing had made a good faith effort to establish a community advisory committee (communication link between the CLA and neighborhood); (iii) staffing requirements for when 1+ residents were present in the house, and when 1+ residents was in need of supervision; (iv) square footage requirements for bedrooms based upon occupancy; (v) and other program requirements including staff training and criminal background checks.

In closing, Mr. Less noted that notices had been mailed from Planning on April 9th to property owners within 200' of the subject property inviting them to tonight's meeting, and noted and summarized the following conversations that he had:

Karen Vangerad, 2219 Paul Road, who resided next to the subject. She received the notice and wanted the Commission to know that while she couldn't attend tonight's hearing, she was against the proposal, but not because of the proposed land use and clientele. Rather, she was concerned with the potential size of the facility and impacts on wildlife in the area. She advised Mr. Less that she and her husband both worked at Aurora Hospital in the health care business. She also made specific reference to a June 6th graduation party that she had planned, and was concerned that construction at the site could be disruptive, and a visual eyesore for the 150 people she had invited.

Chris DeCleene, 2218 Herman Road, who was also against the proposal. His main concern was with the potential for diminution of his property values. Mr. Less advised that he told Mr. DeCleene that there were not less than 28 of these facilities throughout the City, and the community had not experienced any impacts of these facilities upon property values. Mr. Less advised him further about the City's annual review process, and that the City's experience had been that these facilities were typically some of the best neighbors in a neighborhood.

Mr. Less also detailed to Mr. DeCleene what federal and state law, and the courts have said about these concerns, and that these arguments were not grounds, nor would they be accepted as justification for the discriminatory effects of the restrictions as they related to the Federal Fair Housing Amendment Act of 1988 (FHAA) and the American with Disabilities Act (ADA)-- Title II of ADA prohibits a public entity from discriminating against an individual on the basis of disability or from excluding such an individual from public services, programs or activities.

Cheryl Jones from Wausau, on behalf of her 93 year old mother-in-law who lived in a condo at 2230 Paul Road (Paul Road at Joseph Road). She had an extensive conversation with Mr. Less regarding these facilities, and their performance in the community and this owner/operator in specific. Her concern was that staff would be strangers in the neighborhood, and could disrupt the rhythm of the area.

Mr. Less then noted that Mr. Braun had reported to him that he talked with Richard Humpal, 2225 Paul Road, who apparently was not opposed to the proposal, but did pepper Mr. Braun with questions regarding setbacks, off street parking, type of residents,

and impacts on property values. He wanted to see a site plan for the proposed project.

In closing, Mr. Less provided an additional comment on the legal issues surrounding these facilities, noting that Wisconsin courts had found that the spacing requirement and the variance procedure, as well as other siting and density criteria in the statute were inconsistent with the legislative histories of both the FHAA -- which explicitly prohibited discrimination in housing because of a handicap and prohibited a refusal to make reasonable accommodations in rules, policies, practices or services when such an accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling, and the ADA, and as a result, were pre-empted by both laws. Mr. Less closed by stating that while a municipality may not intentionally discriminate against the disabled, it may be unlawfully discriminating by failing or refusing to make a reasonable accommodation, which meant that it would have to demonstrate and prove that the accommodation was infeasible or impractical, or would impose undue financial or administrative burdens.

Richard Humpal, 2225 Paul Road, expressed concerns with off-street parking, and asked how this would be addressed?

Mr. Less explained that a site plan to be filed with City Planning which would identify at least 6 off-street parking spaces on the lot.

Mr. Humpal then asked if the site plan would address setbacks too?

Mr. Less stated that the development of this property would have to comply with district setback, and other code and building requirements. Mr. Less noted that Paul Road was available for parking, and added that staffing of these facilities tended to be light. Mr. Less stated that traffic impacts would be minimal.

Mr. Humpal asked if the facility would be staffed at all times?

Steve Hendrikse, 633 St. Clair, Sheboygan, commented that he was an employee of TLC Homes, and added that they were required to have staff present any time a resident was in the facility. Mr. Hendrikse noted that there would be at least 1 staff present between midnight and 5am, and 2 staff present otherwise during daytime hours. Mr. Hendrikse noted that the occupants of the facility would be working at Holiday House during the day, and would not be present at the facility. Mr. Hendrikse added that he anticipated no more than 2-3 vehicles present at any time at the property, and added that typically these residents didn't have visitors, but rather were taken out of the facility to other family environments.

