

**PLEASANT PRAIRIE PLAN COMMISSION MEETING
VILLAGE HALL AUDITORIUM
9915 39TH AVENUE
PLEASANT PRAIRIE, WISCONSIN
5:00 P.M.
December 11, 2006**

A regular meeting for the Pleasant Prairie Plan Commission convened at 5:00 p.m. on December 11, 2006. Those in attendance were Thomas Terwall; Michael Serpe; Donald Hackbarth; Wayne Koessler; Andrea Rode; Jim Bandura; John Braig; Larry Zarletti; and Judy Juliana. Wayne Koessler was excused. Also in attendance were Michael Pollocoff-Village Administrator; Jean Werbie, Community Development Director; Peggy Herrick-Asst. Planner/Zoning Administrator and Tom Shircel-Asst. Planner/Zoning Administrator.

1. **CALL TO ORDER.**
2. **ROLL CALL.**
3. **CORRESPONDENCE.**
4. **CONSIDER THE MINUTES OF THE NOVEMBER 13, 2006 PLAN COMMISSION MEETING.**

Judy Juliana:

Move to approve.

John Braig:

I'll second.

Thomas Terwall:

MOTION BY JUDY JULIANA AND A SECOND BY JOHN BRAIG TO APPROVE THE MINUTES OF THE NOVEMBER 13, 2006 PLAN COMMISSION MEETING AS PRESENTED IN WRITTEN FORM. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

5. **CITIZEN COMMENTS.**

Thomas Terwall:

If you're here tonight for an item on the agenda that appears as a public hearing, we would ask that you hold your comments until the public hearing is held so we can incorporate your comments as a part of the official record of that item. However, if you're here to discuss an item that is not a matter of public hearing or if you're here to ask a question or make a comment about an item not on the agenda, now would be your opportunity to do so. We would ask that you step to the microphone and begin by giving us your name and address. Is there anybody wishing to speak under citizens' comments? Anybody wishing to speak?

6. OLD BUSINESS

Thomas Terwall:

We need a motion to remove this from the table.

Mike Serpe:

So moved.

Judy Juliana:

Second.

Thomas Terwall:

MOTION BY MIKE SERPE AND A SECOND BY JUDY JULIANA TO REMOVE THIS ITEM FROM THE TABLE. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

A. TABLED PUBLIC HEARING AND CONSIDERATION OF A ZONING MAP AMENDMENT: To correct the zoning map and rezone the property known as Tax Parcel Number 93-4-123-191-0220 (Lot 29 Block 6, Carol Beach Estates Unit #6) owned by Leslie Fai, generally located on 94th Street between 8th and 11th Avenues from R-6 Urban Single Family Residential District to C-1 Lowland Resource Conservancy District as a result of a wetland staking.

Jean Werbie:

Chairman Terwall and members of the Plan Commission, the item you have before you this evening is to correct the zoning map and rezone the property known as Tax Parcel Number 93-4-123-191-0220. It's also known as Lot 29 Block 6, Carol Beach Estates Unit #6 Subdivision. The property is owned by Leslie Fai, generally located on 94th Street between 8th and 11th Avenues.

The request is to rezone the field delineated wetlands from the R-6, Urban Single Family Residential District, to C-1, Lowland Resource Conservancy District.

On February 25, 2002, Dr. Leslie Fai, owner, had requested that a wetland staking be completed on the property as referenced previously. On June 14, 2002, the Village received a letter dated June 13, 2002 from SEWRPC that indicated that on May 23, 2002, the SEWRPC completed an inspection of the property and determined that the entire site was wetlands.

On June 24, 2002 the Plan Commission adopted Plan Commission Resolution #02-10 to initiate a zoning map amendment to rezone the entire property into the C-1 District.

On August 12, 2002, the Plan Commission held a public hearing and tabled the public hearing to allow the owner time to apply to the Wisconsin DNR and the U.S. Army Corps of Engineers to obtain permits to fill the wetlands on the property so it could be built on.

Dr. Leslie Fai filed an application with the DNR for Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act to place fill material in the wetland for the purpose of building a single family house. The DNR evaluated and denied the application as outlined in a letter to Dr. Fai on August 12, 2004.

On September 7, 2004, Dr. Fai filed a request for a hearing pursuant to Wis. Stats. Section 227.42 and a hearing was held by the State of Wisconsin Division of Hearings and Appeals on October 17, 2005. The court affirmed the DNR's determination to deny the wetland water quality certification and the appeal was dismissed in the decision dated November 9, 2005.

The Village received the attached letter on November 28, 2006 from Dr. Fai protesting the rezoning. I'd like to read that into the record. It was received by the Village on November 28, 2006. "Pleasant Prairie, I wish to protest against the village trial to rezone my land 93 4 123 191 022 from R 6, Residential District to C1 Lowland Resource Conservancy District, since the present status of the lot, was decided, by the most reliable agencies and authorities to contain wetlands. It is known that even today I have a filling permit from the Army Corps of Engineer and my lot is furnished and 90 % paid for it by me, with municipal water sewage and all necessities needed for urban living." And it's signed Dr. Leslie Fai. "PS: The present zoning is correct."

The next thing I'd like to enter into the public hearing is discussion regarding the Carol Beach/Chiwaukee Prairie Land Use Management Plan. Community Assistant Planning Report No. 88 prepared by the SEWRPC entitled a Land Use Management Plan for the Chiwaukee Prairie-Carol Beach Area of the Town of Pleasant Prairie completed in 1985. This Plan sets forth several recommendations to implement the Plan. One such recommendation was that upon adoption of the aforementioned Plan the Town of Pleasant Prairie should submit to the Corps of Engineers a collective application seeking permission to fill and develop for residential uses all wetland areas located within the proposed urban areas shown on the final land use plan map.

On May 19, 1986, the ACOE held a public hearing regarding the area-wide fill permit, and on October 26, 1987 a permit was issued to the Town of Pleasant Prairie by the ACOE to fill 64 acres of wetlands in the Carol Beach/Chiwaukee Prairie area within the urban development areas as shown on the Plan. This area-wide fill permit expired on December 31, 1997. Once the area-wide fill permit expired in 1997, all property owners within the urban development areas had to

apply for individual permits pursuant to the State and Federal Regulations that were and are applicable to all property owners in the State of Wisconsin.

Dr. Fai's property, which is located within the urban area pursuant to the Plan, was originally included in the fill permit area. Dr. Fai did not fill his lot under this original permit. During that ten years, approximately October 1987 to December 31, 1997, approximately 51 acres were built on and approximately 25 acres of wetlands were filled.

Since the fill permit expired several properties within the urban area have been built on without filling of any wetlands. The Army Corps of Engineers and the DNR have issued the following two permits to fill a portion of wetlands within an urban area:

- The ACOE and DNR issued a permit for 0.01 acres of wetland to be filled for a driveway to be installed through a wetland to provide access to the non-wetland area of the property on Lot 15 of Block 30 in Carol Beach Estates Unit #3.
- The Corps and the DNR issued a permit for a 15 foot by 32 foot area to be filled for a driveway to be installed through a wetland to provide access to the non-wetland area to build a house, and that was for Lot 3, Block 20, Carol Beach Estates Subdivision Unit No. 2.

Under installation of sewer and water, on July 29, 1996, the Village Board held a public hearing for the installation of municipal sewer in Carol Beach Estates Unit # 6 Subdivision. The sewer was installed and the property owners were assessed. Dr. Fai was assessed \$5,015 for sewer being provided to the subject property.

On April 21, 1997 the Village Board held a public hearing for the installation of municipal water on 94th and 95th Street in Carol Beach Estates Unit #6. The water was installed and the property owners were assessed. Dr. Fai was assessed \$3,600 for water being provided to the subject property.

As stated above, on December 31, 1997, the Corps fill permit originally issued to the Town of Pleasant Prairie in October of 1987 had expired and Dr. Fai had not filled his lot under the permit. In October of 2006, Dr. Fai requested a full refund of the assessment paid to date for sewer and water since his property was not considered buildable. On December 7, 2006 the Kathleen Goessl, CPA, Finance Director/Treasure for the Village sent the attached letter to Dr. Fai indicating that since the improvements to the parcel were levied at a time when the properties could have been filled and development could have occurred, that the Village approved those special assessment projects based upon the cost being spread over all affected parcels and payment being made by all property owners, and that all of the events that occurred after that special assessment was levied were out of the Village's control. Dr. Fai is still responsible for the payment of the special assessments on this property.