Mr. Humpal stated that there could be 8 vehicles for 8 individuals at the facility at any one time.

Mr. Hendrikse stated that this was unlikely, and that typically these visits were away from the home so the resident could get out of the facility.

Mr. Humpal asked if there were any age restrictions?

Mr. Hendrikse replied that the individuals at the facility would be at least 18 years of age, with no upper age restriction.

Mayor Nickel's commented that what was being envisioned as an off-street parking issue, would be similar to impacts from the graduation party noted earlier, and added that

Paul Road was available for public parking.

Mr. Humpal asked if this was a HUD-related facility?

Mr. Hendrikse stated it was not related to HUD in any way.

Angela Leonard, 2214 Paul Road, stated that she lived across the street from the proposed facility, and while not having an issue with them locating in this area, questioned if the capacity of the facility could be increased in the future, and if the height of the building could be increased? She also questioned the orientation of the building (she was concerned that the side of the building would be facing Paul Road), as well as lighting, the size of the facility, the future ability to sell her home, and loud noises disrupting the residents of the facility (as they liked to light off fireworks) as additional concerns. Ms. Leonard questioned if her lifestyle would have to change as a result of this facility in their neighborhood, and if her property taxes would go up? She was concerned that the noise from her "fun" lifestyle could be disruptive for the residents of this facility.

Mr. Less stated that going above 8 in occupancy would require the City to consider issuance of a Conditional Use Permit (CUP), and added that the development on the site would have to meet zoning district regulations. Mr. Less added that regarding Ms. Leonard's concern that they would have to change their lifestyle to accommodate the residents of the facility, there was nothing that required them to do so. Mr. Less added that regarding impacts upon property taxes, there had been no evidence of any impact, either positive or negative, of these facilities on surrounding properties.

Mr. Braun commented that the floor plan provided was a model used in Oshkosh, and that for the Paul Road facility, the front of the building would be facing west.

Jason Sladky, 900 Quay Street and Alderman in this district, asked if the facility could be expanded in the future, and whether such an expansion would be entitled to the same protections as the original accommodation?

Mr. Less stated that a capacity above 8 would require the City to issue a CUP, and that he didn't believe the accommodation issues related to the FHAA or the ADA would be applicable if the facility was proposed for a future expansion to increase its capacity. Mr. Less added that the accommodation was made for the original 8 unit to locate at the site.

Mr. Hendrikse added that their funding for this facility limited occupancy to not more than 8, so their funding would not allow a future expansion. Mr. Hendrikse commented that they do a good job taking care of their properties.

Ms. Leonard explained concerns with poor snow plowing of Paul Road, and felt this would be problematic for the facility residents.

Kathy Sukowaty, 2144 Paul Road, commented that she had nothing against these future residents, but noted that she had sidewalks only on their side of the street, with none on the east side of Paul Road. She expressed a concern with the size of the building and lot occupancy, and was concerned that the residents would be on her side of Paul Road. Mr. Sukowaty added that she also had a dog, and was concerned for the safety of these residents using the sidewalk on her side of the street, and then questioned if there would be an increased police presence in the neighborhood due to this facility and increased public safety concerns?

Frank Gehrke, 2208 Paul Road, commented that he enjoyed his lifestyle and the rural nature of Paul Road, and that they built on Paul Road for a more rural landscape. He noted that he didn't want to lose their lifestyle, nor did he want his property values to decline. Mr. Gehrke added that he didn't have any problem with the people living there, but felt the building was too big for the property.

Holly Gotstein, 3510 Joseph Road, commented that she was representing the Hidden Acres Condominium Association as its President, and 14 families from the Association, and noted they were opposed to the proposed use in their neighborhood. Ms. Gotstein felt that the proposed building didn't fit into the design of the other buildings in the area, and was also concerned with parking and lighting from the facility. Ms. Gotstein stated that they were concerned with overall property and facility aesthetics, and with vehicles related to the facility parking on Paul Road.