Under current wetland fill permits from the Corps and DNR, pursuant to the attached e-mail from the Dale Pfeiffle, he's the staff representative from the Corps of Engineers, which was received on December 5, 2006,, Dr. Fai has two Department of the Army permits for wetland fill. One is for 0.19 acre of wetland fill on a lot located south of 93rd Street, and the second is for 0.26 acre of wetland fill on a lot north of 94th Street which is the lot proposed to be rezoned. Both permits expire on December 31, 2006. And before you this evening when you walked in was a copy of that letter and the information with respect to the permits from the Corps of Engineers.

Furthermore, the Corps permits are not valid without the DNR Section 401 Water Quality Certification. Again, that was denied on Nov. 9, 2005, and a Coastal Zone Management Consistency Determination. Pursuant to the attached e-mail from Heidi Hopkins with DNR, received on December 6, 2006, she is not aware of another request submitted to the DNR by Dr. Fai for a fill permit. In addition, his right to appeal the November 9, 2005 Court decision has long since expired. Further discussion with the DNR attorney would be required to determine if the DNR would have to accept another application to fill, and if it was accepted the decision would be the same unless Dr. Fai could show some significant change in circumstances which would allow the DNR to alter their decision.

If a permit is obtained by all required agencies to fill wetlands, the Village will then consider, based upon a property owner's request, a zoning map amendment to rezone the wetlands allowed to be filled. In the past, if proper permits have been issued by the DNR and the Army Corps of Engineers, the Village Board has a policy of following the DNR and Corps recommendations and have rezoned the area to be filled out of the C-1, Lowland Resource Conservancy District.

Therefore, the entire property known as Tax Parcel Number 93-4-123-191-0220 owned by Leslie Fai, generally located on 94th Street between 8th and 11th Avenue is proposed to be rezoned from R-6, Urban Single Family Residential District, to C-1, Lowland Resource Conservancy District, as a result of the wetland staking completed by SEWRPC on May 23, 2002. With that, Mr. Chairman, I'd like to continue the public hearing.

Thomas Terwall:

This is a matter for public hearing. Is there anybody wishing to speak on this matter? Anybody wishing to speak? Hearing none, I'm going to open it up to comments and questions from Commissioners and staff.

Mike Pollocoff:

Just as an additional comment. This doesn't happen real often, but Jean and I disagree on the recommendation on this. The reason is I think clearly Dr. Fai did not take advantage of the nationwide fill permit that was granted to the Town of Pleasant Prairie. So consequently that time lapsed, he didn't get his fill permit, and then when he did apply for a fill permit it was denied. But you have to backstop that action that Dr. Fai took against the entire plan. The entire plan indicated that the Unit 6 area, Carol Beach Unit 6, was slated for urban development. That in the back and forth negotiations that occurred between the County, SEWRPC, the Town of Pleasant Prairie, Army Corps, every other environmental agency around there, was that those wetlands that were most critical to protect were protected in the Chiwaukee Prairie Land Use Plan. Those wetlands which were not of as significant value were deemed to be buildable and developable.

If you think back to the discussion at the time, the people that were negotiating this and working on the evolution of this plan paid careful attention to the property rights that owners of all these parcels had, and there were close to a couple thousand lots that were in play during the discussions of the plan. Some of those lots had significant wetlands on them. Some didn't. Some did but they weren't of a nature when you looked to consolidate wetland lots that were there. So the outgrowth of in particular where Dr. Fai's lot is that the Village of Pleasant Prairie was identified by the Plan as being able to allow development to occur in the Unit 6 area.

With that in mind, the Village as we brought sanitary sewer down to abandon the Pleasant Homes Treatment Plan, we ran a major interceptor through Unit 6, down 8th Avenue to 95th and then 95th out to Sheridan Road and Sheridan Road out to 116th Street, down 26th Avenue to the bike path, down the bike path to Green Tree Estates to abandon that sanitary sewer. As that trunk sewer went in, part of the approved master plan that the DNR required us to submit was how are you going to service other areas in the Village? What is the sizing of this interceptor sewer assessed for, and what's going to go into it? Part of it was, again, a reliance on the Chiwaukee Prairie Master Plan that Unit 6 would be developed with urban services.

If you were to pull that up, it shows right there what the fill permit was, all of Unit 6 was. But if you want to go back to that sewer and water map you can see that where Dr. Fai's property is it actually does have sewer and water. Sewer and water goes down his street. It doesn't go all the way because there is a slight ridge in that subdivision so the sewer falls east and west and the water wasn't connected. After the plan was adopted, a local interest group that call themselves the Barnes Prairie Rescue Coalition decided we didn't agree with the Chiwaukee Prairie Plan and we think these lands should be preserved as well and they started acquiring property.

Well, in the intervening period the Village year by year was installing sanitary sewer in Unit 6 because the ground water table there is extremely high and there were a number of houses in that subdivision that had failing septic. In fact, there's a home with failing septic right across the street from the Fai property. We extended sanitary sewer in these areas. As time went on, street by street by street, the wells began to fail in Unit 6 and we installed municipal water. I can remember we probably went about a year and a half where about every other month a certain additional section of street, not always a whole street, would come in from Unit 6 and say our wells are drying up and we need water. Sometimes they'd say it's not that bad then they'd be back again in three months and say now it is that bad and now my well has dried up so provide water for me.

So in reliance on what the plan provided for the Village expended the capital infrastructure for sewer and water in this area. The submissions of those plans were compliance with the water quality plan, the 208 plan, that's approved by DNR that says here's where sanitary sewer should go. Conversely, the Public Service Commission says this is where water should go. Both those improvements went by Mr. Fai's property. That's our framework for how we extend sewer and water. It has to be approved by the State. It has to be approved by the Regional Plan Commission and that's how we plan where we're going to extend water. If you're not in one of those areas the Village won't extend sewer and water. If you're on Lakeshore Drive we're not going to extend sewer or water there because it's not an approved site.

So the Village complied all the way along with all those plans, assessments for levy. People had those assessments against them. People needed the sanitary sewer in that area. It wasn't done so we could see the area develop. There was sewage running in the ditches in that area. So now that a private group has decided because they didn't like the end result of the plan acquire property, they acquired property in this area and then once the assessment became due they said we can't afford to pay these assessments and they gave it to Nature Conservancy. Nature Conservancy paid the assessments but they quite purchasing land in that area because as one of those signatories of the plan they agreed with us that this wasn't what we signed onto. But now that we own land that does have wetlands on it, we're not going to develop it but we will pay for the sewer and water assessment on there.

This parcel is different in that Nature Conservancy doesn't own it. The Barnes Prairie Rescue Coalition didn't buy it, but now DNR has applied the current standards for wetlands against that parcel unrelated to what was adopted in the Chiwaukee Prairie Master Plan. So the Village is caught in a position where we lived up with all—we still to this day live to all the conditions that we signed on to for that master plan, but the DNR has changed what they're willing to do. The guy didn't get his permit and that's his fault, but the whole concept of the plan was that there was wetlands that should be preserved and there's wetlands that we're going to agree we're not going to preserve and this was one of the ones they agreed not to preserve it. And it evidenced by the fact that it's got full municipal improvements. Why would you put sewer and water in front of wetland parcels that are going to be preserved? We wouldn't do it. We wouldn't do it and the State shouldn't let us do it.

My contention is that the Village didn't do anything wrong here. Dr. Fai, if he did anything wrong, it's he didn't fill his lot. But at the end of the day the Chiwaukee Prairie Plan says that lot should be developed. I think if the State feels that it's that good they should at least provide Mr. Fai with . . . pay his sewer and water assessment. Because right now the State is saying it's not in our acquisition are and we're not going to buy it. So he's caught in between two different things. If the utilities give Dr. Fai his money back we have one source for that and we go back to the rest of the rate payers and say, well, we put a water main where we were supposed to but later on it was determined by another agency that we shouldn't have so now we have to eat it. I guess I'm not going to recommend to the Village Board that they do that because the Village didn't do anything wrong.

It's not an easy solution and there isn't an easy solution, but the reason we're here is because the DNR did not follow the plan. The environment group didn't follow the plan. Once they agreed to it they kept working to get more and more out of it, whereas the Village lived with all the aspects of the plan good and bad. There's some things in there we'd rather not have development in certain areas, but they said it could be developed so we developed it. If there's an area that needed to be protected under the plan we protected it but this is not that case. We didn't do this to ourselves. We followed all the rules and now Dr. Fai is going to pay and I don't want the Village to be in a position where we're going to have to pay because somebody else didn't follow their end of the plan. That's a little bit different light on it than we see in other rezonings for wetlands.