Mark Gotstein, 3510 Joseph Road, felt that this facility would cause too much on-street parking pressure, and that this facility would take away from their ability to enjoy this area. Mr. Gotstein felt that the added cars and the children in the neighborhood was not a good mix. Mr. Gotstein felt that locating this facility in their neighborhood would erode the lifestyle and quality of life of area residents.

Ms. Gotstein also commented on the lack of plowing on Paul Road, and this area in general.

Mr. Gotstein echoed his wife's comments on snow plowing and the passability of Paul Road, and questioned how residents would get to Holiday House if the street wasn't plowed?

Brad Erdmann, 2226 Herman Road, stated he was against the proposal too, and noted that he had young children, and that they would get loud, and had parties and bonfires in their backyards. Mr. Erdmann felt this would be a problem for the facility residents. Mr. Erdmann also commented on flooding tendencies in the area, and was concerned that the new facility would make drainage and flooding matters worse.

Mr. Less commented that the site plan would have to demonstrate that the property would handle its own drainage, and added that no property in the City was allowed to drain on to the property of another.

Mr. Erdmann commented that the land was flat.

Mayor Nickels commented that this issue would have to be addressed before construction could commence.

Mr. Gehrke noted that he had built his home 4 years ago, and wouldn't have done so if he knew about this facility.

Chris DeCleene, 2218 Herman Road, explained that there was already a high concentration of these facilities throughout the City, and felt that the law regarding the 2,500' separation was there to protect them. Mr. DeCleene added that if TLC wanted an exception, they should have the law changed, and stated again that the law was there to protect neighborhood residents. Mr. DeCleene then noted that he drove past TLC's Fleetwood Drive facility frequently, and commented about parking problems that he observed in that area, and referenced a shuttle bus he had observed parked in its driveway. Mr. DeCleene asked about the annual review process.

Mayor Nickels commented about the annual review process and its purpose, and noted that a permit could be pulled if a facility would become problematic and regulations weren't followed.

Mr. DeCleene questioned if the ownership of this facility could change in the future without City approval?

Mayor Nickels stated that the approval was uniquely for the current petitioner.

Mr. DeCleene asked if the City received more property tax revenue from this commercial business?

Mr. Less responded that how this property was valued was a matter to be determined by the City Assessor.

Mayor Nickels noted that property taxes were collected based upon valuation.

Mr. DeCleene commented that he had children, and noted a blind curve that he was concerned with in the area.

George Cronk, 2204 Herman Road, expressed traffic concern, and the likelihood of delivery trucks frequenting this facility. Mr. Cronk asked if any of the residents would be driving?

Mr. Hendrikse commented that the facility residents likely would not be driving.

Mr. Humpal commented that the facility was too big for the site, that it would enhance drainage problems and would increase the amount of impervious surface at the property.

Mayor Nickels again noted that the property would not be allowed to drain on to the property of anyone else.

Mr. Humpal asked how the City would deal with an enhanced drainage problem caused by this facility, and would the City shut them down?

Mr. Koski replied that the City would make them fix it, and added that this would also be true for a single family residence.

Mr. Humpal stated that the Planning Commission needed to make sure there was a foundation drain around the entire building, with downspouts set to exit into the storm sewer, as the amount of roof area would flood the yard.

Ms. Stokes stated that someone building a residential house on this lot would have to deal with the same set of development issues, and would not have to come to the Commission for approval. Ms. Stokes stated that the City couldn't tell them what to put on their property as long as it met code.

Mr. Humpal felt that this was a business locating in a residential zoning district.

Mr. Diedrich commented that it was a permitted use in the current zoning.

Mayor Nickels commented that this use was permitted in any residential zoning district under statute.

Keith Hutterer, 2130 Herman Road, asked what would happen to the facility if the operators went out of business, and questioned what the future use of this building would be? Mr. Hutterer felt that it was better to leave this property alone, as he felt the building could become a halfway house in the future to the detriment of the neighborhood. Mr. Hutterer felt the rules were being broken to allow the facility into the area.

John Hastreiter, 2208 Paul Road, stated that he was against the proposal due to the size of the facility, and was concerned with the future re-use of the building.

Mr. Muenzenmeyer explained how the annual review process of these facilities was conducted, and stated that they had been proven over time to be non-problematic in the community.

Mayor Nickels commented that he lived across the street from a CBRF, and originally had the same concerns as he was hearing this evening. He added there hadn't been any problems, and that it had been positive for the neighborhood.

Mr. Brey asked Mr. Muenzenmeyer, if, when he was the Building Inspector, if he would have allowed a single family home of this size on this lot?

Mr. Muenzenmeyer commented that this was controlled by zoning, and added that it was a very large lot. Mr. Muenzenmeyer added that he would have no problem with a home of this size on a lot of this size. Mr. Muenzenmeyer added that many of the lots in the City were only 50' in width.

Mayor Nickels advised the group that the Commission was only a recommending body in this matter, and that the final decision was with the Council for consideration this coming Monday. Mayor Nickels commented that the public input portion of the Council meeting would be the time to offer any comments to the Council.

Mr. Diedrich asked Mr. Less to again comment on the ability of a City to refuse this type of accommodation, and to identify the relevant court cases.

Mr. Less explained the position of the Seventh Circuit on this matter and cited 2 cases from the Greenfield and Greendale areas of WI, and that in his opinion, denial of an accommodation on the kinds of grounds identified this evening would place the City in a precarious legal position to defend their action against the FHAA and ADA. Mr. Less added that despite these cases, the 2,500' provision had never been removed from the statute. Mr. Less explained that the City went through this informational hearing process to bring everyone together, and added that the City's historic tracking of these facilities has been positive. Mr. Less added that in his opinion, the absence of an evidentiary trail of health and safety issues related to a specific facility, would limit the City's ability to defend itself against a discrimination claim.

Ms. Stokes noted that she lived about 1 block from a similar facility, and it was virtually invisible in the neighborhood.

Additional discussion was held.

Mayor Nickels asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend to Council that it grant the exception to the 2,500' spacing requirement and density requirement as requested to JHA Properties, LLC d/b/a TLC Homes, Inc. (together "TLC") pursuant to Wis. Stat. §

62.23(7)(i)1. and 2. with the understanding that if TLC did not secure all required licenses from the State by December 31, 2014, this exception would become void and terminates effective January 1, 2015.

Moved by Muenzenmeyer, seconded by Hornung, that this Communication be recommended for approval to the Licensing, Permits & Inspections Committee. The motion carried by the following vote:

Aye: 7 - Member Diedrich, Alderperson Brey, Member Hornung, Mayor Nickels, Member Koski, Stokes and Member Muenzenmeyer

[14-483](#)

Communication from SMI as representatives of the Manitowoc Lakebreeze Apartments, LLC and WLC, LLC requesting a change to the Official Map eliminating two streets that run to the east off of Johnston Drive to accommodate an apartment project, recommending placing on file.

Attachments: [14-483.pdf](#)

[PC 14-2014 & PC 3-2014 Lake Breeze Apts](#)

Mr. Less explained that there were actually 2 requests that would be detailed and handled concurrently tonight. Mr. Less stated that first, was a request from SMI, Inc. on behalf of WLC, LLC, as the record owner, and Manitowoc Lake Breeze Apartments, LLC, as the contract purchaser of property east of Johnston Drive, west of Zimmer Drive, and to the north of E. Charles Lane. Mr. Less noted that SMI, on behalf of these parties, had submitted a request to vacate and remove from the Official Map 2 dedicated R/W's on the east side of Johnston Drive, and secondly, for an amendment to the Official Map to remove certain future R/W's. Mr. Less noted that the request to discontinue or vacate the 2 R/W's east of Johnston Drive occurred pursuant to Wis. Stat. § 66.1003(2), while the Official Map amendment proceeding would occur pursuant to Wis. Stat. § 62.23(6) (c). Mr. Less noted that while both items would be discussed concurrently, a formal public hearing before the Council would only be required for the Official Map amendment.

Mr. Less explained that the street vacation process was governed under Wis. Stat § 66.1003 and specifically 66.1003(2) which provided that a portion of a public R/W may be vacated upon submittal of a written petition to the Common Council, signed by the owners of all of the frontage abutting the portion of the street sought to be vacated, plus the owners of more than one-third of the frontage of the remaining portion of the street which lay within 2,650 feet of the ends of the portion of the street to be vacated. Mr. Less noted that a vacation petition was filed with the Clerk's office on April 7, 2014, and added that a "Notice of Lis Pendens" had been prepared, and would be recorded at the Register of Deeds office prior to Monday, April 21st.