Jean Werbie:

All that being said, we actually have at least seven properties (that Peggy is putting up on the screen) that fall into that exact same situation. The situation is that there was a ten year window of opportunity for people to fill these lots. He chose for one reason or another not to do it. We never made any guarantees that the Town at that time or the Village was going to be getting an extension to the fill permit. And I don't know what, if any, control that the Village has over the Wisconsin DNR when it comes to filling of wetlands? I mean we've seen how much authority we've had in the past and I don't think that that's going to change in the future.

The Army Corps of Engineers themselves even granted the fill permits that are now expired that said, well, we agree that they should be filled under the plan but the DNR does not. The mechanism has expired. The purpose of this request this evening is for us to follow our own zoning ordinance and just simply to rezone what has been identified as wetlands based on a wetland staking. It doesn't say that the property owner can't come back at any future point in

time, and if there has been a determination that these wetlands could be filled that we can't pull all of these areas out of that restrictive classification and allow them to be filled and developed because they have sewer and water available to them. But it follows the process that we have been following for a number of years now with respect to rezoning based on the wetland delineations.

If we don't rezone it what likely is going to happen is that this lot has sewer and water, it's still zoned residential and likely someone will purchase it thinking that they can build on it until they come into our offices to try to get a permit and they're not going to get one. So I just want to try to avoid that type of a situation from happening as well.

Thomas Terwall:

Can you tell me the lots that are contiguous to this lot, are they built on or are they vacant?

Jean Werbie:

They're all vacant. Across the street there's two homes directly to the south.

Thomas Terwall:

And are any of the vacant ones buildable or are they all zoned wetland?

Jean Werbie:

They're not zoned wetland at this time. They're zoned R-6 but our wetland maps indicate that there could be wetlands.

Thomas Terwall:

And there has been no fill permit for any of those lots?

Jean Werbie:

Correct.

Thomas Terwall:

Just for the benefit of the Commission, going back to the 1985 plan that Mike referred to, at the time that Chiwaukee Prairie Comprehensive Study was conducted, it lasted what, Mike, two years?

Jean Werbie:

Five years.

Thomas Terwall:

But there were to opposing sides. The Conservancy people, which included spokesman that came all the way down from Green Bay every time we had a meeting, they felt so strong that the entire area should be Conservancy that they wanted all the houses that were down there ripped out, all the roads ripped out, and nobody would be allowed to live there because it was one of the last pristine areas left in the State of Wisconsin.

On the other side you had the development people saying, hey, these lots have been platted and we've been paying taxes on them since Joe . . . developed this thing, and now you're going to come back and tell me I can't build a house on a lot that I've been paying taxes on all these years? That's not right. So for five years we argued back and forth.

The agreement came down that some areas could be developed and some areas could not be. If you were in an area that could not be developed, even though you continued to own the property, even The Nature Conservancy or the Chiwaukee Prairie Group would make every effort to acquire those properties on a willing buyer/willing seller basis. Unfortunately, instead of spending their money on those properties, they opted to go up and buy as many properties as they could in the developable area because they figured if this area cannot be developed I don't have to worry about that. The guy that owns it can't develop it because the Village has already agreed that it's not developable. So every lot that they could buy that was buildable that was one less home that was going to be built there because they owned it which as far as I'm concerned was an ethical violation of what everybody had agreed to. But that's where we came down to. I'm inclined to agree with where Mike is coming from on this.

The big problem here is Dr. Fai has a ten year opportunity to get a fill permit for his property. Even after he had been assessed for sewer and water and knew those assessments existed, he still had time to fill that property under that permit. And for whatever reason, I don't know, he chose not to do it.

John Braig:

There is another concern here that we haven't addressed at all. This land is wetlands currently. It receives water when there's a wet season or rain or so on. If it's filled it's not going to receive that water. That water is going to go somewhere else. Plus if it's zoned residential and he can develop it and put a house on it and a driveway and a garage he's going to create more runoff. I think we're asking for trouble if we let this go ahead like this without addressing the storm sewer situation there. We've had many people from the Carol Beach area complain about the storm water problem, and if we get into a wet season we've really got a problem.

The other thing that I'm looking at is based on what we've been doing and our requirements it almost strikes me that we have the obligation to zone this Conservancy now. But if he's successful in getting the permits and following through with this and has the permit to fill it again, once it's filled it would be reasonable on our part to return the zoning back to where it is. So I see our obligation almost strikes me at this point to rezone it Conservancy but not slam the gate on anything. If he takes the next step and gets a fill permit, he can come back here and follow through the procedures and eventually put a house on this property.

Mike Serpe:

I have a couple things. I don't doubt that Dr. Fai screwed this up in some way, shape or form by not following through within the ten year period. I'm also somewhat convinced that he bought this as an investment and hopes to sell it some day or build a spec house on it and sell it, and obviously that boat has now sailed as well. I have to question if we don't rezone this to the Conservancy are we doing Dr. Fai or anybody else that purchases that property any favors by taxing them as a buildable lot and not a Conservancy lot which I'm sure the assessments are considerably different.

Mike, I have to agree I think you make a lot of sense, but I look at Dr. Fai right now as a person that maybe built a building and it burned down and it didn't have any insurance. He loses because he just didn't follow through with what needed to be done. You pose a very, very difficult decision for all of us to make here but I can't see not supporting what Jean says for the simple fact that nobody is going to be building on that unless at some point in the future somebody allows that lot to be filled. Dr. Fai I'm sure can probably sell that to some Conservancy group maybe probably for more than what he paid for it since it's been a considerable amount of time since he purchased that lot.

Thomas Terwall:

But he's also incurred \$9,000 in special assessments.

John Braig:

And taxes.

Mike Serpe:

I understand that. I don't know what he paid for that lot and I don't know how long he owned it but I'm sure he can probably come out of this--

Thomas Terwall:

More than ten years, we know that.

Mike Serpe:

Exactly. Mike, are we putting ourselves in any legal situation by changing the zoning?

Mike Pollocoff:

I think that the Village's exposure is that we assessed in for sewer and water and it turned out it was wetlands. Even though we had followed the plan up through the assessment and after that, it was determined later on that it was wetlands. I think from Dr. Fai's standpoint, once it's zoned the hill to climb to get that Conservancy rezoning removed is a lot higher once the zoning for Conservancy is in place. I doubt any Conservancy group would buy it because it's already zoned down to the surface use. They wouldn't need to buy it because the Village is going to zone it Conservancy and manage it. So our exposure is we have to defend ourselves for an assessment that we levied in reliance on our DNR permits.

Thomas Terwall:

But we also assessed it at a time when it was a buildable lot. Those assessments were levied when the ten year permit was still in existence, and all the doctor had to do was fill it and he didn't.

Judy Juliana:

My only comment is this. If we decide to go ahead and not put it back into Conservancy, what kind of a precedent is this going to set for future lots?

Mike Pollocoff:

The precedent in my mind that needs to be maintained is the precedent that was set when the Chiwaukee Prairie Plan was adopted. Property owners had some reliance on a plan that was adopted by six government agencies that some lands would be conserved and some lands would be able to be developed. So right now the precedent is a little screwed up. I don't think it should be built on. It has wetlands on it. But the problem is I think at some point the guy who has the property he's caught coming or going. Pleasant Prairie is charging for assessments that he needed, and he has the State saying now you can't develop it. To me there should be some penalty from the State that the State would have to incur where they can't have it both ways. They can't make somebody choke on an assessment and then also say they can't develop the property. They should either be required to find him another parcel—if he bought this for speculation, he bought it for speculation. That happens all the time. But we've compromised his ability to be able to, and when I say we the State has us in this soup him, his ability to be able to get any kind of return on his property because no one is going to buy it from him now that he has it. They don't need to. It's a protected wetland parcel once you zone it.

Jim Bandura:

Mike, I totally agree with what you're saying. Is there any way that we can really hold the State accountable for this to put everybody in this position? It's not a good position.

Mike Pollocoff:

I think the Village needs to tell the State, someone has got to tell the State you've got to live by the damn plan you signed onto. That's really what we want. And if they're not going to do that then—you want a level playing field so all the property owners know what to expect. But if you had property that you thought you could develop and now you can't, people should know that. Everything that we committed to as local governments back when this plan was adopted is now out the window. So I think in my mind the message that needs to be sent to Wisconsin is either we've got to be willing to scrap the plan and say we're going to restart again, because we're the only ones that are following it and consequently we're the ones that are bearing the risk of it, or you go back to the plan you signed onto and these people get made whole.

Donald Hackbarth:

I'm going to have trouble voting yes on this to approve this. I'm going to vote no. Just looking at the plat up there, the intent on that thing to me is saying development. We put improvements in there. We're saying development and I have trouble saying yank these things out and put them in Conservancy. I really have problems with that.