Mr. Less stated that the proposed vacation covered 2 areas of dedicated R/W on the east side of Johnston Drive, with both areas measuring 150' of lot depth by 60' of frontage on Johnston Drive. Mr. Less added that the net result of the vacation would be the elimination of these 2 future streets to facilitate the redevelopment of approximately 24.4-acres of land owned by WLC, LLC. Mr. Less continued that the WLC property, including the proposed areas for vacation, measured approximately 830' x 1,320', and was comprised of 5 tax parcel numbers (809-302-010; 012; 020; 030; and 040). Mr. Less noted that the north line of this property was also the north City limits line in this area. Mr. Less added that WLC purchased the property in late August, 2008 for \$183,000; that the 5 parcels combined had an assessed valuation of \$255,000; and generated \$5,381 in annual real estate taxes. Mr. Less noted that this property was vacant farmland, and also has split zoning, with approximately 2.1-acres being zoned "R-6" Multiple-Family District at the southwest corner of the property and abutting Johnston Drive, and the

remaining approximately 22.39-acres being zoned "R-5" Low Density Multiple-Family District.

Mr. Less stated that the vacation petition was reviewed by Planning, and found to contain owner signatures representing 100% of the frontage abutting the areas proposed to be vacated. Mr. Less explained that in the case of this proposed vacation and for the purpose of determining satisfaction with the 2,650' requirement of the statute, both of these unnamed east-west running R/W's only existed as far as they were dedicated. Mr. Less added that for purposes of determining who must petition, the ownership of intersections was not considered, but the length of the intersection was included within the calculation of the 2,650'. Mr. Less concluded that as there were no street R/W's extending to the west or east of the dedicated R/W's, the signatures on the petition satisfied the statute.

Mr. Less continued that regarding the proposed development, the plan called for the ultimate development of 188 units of apartments developed in at least 2 phases. Mr. Less noted that phase I would include the construction of 5 buildings representing 60 market rate, 1 and 2 bedroom units along Johnston Drive, along with 5, 12-stall garages for each building. Mr. Less added that each unit would have a private entry, and the plan was that the contract purchaser would construct all 5 buildings at the same time. Mr. Less noted that a new CSM tract of approximately 5-acres (201' x 1088') would be created to house Phase I, and which would be approved and recorded post-transfer of ownership to the contract purchaser, and post vacation of the rights-of-way.

Mr. Less stated that subsequent phases would involve the construction of the remaining 8-9 buildings, being likely driven by market demand, and that beyond phase I, the development would need to be sensitive to the location of wetlands in the area. Mr. Less cited a July, 2013 wetland delineation report that was completed by NES Ecological Services, a division of Robert E. Lee & Associates, which identified approximately 4.4-acres of wetland on the WLC property, primarily to the south and east of the area where the first 5 buildings would be constructed.

Mr. Less explained that City and MPU staff did meet with the project engineer and contract purchaser in early March to talk about utility and overall development issues, and noted that:

- 1) The sanitary and storm sewer on Johnston ended about half way through this property, so the developer would have to extend that service at their cost;
- 2) CBCWA has a 48" transmission main that ran in Johnston Drive, which could not be connected to for water service;
- 3) MPU had existing watermains that could service this property, but they didn't extend to the north City limits, and would have to be extended to the north as well;
- 4) A storm water pond was identified as part of the development, so those details would have to be worked out as well between the owner/developer and Public Infrastructure Department; and
- 5) Johnston Drive was identified as a 90' wide R/W on the City's Official Map, and currently dedicated between 77-80' along this property, so the City would require a re-dedication of a 45' wide area measured to the center line of Johnston for the length of the property upon completion of the land sale, and the vacation and Official Map

proceedings.

Mr. Less continued that regarding the vacation under Wis. Stat. § 66.1003(2), the Council could act on the vacation resolution without conducting a public hearing on the request, but a Class 3 notice was required to be published prior to the Council acting on the vacation resolution. Mr. Less noted that statute required that at least 40 days lapse between the date the vacation resolution had been introduced, and the date Council could officially act to approve the vacation. Mr. Less noted that the Official Map amendment process would require a public hearing, and these processes would be run concurrently, with the final 2 of 3 notices being combined to address both matters. Mr. Less added that pursuant to Wis. Stat. § 66.1005(2), the City would retain all easement and utility rights incidental to the vacated R/W which were in place prior to the vacation of the R/W.

Mr. Less continued that the Plan Commission did previously preview this proposal back in January, 2014, and tacitly endorsed moving forward with this process. Mr. Less added that contemporaneous with the proposed street vacation, was an amendment to remove from the City's Official Map the identical 2 areas to be vacated, as well as the full length of a future east-west running Official Map reserved (non-dedicated) street, which was a continuation of the southernmost R/W area being proposed for vacation. Mr. Less noted that the total distance of this east-west running future street area to be removed from the Official Map was approximately 950' as measured from the east line of Johnston Drive. Mr. Less noted that the City viewed any vacation of a street as an amendment to the Official Map.

Mr. Less then advised that regarding tonight's public informational hearing, Planning did mail out notices on April 10th to property owners that would be directly effected by the proposal, and noted that there were no responses to this mailing received. Mr. Less then detailed the timetable for moving forward from tonight, noting that the public hearing would be held before the Council on June 2nd, and June 16th would be the earliest date Council could adopt the vacation resolution and the Official Map ordinance.

In closing, Mr. Less explained that in terms of the conformance of this proposed development and tonight's discussion of the vacation and Official map amendment, he felt that this development area was identified on the City's 20- year land use map that was part of its 2009 comprehensive plan as "Planned Neighborhood", which was intended to provide for a variety of housing types and a mix of non-residential uses such as parks, schools, and small scale shopping. Mr. Less stated that the comprehensive plan map in this area was not actually consistent with the proposed development, and should be amended to reflect this planned development, advising that the map should be adjusted to show this area as "Multi-Family Residential", which was a better suited land use category in the comprehensive plan for this location and was more directly aligned with the City's "R-5" and "R-6" zoning districts.

Al Leist, 7707 Thunder Road, Manitowoc, stated that he was not opposed to the development, but questioned how access would occur into the property?

Mr. Less and Mr. Hornung explained ingress and egress as depicted on the proposed development plan.

Gary Drzewiecki, N 2757 West Town Road, Pulaski, stated that they now owned the property, and thanked the Commission for moving this matter forward.

Mayor Nickels asked Mr. Less for his recommendation.

Mr. Less recommended that the Commission recommend to Council that it instruct Clerk to call for the required public hearing, to publish notices on May 12, 19 and 26, and, to offer its final approval of the vacation and amendment to the Official Map.

Moved by Stokes, seconded by Hornung, that this Communication be recommended for approval to the Licensing, Permits & Inspections Committee. The motion carried by the following vote:

Aye: 7 - Member Diedrich, Alderperson Brey, Member Hornung, Mayor Nickels, Member Koski, Stokes and Member Muenzenmeyer

[14-484](#)

Communication from SMI as representatives of the Manitowoc Lakebreeze Apartments LLC and WLC, LLC requesting a vacation of a portion of two Official Map streets that run to the east off of Johnston Drive, recommending placing on file.

Attachments: [14-484.pdf](#)

[PC 14-2014 & PC 3-2014 Lake Breeze Apts](#)

Moved by Stokes, seconded by Hornung, that this Communication be recommended for approval to the Licensing, Permits & Inspections Committee. The motion carried by the following vote:

Aye: 7 - Member Diedrich, Alderperson Brey, Member Hornung, Mayor Nickels, Member Koski, Stokes and Member Muenzenmeyer

[14-564](#)

Petition of the Manitowoc Lakebreeze Apartments LLC and WLC, LLC requesting a vacation of a portion of two Official Map streets that run to the east off of Johnston Drive, recommending placing on file.