John Braig:

I'm drawing on the experience the Commission had just recently. We had an individual in Carol Beach #2 who wanted to develop his land but there were two spots that were deemed as wetlands and we had zoned them as Conservancy. We, in effect, told the guy and shrugged our shoulders and said our hands are tied, we have to zone this Conservancy. If you can get the DNR to check it over and do a fresh staking and it's no longer wetland we'd be happy to change the zoning. I don't see that this is that much different. It currently is a wetland. I think we have to zone it. As I indicated before, we aren't slamming the door on him.

I will acknowledge that if it is zoned Conservancy it might be a little bit harder to get approval to fill it, but one way or the other he's still got to go back to the DNR and get approval or get a fill permit. Granted, the Conservancy zoning might be a little bit of a complication, but if you looked at the total picture and he was able to explain it to the DNR he might be successful. With that I'd like to move approval.

Mike Serpe:

I'll second it for purposes of discussion further. Jean, I don't know where this vote is going to go tonight and that's why I'm asking this question. Is there any way that we can flag this lot--there's no way we can flag it because if it goes from Dr. Fai to John Q. Public for a sale and he buys it there's no way we're going to know it until the person comes in for a permit?

Jean Werbie:

Correct. And he has been working on his appeal to their original denial for over two years. This has been a tabled item for a couple or three or four years now. So this has been a tabled item which he's been seeking to try to convince the DNR every which way he can think about it, and he's even gone to their appeals court to see if he can appeal their decision. The situation is there are other property owners that are caught up in the same situation. Collectively, maybe they could go and appeal the DNR together, but seven of them have already been rezoned by the Village and they feel the same way. And one property owner that owns three of the lots contacted our office today to find out what you're going to do.

Whether you rezone it or not, and that's really from this standpoint an administrative action because it follows up what we say we're going to do as part of the zoning ordinance, it's still not buildable and it will still exist as nonbuildable until the DNR changes their mind and/or the Corps reissues their permit.

John Braig:

If we rezone this Conservancy, will our assessor automatically make an adjustment before December 31st of this year?

Jean Werbie:

My understanding is that the value for this lot has been adjusted back downward to I think about \$4,800. It was adjusted. I'm not sure how long ago that it was adjusted by the assessor.

John Braig:

Then it reflects the facts now already.

Jean Werbie:

It does.

Mike Serpe:

And John's motion is to concur with the staff's recommendation?

John Braig:

Correct.

Thomas Terwall:

The adjoining lots that are not built on are they zoned Conservancy or are they zoned R-6?

Jean Werbie:

They are zoned R-6.

Thomas Terwall:

So no different than Dr. Fai, the owners of those lots could sell them to somebody else on the basis that it's zoned R-6, and when they come in here to get a building permit they can't get one.

Jean Werbie:

Well, we'll make them take a step backwards. We're require that they do a wetland staking first.

Thomas Terwall:

And we know what's going to happen.

Jean Werbie:

I don't know the extent of the wetlands on their lots either. If you look at the map some of them have all of the lots in wetlands, some at the road, some at the back. If you look at that map you can kind of see how awkwardly shaped some of those wetlands are on the property and some have been buildable with more awkwardly shaped homes but most of them have not been. So, you're right, it's no different than those others other than there is a policy direction set forth in our zoning ordinance.

Thomas Terwall:

There are more comments but I'll make my final comment now. I'm going to vote against this. I, like Mike, sat through five years of these hearings and walked away from the table with a signed, sealed agreement that these people aren't living up to. My only reason that I would support it would be to prevent Dr. Fai from selling that lot as a buildable lot to some unsuspecting person. But there's all kinds of lots down there where the same thing could happen. So why this lot should get that protection and the other one is not I don't know.

Larry Zarletti:

Well, this has been tabled before so I guess my question is what's the urgency of doing this now and what happens if we do not recommend approval for this and the Board concurs with that and it is not approved?

Jean Werbie:

If it's withdrawn or if it's tabled or no action is taken, which of the above?

Larry Zarletti:

If no action is taken then what does that do to the Village one way or the other?

Jean Werbie:

Then it's just something that we red flag as an action item that we never completed. Our action on this item as directed by our Zoning Ordinance.

Larry Zarletti:

Because I guess my point is if we don't have anything to gain by it, the Village doesn't have anything to gain by it, and Dr. Fai can continue to appeal until who knows when, we can't really say that at no time the State would change their mind. We've read and reviewed the fact that he's gone there, they've said no, he's gone to an appeal and they've said no. But it's my understanding he's still pursuing the matter is that true?

Jean Werbie:

I don't know. We just received the letter from the Corps of Engineers saying that their permits had expired, expires at the end of this month and the DNR, based on that e-mail from Heidi Hopkins, she's not aware of any request to further appeal this matter. I guess I'd rather not have

it sit on the Plan Commission's agenda for another couple years. It will just be one of those items that we didn't follow through with and we'll just put it in another pile.

Larry Zarletti:

I guess I'd feel better if I knew that this gentleman had no way of ever convincing the State to do that. I realize there has to be a reasonable time and obviously he's tried and tried again and they've said no. But in your experience have you ever known of a person to take it to this length and continue on and get what they want from DNR?

Jean Werbie:

No.

Mike Pollocoff:

I agree with Jean. I don't think having some indefinable period of tabling this is desirable. The DNR is telling us we have a problem and so is Dr. Fai. What we have to deal with as a community is that the plan is broken. The plan isn't functioning. We're not supposed to be in this position. Dr. Fai is not supposed to be in this position. The plan that we agreed to as a community answered all these questions and now DNR is off on a different tangent. They're interpreting it differently than what the intent of the plan was. The only way we're going to stop these things from happening where we do have exposure, where there are some improvements, again, made reliance on the plan where people can't develop their property, we've got to get the plan corrected. I don't know if that means a complete redo, but at some point our obligation is to have a land use plan in that area that functions the way everybody thinks it's going to.

But right now the DNR is making their own interpretations based on what they want to do. And it puts us in a spot where we've done something in reliance on the plan, Dr. Fai is in reliance on the plan saying this lot should be buildable even though he didn't get his fill permit and that's his problem, but we're going to be at this juncture every time DNR decides to do something contrary to what the plan is. Whether the Plan Commission and the Board approve this or deny it, we've got to get the plan corrected and modified. If what the DNR is telling us that all bets are all that they'll decide what's developable irrespective of what the plan is I guess we need to know that as a community that the plan doesn't exist and there we go. Right now we're assuming it does and I think we're the only people who are hanging to it.

Jean Werbie:

I believe that, though, in defense of the DNR things have changed. In 1991 when the Administrative Rules change for the DNR, the laws were changed and water quality certification came into effect and all bets were off in this area of the Plan. Everything that we had done and agreed to is different. When the Village asked the DNR and the Corps of Engineers in 1996 would you consider renewing that permit that was issued to the Town of Pleasant Prairie, they said everything is different now. Things have changed since 1991. It won't be the same and great restrictions will be placed. So we knew that and we attempted to make that application, but the number of restrictions and the difficulties involved with it made it just about impossible for Pleasant Prairie to get that permit renewed. That's why they said you can look at this but it will

be on a case by case basis, by individuals and that's really how you should proceed and that's how we've been proceeding. That it wasn't a Village decision at that point.

Judy Juliana:

You just said that the assessments have now been back to Conservancy?

Jean Werbie:

Yes, but I'll have to check with the assessor's office exactly how long ago that was.

Judy Juliana:

Alright. If we deny this application and keep it as it is, as the R-6 Urban, then the assessment is going to back up to the R-6 or it's going to stay at the Conservancy?

Jean Werbie:

No, it will stay as Conservancy. The information we provided to the assessor's office, or Dr. Fai did, was the wetland delineation information. And typically that's what they use. Actual use of a property determines its value. If that information is available then they would reduce the assessments.

Judy Juliana:

So we have six owners up there on the slide right now that have not applied for the fill, right? It's expired. They can't do anything and it all has to go back to Conservancy? That's what I'm understanding. So each one of those is going to be a case by case. The other five are going to come up to the Plan Commission then?

Jean Werbie:

All of those folks have been to the Plan Commission and to the Board and you have already rezoned their property based on wetland stakings that were done. Some of them, like at least the very last one, you remember Mr. Zukowski, he actually has quite a bit of wetland in the back of his property, so in fact is building a spec home towards the front. But these are the ones in this Unit 6 that you have already taken that action. They have been assessed for sewer and water. They've paid those assessments, some of which are watching to see what you do this evening to find out if they can do anything about this. But the action before you this evening is whether or not to rezone lots that have wetlands delineated on them to a wetland zoning classification.