Attachments: [14-564.pdf](#)

[PC 14-2014 & PC 3-2014 Lake Breeze Apts](#)

Moved by Stokes, seconded by Hornung, that this Petition be recommended for approval to the Licensing, Permits & Inspections Committee. The motion carried by the following vote:

Aye: 7 - Member Diedrich, Alderperson Brey, Member Hornung, Mayor Nickels, Member Koski, Stokes and Member Muenzenmeyer

V. REFERRALS FROM COMMON COUNCIL

[14-655](#)

PC1-2014: Holsen; Quit Claim Deed to the City of Manitowoc for .49-Acres for Goodwin Road Purposes.

Attachments: [PC 1-2014 Holsen Quit Claim](#)

Mr. Less explained that this deed was related to a recently approved CSM by the Commission, and recommended that the Commission forward a recommendation to Council to approve and accept the deed, and to record the document at the Register of Deeds office.

Moved by Dietrich, seconded by Stokes, that this Communication be recommended for approval to the Licensing, Permits & Inspections Committee. The motion carried by the following vote:

Aye: 7 - Member Diedrich, Alderperson Brey, Member Hornung, Mayor Nickels, Member Koski, Stokes and Member Muenzenmeyer

VI. OLD BUSINESS: None.

VII. NEW BUSINESS

[14-651](#)

PC 11-2014/PC 38-2001: Abbey Ridge LLC; Vacation and Official Map Amendment at Ravenswood Lane and Ebony Avenue.

Attachments: [PC 11-2014 & PC 38-2001 Abbey Ridge](#)

Mr. Less explained that tonight's discussion on the Abbey Ridge area was not in regard to fixing the title problems raised back in January, 2013 that had to do with the incorrect recording of a CSM upon a condominium plat. Mr. Less stated that he had met recently with Paul Steinbrecher and John Lukas to discuss this project, and noted that tonight's discussion was a conceptual one regarding: (i) terminating an existing sewer easement to the City located between Ravenswood Lane and Abbey Ridge Lane that conflicted with a planned future building; (ii) removal from the Official Map and a R/W vacation of a previously dedicated portion of Ravenswood Drive to the west of future Ebony Avenue which ran through an existing building and effectively went no where; and (iii) the dedication of the remainder of Ebony Avenue for public R/W.

Paul Steinbrecher, SMI, 102 Revere Drive, commented that the condominium association area would be expanded, and added that they would ultimately be able to prepare a single CSM for the entire area, and which would then be overlaid by the condominium. Mr. Steinbrecher noted that Attorney Andy Steimle was working to clean up the condominium documents concurrently.

Commission members supported SMI proceeding with requests regarding the easement, vacation and Official Map amendment, and the dedication of Ebony Avenue.

No action was taken.

This Presentation was discussed

[14-656](#)

PC12-2014: Miniature Golf Course at Citizen Park; Review Pursuant to Wis. Stat. § 62.23(5).

Attachments: [PC 12-2014 Mini Golf Course](#)

Mr. Less explained the location and architectural design for a proposed, new, 18 hole, miniature golf course that would be part of the aquatic center complex in Citizen Park. Mr. Less noted that the facility was proposed to be designed, constructed and funded by the Friends of the Manitowoc Family Aquatic Center, with the improvement located immediately west of the Manitowoc Family Aquatic Center, and immediately east of baseball diamonds to the west. Mr. Less stated that it was his understanding that the cost for operation of the facility was proposed to be borne by the City under the current proposal being evaluated by City.

Amy Fricke Weigel, 1834 Eagle Ridge Court, confirmed that Mr. Less was correct in his representation of the project.

Mr. Less recommended that pursuant to Wis. Stat. § 62.23(5), the Commission advise

the Council that it had reviewed the location and architectural design for the miniature golf course, and recommend to Council that it approve the proposed project.

Moved by Hornung, seconded by Brey, that this Plan Commission be recommended for approval to the Parks & Recreation Committee. The motion carried by the following vote:

Aye: 7 - Member Diedrich, Alderperson Brey, Member Hornung, Mayor Nickels, Member Koski, Stokes and Member Muenzenmeyer

Update on Reorganization of Planning Department

Mayor Nickels advised the Commission of the current plan to reorganize the Planning Department into a Community Development Department, and which was occurring in other cities around WI. Mayor Nickels continued that Planning would continue to include the Building Inspection and Assessor functions. Mayor Nickels explained that an Associate Planner/Economic Expediter position job description had been written, and added that the Director of this future department would do what Mr. Less was currently doing. Mayor Nickels detailed that this Associate Planner/Economic Expediter would be a "go to" person for the City to deal with developers. Mayor Nickels added that the City Planner under this model would serve under the Community Development Director, and would work most directly with the Commission in the future, with the Community Development Director being the economic development specialist for the City. Mayor Nickels noted that the job descriptions were still being worked on at this time, but the enhanced focus would be on economic development.

Mr. Diedrich asked what staff would conduct the informational hearings and referrals before the Commission?

After discussion, Mayor Nickels concluded that it would be the City Planner to perform those functions.

Mr. Hornung asked if the Community Development Director would be expected to attend the Commission meetings?

Mayor Nickels stated that they would attend for some types of business.

Mr. Less felt that there would be crossover, with the Planner taking the lead on most projects and presentations before the Commission. Mr. Less added that having both staff people present at Commission meetings would be important.

Mr. Braun asked about the timing for filling the Associate Planner and Director positions?

Mayor Nickels commented that the Associate Planner/Economic Expediter job description had been finalized, but added that nothing had been done with the Director position, as Council had not approved an overall plan for the department at this time.

Mr. Brey commented that the Associate Planner/Economic Expediter job description had already been approved by his Licensing, Permits & Inspections Committee.

Mayor Nickels commented that the absence of an HR Director has been a problem in this instance. Mayor Nickels added that the overall scheme for the department, as well the job descriptions hadn't yet been approved by Council. Mayor Nickels again

commented that other cities such as Appleton, Green Bay and Oshkosh had gone to this community development model.

Additional discussion was held. No action was taken.

This Presentation was discussed.

VIII. MISCELLANEOUS

A. Manitowoc County Activities: None.

B. Certified Survey Maps (CSM):

[14-652](#)

LOK-SAFE, LLC; Proposed Resurvey of CSM Tr. 4, V.1, P. 361 and CSM Tr. 7, V.7, P. 513 in the NW ¼ of the NW ¼, Section 1, T18N, R23E, Town of Newton.

Attachments: [CSM Lok Safe](#)

Mr. Braun explained the proposed CSM on the east side of "CR"/So. 42nd Street, south of Viebhan Street, and noted that the owner wanted to eliminate a property line between 2 existing parcels to create a single parcel measuring approximately 5.5-acres, which would allow for construction of additional mini-warehouse buildings. Mr. Braun recommended approval of the CSM, subject to Town and County approvals.

Moved by Hornung, seconded by Stokes, that the Certified Survey Maps be approved. The motion carried by the following vote:

Aye: 7 - Member Diedrich, Alderperson Brey, Member Hornung, Mayor Nickels, Member Koski, Stokes and Member Muenzenmeyer

[14-653](#)

Yetter Living Trust, Proposed CSM of Lots 12 and 13, Block 5, Woodridge Estates Subdivision #2, Section 8, T19N, R24E, City of Manitowoc.

Attachments: [CSM Yetter](#)

Mr. Braun explained a proposed CSM in Woodridge Estates Subdivision #2 located north of Stoney Brook Drive and west of Woodridge Drive. Mr. Braun noted that the request was to combine 2 lots into a single lot measuring .78-acres, which would allow the owner to construct an addition on to their home. Mr. Braun recommended approval of the CSM.

Moved by Hornung, seconded by Stokes, that the Certified Survey Maps be approved. The motion carried by the following vote:

Aye: 7 - Member Diedrich, Alderperson Brey, Member Hornung, Mayor Nickels, Member Koski, Stokes and Member Muenzenmeyer

C. Summary of Site Plans: None.

IX. ADJOURNMENT

Commission members discussed that Ms. Stokes would be leaving the Commission, but would be active at the May meeting, and would be replaced thereafter.

The meeting was adjourned at 8:10 P.M.

Respectfully Submitted,

David Less
Secretary

CAUTION TO PLAN COMMISSIONERS: The documents attached to this agenda are for your review in preparation for the City Plan Commission meeting to be held on the above date. Any discussion or communication between members of the Plan Commission by any means prior to the Commission meeting regarding these documents may be a violation of the open meeting laws.