Thomas Terwall:

AND AT THIS POINT I'M GOING TO CALL THE QUESTION. BETWEEN THE VILLAGE BOARD AND THE PLAN COMMISSION WE'VE SPENT MORE TIME ON DECIDING THAN IT WOULD HAVE TAKEN TO FILL WITH A TEASPOON. THE MOTION BY JOHN BRAIG AND A SECOND BY MIKE SERPE IS TO CONCUR WITH THE RECOMMENDATION OF STAFF AND TO SEND A FAVORABLE

RECOMMENDATION TO THE VILLAGE BOARD TO REZONE THIS LOT TO CONSERVANCY. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? No.

Donald Hackbarth:

No.

Thomas Terwall:

MOTION BY JOHN BRAIG AND A SECOND BY LARRY ZARLETTI. ALL SHOW OF HANDS. ALL IN FAVOR RAISE YOUR RIGHT HAND.

Thomas Terwall:

Opposed? So Ordered.

7. NEW BUSINESS

Thomas Terwall:

To take Items A and B together?

John Braig:

So moved.

Larry Zarletti:

Second.

Thomas Terwall:

All in favor signify by saying aye.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

A. Consider Plan Commission Resolution #06-25 to amend a portion of the Prairie Ridge Neighborhood Plan generally located at the northeast corner of CTH H and Bain Station Road.

B. PUBLIC HEARING AND CONSIDERATION OF A CONCEPTUAL PLAN for the request of Mark Eberle P.E. of Nielsen, Madsen & Barber, S.C. agent for The Settlement of Bain Station LLC and The Landing at Bain Station LLC, owners of the properties generally located at the northeast corner of CTH H (88th Avenue), and Bain Station Road for a Conceptual Plan for the proposed mixed residential development including 44 single family lots to be known as The Settlement at Bain Station Crossing; 108 condominium units (4-8 unit buildings, 10-4 unit buildings and 6-6 unit buildings) to be known as The Landing at Bain Station Crossing Condominiums; and 95 senior condominium units (1-25 unit building and 2-35 unit buildings) to be known as The Summit at Bain Station Crossing Senior Condominiums.

Jean Werbie:

Mr. Chairman and members of the Plan Commission and audience, we have two items on the agenda this evening. The first is Plan Commission Resolution 06-25 to amend a portion of the Prairie Ridge Neighborhood Plan generally located at the northeast corner of CTH H and Bain Station Road.

Then the second part of the meeting for this item is a public hearing and consideration of a conceptual plan approval for the request of Mark Eberle P.E. of Nielsen, Madsen & Barber, S.C. agent for The Settlement of Bain Station LLC and The Landing at Bain Station LLC, owners of the properties again for land at that same location which is the northeast corner of CTH H and Bain Station Road, and this is for a proposed mixed residential development.

The first item is the Prairie Ridge Neighborhood Plan amendment. The proposed Bain Station Crossing Development is located within the Prairie Ridge Neighborhood. On May 10, 2004, the Village approved a Neighborhood Plan for said neighborhood and it was subsequently amended on August 22, 2005.

The Prairie Ridge Neighborhood Plan indicates that these properties within the proposed Bain Station Crossing Development Site be developed with 152 multi-family units and 40 single family lots for a total of 192 dwelling units. The Conceptual Plan as submitted includes 44 new single family lots, razing 5 single family homes, 108 condominium units and 95 multi-family senior condominium units and for a total of 242 new dwelling units. This is 50 units more than was originally approved on the neighborhood plan, and it slightly exceeds the overall density of the neighborhood and projected population for the neighborhood. However the increase of senior housing units reduces the number of school age children.

Pursuant to the current Neighborhood Plan for Prairie Ridge, the projected population and density within the neighborhood based on the number of households proposed for this neighborhood when fully developed includes:

- 1,546 existing and proposed dwelling units (excluding senior housing units)
- 521 senior housing units

- 2067 total dwelling units
- 4,221 persons (1,546 proposed dwelling units x 2.73 persons per household);
- 782 seniors a Prairie Ridge Senior Campus
- 5,003 persons is the total estimate of population
- 970 school age children or 649 public school age children

Again, this neighborhood is bounded by the tracks all the over to 104th, from Highway 50 down to Bain Station to it's a mile and a half square area of the Village of Pleasant Prairie.

The average lot size per dwelling unit within the neighborhood as shown on current Neighborhood Plan is 9,736 square feet per dwelling unit

The projected population and density within the neighborhood based on the increase of 50 dwelling units within the proposed Bain Station Crossing Development includes:

- 1,501 existing and proposed dwelling units
- 616 senior housing units
- 2,117 total dwelling units
- 4,098 persons
- 924 seniors a Prairie Ridge Senior Campus
- 5,022 persons is the total estimate of population
- 943 school age children or 630 public school age children

The average lot size per dwelling unit for the neighborhood as amended is 9,506 square feet per dwelling unit.

Under the Conceptual Plan for Bain Station Crossing Development first we'll look at the total residential development. An approximate 72.4 acres of property is proposed to be developed generally located at the northeast corner of Bain Station Road and 88th Avenue and located within the Prairie Ridge Neighborhood is proposed to be developed into a mixed use residential subdivision that includes single family lots, condominiums and senior condominiums.

- The Settlement at Bain Station Crossing: 44 single family lots on approximately 31.17 acres located on the western portion of the site.
- The Landing at Bain Station Crossing: 108 condominiums, 10-4 unit buildings, 6-6 unit buildings and 4-8 unit buildings, on approximately 26.3 acres located on the eastern portion of the site.
- The Summit at Bain Station Crossing: 95 senior 55 years or older condominiums; 2-35 unit buildings and 1-25 unit building with underground parking on approximately 7.14 acres located in the north central portion of the site.

The entire development provides for a net density of 4.11 units per net acre. The net density is calculated by dividing the number of dwelling units by the net area.

Projected population and housing for this development:

- 152 proposed dwelling units

- 95 senior housing units
- 247 total dwelling units
- 415 persons
- 143 seniors at The Summit at Bain Station Crossing
- 558 persons is the total estimate of population
- 95 school age children or 64 public school age children

Under the single family development, again we'll be referring to that as the Settlement, this would be developed on 31.17 acres into 44 single-family lots and three Outlots. Two of the single family lots, Lots 4 and 5, are 4.5 acres and 3.2 acres respectively and the remainder of the lots range in size from 45,845 to 15,001 which is a third of an acre to over an acre in size. The average lot size for a single family is just under 20,000. Each of the single family lots meets the minimum requirements of the R-4 and that District only requires minimums of 15,000 square feet in area and 90 feet of road frontage. Lots 4 and 5 are proposed to be zoned C-2, Upland Resource Conservancy District wherein this district requires lots to be a minimum of five acres with 300 feet of frontage, or pursuant to a recent change in the Zoning Ordinance, that area can be reduced down and the width can be reduced down, but the intent is to maintain and preserve as much of the wooded area on the property as possible.

Five existing homes and their accessory structures within the proposed development site will be razed. I know that I've seen at least the first one or two go down already that were right on the corner. I've seen a couple buildings that have been razed already. Proper razing permits will be required to be obtained prior to the structures are razed. All structures shall be removed and all related inspections shall be completed prior to acceptance of required first year public improvements.

The second portion of the development, the condominium development, is known as the Landing. This area of development is generally located east of 85th Avenue and north of Bain Station Road. The main north/south road through this particular development that leads from Bain Station Road to the north where the Hidden Oak Apartment Project is 85th Avenue. So it kind of helps divide the various developments on the site.

There are a variety of building types and styles proposed within the development. There are ten 4-unit buildings, six 6-unit buildings and four 8-unit buildings. The details have been presented there below in the staff comments. It talks about two bedroom units and three bedroom units, one to three car attached garages and units ranging in size from 1,490 square feet to 1,860 square feet for the 4-unit buildings. The 6-unit buildings will have two bedrooms and three bedrooms, two car attached garages and units that range from 1,490 to 1,865 square feet. Then the 8-unit buildings will be two bedrooms, two car attached garages and they'll range in size from 1,375 square feet to 2,140 square feet.

There are six color schemes, including Millstone, Charleston, Nob Hill, Santa Fe, Portsmouth and Aspen-Blue proposed for this development. On the boards across the auditorium from me are the various models that they have put together for this project. All the buildings will use the same roofing material and trim color, cultured stone and garage doors. As part of the PUD, an illustration will be provided that indicates which buildings will be which colors within the development.

The third portion of the development is the senior development. It's the senior condominium project known as the Summit. It will be developed on 7.14 acres of land generally located west of 85th Avenue and south of 83rd Street and is proposed to be developed into 95 senior condominiums. The buildings will be three stories with underground parking. Two of the buildings will have 35 condominium units and 1 building will have 25 condominium units. The condominium units will range in size from approximately 700 to 1,200 square feet. In addition, the following amenities are proposed in common areas within these buildings: a community room, exercise room, salon and computer room and each building will have two elevators. Aspen-blue color scheme will be used for these three buildings and the buildings will be constructed of brick and cement board siding. The senior buildings are on the easel, the board to the left.

Under open space within the development, approximately 8.95 acres or 14 percent of the development site are proposed to remain as open space within the Development including wetlands, floodplain and other open space. This does not include the open space and retention facilities within the condominium areas and the tree preservation areas within the single family and senior condominiums which provide additional open space within the development.

Under wetlands and floodplain, a total of 4.47 acres within the development have been field delineated as wetlands. Wetland areas 1 and 2 were field delineated by Alice Thompson & Associates on April 13, 2005 and approved by the Wisconsin DNR on May 10, 2005. Wetland area 3 was field delineated by Wetland & Waterway, LLC on April 7, 2006 and approved by the Wisconsin DNR on April 7, 2006. Copies of the approval letters need to be submitted to the Village. As you know, wetland stakings are valid for five years. If the development does not move forward during that time period they will need to have those areas redelineated. The southeast portion of wetland 1 is also located within the 100-year floodplain. Both the wetlands and the floodplain areas are proposed to be preserved as a part of the development. Typically wetlands are not recommended to be located within new platted lots; however due to the size and the conservancy protection areas, the wetlands area in a C-2 District, those two lots, will be allowed to remain on Lots 4 and 5 as long as they're protected.

Under woodlands, a tree survey was prepared and a number of trees are proposed to be preserved within the development site. Approximately 8 acres are located within woodland preservation easements including trees within Outlots 1, 2 and 3. The trees along Bain Station Road in the rear of Lots 24 through 33 and Outlot 3 within the Settlement are proposed to remain. Tree preservation easements are also located on the rear of Lots 6, 8-17, and 20-23. A majority of the trees located within the Summit are proposed to be preserved including the trees located on the rear of lots 34-44 and they would be located in tree preservation easements. In addition approximately 7.7 acres of the property are zoned C-2, Upland Resource Conservancy District, and that area would be preserved within the portions of two single family lots.

I'd like to mention that I did have some Plan Commissioners that did go out to the sites with me and walk the treed areas and the entire site to identify the largest areas of woodlands to be preserved and did work with the staff and the developer to work through the site so that the greatest areas could be preserved and protected and how the development could get laid out.

Under public and private improvements, the developer is proposing to dedicate and construct 85th Avenue, again that's the main north/south road, south of the Hidden Oaks Apartment Complex to Bain Station Road. They'll also be constructing 83rd and 84th Streets west of 85th

Avenue. They'll be constructing 87th Avenue between 83rd and 84th Streets and 84th Place west of 87th Avenue. So, again, all of the public improvements through the public roadway systems will be constructed by the developer as well as the private road systems. The private road systems within the condominium development will have public sanitary sewer, water and storm sewer systems but the roadways will be private built to Village's public standards.

The long-range Village transportation plan indicates that Bain Station Road and 88th Avenue are proposed to be widened when traffic counts/new developments warrant such improvements. The right-of-way of Bain Station Road shall be 80 feet and the right-of-way of H shall be a minimum of 100 feet, unless additional right-of-way is required by Kenosha County. Additional right-of-way shall be dedicated and acceleration/deceleration lanes shall be required at the intersection of 85th Avenue and Bain Station Road. In addition, pursuant to the Village Park and Open Space Plan adopted in March of '06, identified that a future on-street bike trail is proposed on Bain Station Road next to the development, and this trail on Bain Station road will need to be constructed at the time that the roadway is widened.

The developer will be responsible for the paying a transportation improvement fee for their fair share of widening Bain Station Road and 88th Avenue to an urban profile with an on-street bike trail on Bain Station Road. Detailed cost estimates will be provided to the developer at the time that Preliminary Engineering Plans have been finalized. The cost shall be paid to the Village as a condition of Certified Survey Map and Final Plat approval.

The entire development shall be serviced by municipal sanitary sewer, water and storm sewer. The Village will consider foregoing the installation of sewer along 88th Avenue provided that the sewer is designed and extended to 88th Avenue to service the adjacent area. Further detailed study on this matter is warranted. But since we're at the conceptual plan stage we will need to continue to work through some of those details.

The Village will consider foregoing the installation of sewer along Bain Station Road provided that the sewer is provided to service the existing home located at 8603 Bain Station Road. A right-of-recovery for this sewer could be afforded the developer if, in fact, that's what the Village Board requires them to do. Again, some further study is warranted on that matter as well.

Areas have been identified for storm water management purposes. The developer's engineer will be required to evaluate the development site, based on actual field conditions and shall present a storm water management facility plan which meets the Village requirements. A lot of the preliminary work for the storm water management efforts have been completed and their engineer is with us this evening to answer any questions that the Plan Commission or audience might have.

With respect to right of recovery, a 10-year right-of-recovery could be afforded to the Developer for any of the following public improvements that he is required to install based on a direct benefit by an adjacent landowner, if, after holding a special assessment hearing, the project is approved by the Village Board. Some of these costs could include water main improvements installed within Bain Station Road to service land in the south side of Bain Station road; sanitary sewer improvements being installed to service 8603 Bain Station Road; and sanitary sewer improvements being installed to service the service area on the west side of 88th Avenue.

Water connection is not mandatory to any property owners adjacent to the development that do connect, but if they do connect to those services they would be required to pay those special

assessments. Sanitary sewer if provided to those adjacent lands would be a requirement for connection.

A Special Assessment public hearing for the off-site municipal water/sewer improvements will need to be scheduled, and this is a matter that would need to go to the Village Board prior to consideration of a final plat or a certified survey map.

Under site access, acceleration/deceleration lanes shall be required at the intersection of 85th Avenue and Bain Station Road and there will be no direct access to 85th Avenue for any of the condominium units or single family units. An entrance on 85th Avenue to the senior condominium units in buildings 1 and 2 will align with 83rd Place, a private road servicing the condominium development. A third access is provided to service all senior buildings from 83rd Street. There will be no direct access to Bain Station Road and 88th Avenue for any of the new development. The only exception is the driveway to service Lot 12, provided approval from Kenosha County is obtained as that's a county trunk highway.. The existing gravel drive and culvert directly east of 85th Avenue from Bain Station Road and all existing driveway access points to 88th Avenue will need to be removed when the homes are razed and the areas will need to be restored.

With respect to off street parking requirements, adequate off street parking shall be provided as specified in Article VIII of the Village Zoning Ordinance. Parking spaces directly behind a garage and on-street parking shall not be included in the required parking spaces.

For the proposed condominiums, the Village zoning ordinance requires two spaces per two bedroom unit with 75 percent of the required spaces located within an enclosed garage plus one space for every 8 units; and 2.5 spaces for each dwelling unit with 75percent of the required spaces located within an enclosed garage plus one space for every 8 units.

There are 64-2 bedroom units and 44-3 bedroom units in the proposed Condominium Development which requires 238 parking spaces, 179 of which will be enclosed. There are 14 guest parking spaces for a total of 252 parking spaces. The Development includes 228 enclosed spaces and 26 guest parking spaces for a total of 254 parking spaces. No parking shall be allowed within the private roadways on a permanent basis. The total parking provided exceeds the minimum required by 2 spaces; however there are 10 fewer enclosed parking spaces provided. This may be an item that the Plan Commission and the Board would like to address as part of the planned unit development.

For senior condominiums, the Village zoning ordinance requires 1 space per two bedrooms. There are 74 two-bedroom units and 21 one-bedroom units or 168 bedrooms within the Summit development. This requires 85 parking spaces. The development includes 156 enclosed spaces and 33 non-enclosed for a total of 189 spaces.

Under the zoning map amendments for the project:

- The single family portion of the development is proposed to be zoned R-4, Urban Single Family Residential District, with the exception of Lots 4 and 5 which would be placed into the C-1 for the wetland areas and C-2 for the Upland Resource Conservancy District. Outlots 1, 2 and 3 are proposed to be zoned PR-1, Park and Recreational District.

- Lot 45, the senior condominium development, that's proposed to be zoned R-1 (PUD), Multi-family Residential District with a Planned Unit Development Overlay District.
- Lot 46, the condominium portion is proposed to be zoned R-10 (PUD), Multi-family Residential District with a Planned Unit Development Overlay District.

The condominium developments are proposed to be developed as PUD's since it's the intent of the developer that the property would be developed with more than one structure, and the developer through the Village is looking for some flexibility with some dimensional requirements as long as they're a defined benefit to the community. In general, the PUD will allow for more than one building per property, provided that the multi-unit buildings are condominiums with at least 80 percent owner occupied at all times, a percentage of the exterior materials are natural stone or brick materials and building types provided a common theme without being monotonous, the location of garage doors are largely located as side entry, allows for some private streets within the development with public utilities, individual entrances into the units and full basement. Community amenities shall be provided for the senior condominiums, adequate transportation shall be made available and other items to be further discussed as we move further through the process.

The zoning of the condominium projects can be done in a two steps and this has been discussed with the developer. The first, the field delineated wetlands would be placed into the C-1 District; the delineated floodplain would remain in the FPO, Floodplain Overlay District; nonwetland areas that are multi family would be placed into the R-9 UHO, and the balance of the multifamily would be placed in the R-11 UHO. At the time that the Village Plan Commission and Board considers the Final Condominium Plats and the specific PUD text information is available, that's when we would remove the UHO designations and place them into the PUDs.

Finally, with respect to the fiscal review, a fiscal impact analysis shall be completed by the Village staff for the proposed Bain Station project as it relates to the amount of Village tax dollars collected from the development and the level of Village services required to serve the development. The Village staff is working on completing the analysis, and the developer has agreed to enter into a cost sharing agreement to donate additional funds as contributions for the lots and units within the development that address current shortfalls and funding/fees collected for police and fire, EMS, public works and transportation needs as a result of this development.

With that, I would like to introduce to you three representatives that we have from the developer. We have Mike Dillworth who is the owner, Paul Meyer, as well as Mark Eberle the engineer for the project. I think they would like to begin by showing us a quick video of the proposed project.

Do we have sound guys or are we just watching? We're just watching. Do you want to describe anything that's happening as we're going through it? Do you need to come and take the mic or are we just watching. That's the senior project up there on the right.

(Video shown)

Those are friendly mountable curbs. There are 44 single family lots proposed to be developed. This is the senior condominium up on the right. Now we're back at 85th Avenue. Now we're into

the condominium area on the east side of the development. I'd like to continue the public hearing on this matter.

Thomas Terwall:

Does the developer wish to say anything before I open it up?

—:

Are there any questions on the film?

Thomas Terwall:

We will have. I just wanted to know if you wanted to make any further presentation before I open it up to questions. Thank you. This is a matter for public hearing. Is there anybody wishing to speak on this item? Anybody wishing to speak? Anybody wishing to speak? Hearing none, I'm going to open it up to comments and questions from Commissioners and staff. Jean, as far as we know, does the video, although it's computer generated, reflect the scale, the amount of green space and the space between buildings and lots and so on?

Jean Werbie:

I'm going to defer to the developer on that.

Mark Eberle:

Mark Eberle, Nielsen, Madsen & Barber, 1339 Washington Avenue, Racine. The video was put together several months ago and the layouts for the buildings and the parking lot roadway configurations were taken from our drawings and entered into the video so they are pretty accurate. There is a couple portions of the video, the senior housing complex, that we've worked with the fire department and got the access rearranged, so what you saw in the video was not current. And, also, we did have a third cul-de-sac up against 88th Avenue that showed up in the video that is no longer current. The number of homes, the number of buildings in the condo areas and the parking lot areas are fairly accurate.

Thomas Terwall:

And the amount of space between buildings is depicted?

Mark Eberle:

Yes.

Mike Serpe:

Mark, while you're there, considering the size of the development and considering the seniors and whatever, was there any consideration to sidewalks?

Mark Eberle:

Yes. In the senior housing complex itself we have a number of sidewalks that tie the buildings together, also whatever ramps we need to get up to the doors. There is a significant grade that works across this site so we do have a number of sidewalks and ramps. We also have a sidewalk that's going to come down to 85th Avenue for a potential bus stop in the future.

Mike Serpe:

So there is sidewalk areas that people can walk for some distance?

Mark Eberle:

The sidewalks we have proposed are only in the senior housing complex at this point.

Donald Hackbarth:

After walking this property there's a lot of work that's been done on this project and I really like the way you laid out the senior complex compared to what it was, preserving trees, rather than across the road. I think that was an initial--were you trying to fit in a building across the road?

Mark Eberle:

It did work out a lot better to keep it as one tight unit in the center.

Donald Hackbarth:

Which is good. Bain Station Road and 88th Avenue that's a pretty dangerous intersection. Is there going to be something done in conjunction with this project?

Mike Pollocoff:

Not that we have--we're acquiring the additional right of way and money towards making improvements towards Bain Station. We're going through a process to try and not signalize but make people aware of Bain Station and the traffic on H, but it is one of our more dangerous intersections.

Donald Hackbarth:

Is a light in the future there or not?

Mike Pollocoff:

Traffic signal?

Donald Hackbarth:

Yes.

Mike Pollocoff:

I would bet anything that one is warranted, but right now Kenosha County isn't interested.

Donald Hackbarth:

The other comment I have then is looking at the grid, I don't understand sometimes the 84th Place and this 84th Street and whatever. When you look at 82nd going down to Bain Station, what would the grid actually say 84th Place and 84th Street should be, the cul-de-sacs there and the cul-de-sacs to the east as well?

Jean Werbie:

I'm not sure what your question is but I think that 84th Place should be 83rd–

Donald Hackbarth:

Just looking at the lay of the land, from 82nd Street down to Bain Station Road I'd almost say that 84th Place should be about 85th or something. Then 84th Place or Street on the bottom should be like about 86th Street or something.

Jean Werbie:

The building inspection department laid out a grid for us on all these street names, but we could have then re-look at it to make sure that all the streets are properly numbered.

Donald Hackbarth:

. . . distance between it . . .

Jean Werbie:

We can have inspection re-look at it.

(Inaudible)

John Braig:

Jean, when we were out there when we went through several variations or possibilities on cul-de-sacs, especially as it deals with the northwest corner of the property, we came across some significant violations on an adjoining property which the developer had been interested in purchasing. Can you update us on the status of that?

Jean Werbie:

What I can say at this point is that photographs have been taken and a letter has been drafted to send out to the adjacent landowners to discuss some of the potential junk and debris that they have on their property. There's actually three or four properties that have some issues or concerns that the developer is purchasing, so all of those will be cleaned up. But the one property that you're referring to just south of Hidden Oaks residential subdivision I will be hearing probably from those residents in the near future since that letter will be going out within the week.

John Braig:

It's more than just junk and debris. There are two residences on this single parcel or two separate structures. Are they grandfathered or is that a zoning violation?

Jean Werbie:

No, they're grandfathered in.

John Braig:

If they're grandfathered how did they come to be? There were never permits issued for the second residential building was there?

Jean Werbie:

I would have to check the year of the permit issuance, but it wasn't unusual in Pleasant prairie over the years where a second seasonal or farm laborers' home was allowed on an agricultural piece of property. That was not unusual and we do have that throughout the Village when they're older homes. Many of them try to correct that in later years by subdividing the parcels, but we still have a number of them scattered through the Village that are two homes on one parcel.

Thomas Terwall:

Can you tell me what the vision is where or how most of the residents of this development are going to get there? Are they going to come down Bain Station Road? Are they going to come in off of 82nd Street?

Jean Werbie:

I did not do the traffic study or traffic evaluation on it, but they could easily come in off of 82nd or Bain Station Road, one of those two directions then come north or south into the development.

Thomas Terwall:

Because to go east on Bain Station Road from 85th Street is a crap shoot. You've got two sets of tracks there. It's not uncommon at all for trains to sit across those tracks for a half hour to an hour at a time and you can tell me that that's illegal, but let me tell you that it's happening on a regular basis.

John Braig:

It's routine and I've mentioned it.

Thomas Terwall:

I avoid that road because of that now.

John Braig:

I'd like to suggest that the staff check with the municipality of Blue Island, Illinois. I saw a travelogue or documentary on suburban Chicago, and in it they just happened to mention that the railroads through Blue Island always was a problem, but they've changed it to a source of revenue and they didn't go into detail. But I think it might warrant our staff to check with Blue Island and see what's going on.

Donald Hackbarth:

Motion to adopt Resolution 06-25.

Mike Serpe:

I'll second.

Thomas Terwall:

MOTION BY DON HACKBARTH AND A SECOND BY MIKE SERPE THEN TO ADOPT RESOLUTION 06-25. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? Then we need a motion for consideration of the conceptual plan.

Donald Hackbarth:

I'll move approval of the conceptual plan as well.

Mike Serpe:

Second.

Thomas Terwall:

MOTION BY DON HACKBARTH AND A SECOND BY MIKE SERPE TO SEND A FAVORABLE RECOMMENDATION TO THE VILLAGE BOARD TO APPROVE THE CONCEPTUAL PLAN SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

C. PUBLIC HEARING AND CONSIDERATION OF A CONDITIONAL USE PERMIT INCLUDING SITE AND OPERATION PLANS for the request of Fr. Donald Thimm, agent for the Congregation of St. Anne for interior remodeling of approximately 2,220 square feet for administrative offices and meeting rooms at St. Anne Catholic Church located at 9091 Prairie Ridge Blvd.

Jean Werbie:

Mr. Chairman, members of the Plan Commission and audience, this is a public hearing in consideration of a conditional use permit including site and operational plans for the request of Father Thimm, agent for the Congregation of St. Anne for interior remodeling of approximately 2,220 square feet for administrative offices and meeting rooms at St. Anne Catholic Church located at 9091 Prairie Ridge Boulevard.

As a part of the public hearing record, the Village staff has compiled a listing of findings, exhibits and conclusions regarding the petitioner's request as presented and described below:

Findings of Fact:

1. Fr. Donald Thimm, agent for the Congregation of St. Anne is requesting approval of a Conditional Use Permit, including Site and Operational Plans for the interior remodeling of approximately 2,220 square feet of existing space for administrative offices and meeting rooms at the St. Anne Catholic Church located at 9091 Prairie Ridge Blvd. The application is attached as Exhibit 1. The current administrative offices located at 8550 88th Avenue will be relocated to this location and the property at 8550 88th Avenue will be sold.
2. Pursuant to the application office hours are normally 8:30 a.m. to 9:00 p.m. Mondays through Thursday, 8:30 a.m. to 5:00 p.m. on Fridays and 8:30 a.m. to 4:30 p.m. on Saturdays. There are currently 7 staff people working in the office, 3 full-time and 4 part-time. It is anticipated that the two meeting rooms will accommodate 20-30 people.
3. This property is zoned I-1, Institutional District wherein a Church and related activities are allowed with approval of a Conditional Use Permit.
4. On May 21, 2006, the Village approved a Conditional Use Permit including Site and Operational Plans for the construction of the Church pursuant to Grant Document #02-04. Pursuant to this approval, the administrative offices in the western portion of the building were not included in this approval.
5. The current on-site parking lot has 322 parking spaces and no additional parking spaces are proposed at this time.

6. Pursuant to the Site and Operational Plans approved by the Village Plan Commission on May 21, 2002, the Plan Commission approved a reduction in the parking requirements for the full build-out of the church development. Pursuant to the Village Zoning Ordinance, Phase 1, 36,000 square foot building, which is completed, requires 307 parking spaces and the future phase, an addition of approximately 20,000 square feet, will require an additional 152 parking spaces, for a grand total parking requirement of 459 spaces upon full build-out. The Plan Commission determined that because the main worship space will not be used concurrently with any of the other areas designated for assembly that the 322 spaces provided is sufficient for the church at full build-out. The Plan Commission allowed for the reduction provided that in the future, the Village may require the additional 150 parking spaces to be constructed if it is determined that the 322 spaces provided is insufficient to handle the on-site parking demands.
7. On November 30, 2006, building permits were issued by the Village for the work to commence, however occupancy of the area can not be obtained until a Conditional Use Permit is obtained and all other conditions of the building permit are satisfied.
8. The property owner and all of the abutting and adjacent property owners within 300 feet were notified via U.S. Mail on November 20, 2006, 2006. Notices were published in the *Kenosha News* on November 27 and December 4, 2006.
9. The petitioner received a copy of this Village staff report via e-mail on December 8, 2006.
10. According to Article XVIII of the Village Zoning Ordinance, the Plan Commission shall not approve a Conditional Use Permit unless they find after viewing the findings of fact, the application and related materials and information presented at the public hearing this evening that the project as planned, will not violate the intent and purpose of all Village Ordinances and meets the minimum standards for granting of a Conditional Use Permit. In addition, according to Article IX of the Village Zoning Ordinance, the Plan Commission shall not approve any site and operational plan application without finding in the decision that the application, coupled with satisfaction of any conditions of approval, will comply with all applicable Village ordinance requirements and will comply with all other requirements of applicable federal, state or local statutes, regulations, ordinances or other laws relating to land use, buildings, development control, land division, environmental protection, sewer service, water service, stormwater management, streets and highways and fire protection.

With that, I'd like to continue the public hearing.

Thomas Terwall:

This is a matter for public hearing. Is there anybody wishing to speak on this matter? Anybody wishing to speak? Anybody wishing to speak? Hearing none, I'll open it up to comments from Commissioners and staff.

Donald Hackbarth:

This is 2,200 square feet of remodeling. Does this have to come before Plan Commission or is this something that staff could just handle themselves?

Jean Werbie:

The way the conditional use permit was originally granted, was that it stated it was the approval for everything but any build out of the existing church facility. The staff is recommending in our comments or conditions that whenever there is a minor modification or some type of minor build out within an existing conditional use application, we are going to be requesting with this application and others before you that they be handled as staff approvals as opposed to having to bring this before the Plan Commission. So we are working towards that end, and if we need to modify the conditional use provision so that the petitioners don't have to come back before you for such a minor modification we will be doing that.

Donald Hackbarth:

The other comment I have is does this have to be retrofitted for sprinkler system or something like that?

Jean Werbie:

All that was taken into account in its original build out. The fire department has evaluated this particular project, and based on where they configure the walls and such they are looking to see if any sprinkler heads need to be adjusted or fixed. But the fire department will deal with that matter.

John Braig:

Is this a remodeling, is that the term you used, or is it actually a build out of a shell structure.

Jean Werbie:

It's really the build out of an interior space. Right now it's open space. The walls are all there but it's to build out that space.

Jim Bandura:

Just a quick comment. I'm going to abstain from this as I am a parish member just to let the record show.

Thomas Terwall:

If there's nothing further I'll entertain a motion.

John Braig:

So moved.

Larry Zarletti:

Second.

Thomas Terwall:

IT'S BEEN MOVED BY JOHN BRAIG AND SECONDED BY LARRY ZARLETTI TO APPROVE THE CONDITIONAL USE PERMIT INCLUDING THE SITE AND OPERATION PLAN SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? And you abstain.

Jean Werbie:

Mr. Chairman, I would ask that Items D, E and F all be taken for your consideration at one time.
John Braig:

So moved.

Mike Serpe:

Second.

Thomas Terwall:

MOTION BY JOHN BRAIG AND A SECOND BY MIKE SERPE. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed?

D. PUBLIC HEARING AND CONSIDERATION OF PLAN COMMISSION RESOLUTION #06-26 for the request of Louise Holz to amend the Village Comprehensive Land Use Plan to change the land use designation of the property located at 8550 88th Avenue from Government and Institutional land use designation to the Upper Medium Residential land use designation.

E. Consider Plan Commission Resolution #06-27 for the request of Louise Holz to amend a portion of the Prairie Ridge Neighborhood Plan for the property located at 8550 88th Avenue.

F. PUBLIC HEARING AND CONSIDERATION OF A ZONING MAP AMENDMENT for the request of Louise Holz to rezone the property located at 8550 88th Avenue from the I-1, Institutional District to the R-4, Urban Single Family Residential District to convert the church office to a single family home.

Jean Werbie:

Mr. Chairman, members of the Plan Commission and the audience, letter D is the public hearing and consideration of a Plan Commission Resolution 06-26. This is the request of Louise Holz to amend the Village Comprehensive Land Use Plan to change the land use designation of the property located at 8550 88th Avenue from Government and Institutional land use designation to the Upper Medium Residential land use designation.

Item E is the consideration of the Plan Commission Resolution 06-27, and this is also for the request of Louise Holz to amend a portion of the Prairie Ridge Neighborhood Plan for that same property located at 8550 88th Avenue.

Item F is the public hearing and consideration of a zoning map amendment for the request of Louise Holz to rezone the property located at 8550 88th Avenue from the I-1, Institutional District, to the R-4, Urban Single Family Residential District. This is to convert existing church offices back to a single family home.

The petitioner is proposing to purchase the property at 8550 88th Avenue that is currently occupied by St. Anne Catholic Church as their parish center and convert the offices back into a single family home.

In 1998, the Parish moved this single family ranch style house from 75th Street to this property and converted the house to serve as the Church offices, a small chapel and meeting rooms for the Church. The Village approved Conditional Use Grant Document #98-12 for said use of this building. The house was remodeled at that time to meet the building code, including being made handicapped accessible with smoke detectors and fire extinguishers. A small parking lot was installed for off-street parking with driveway access from CTH H. It was planned that the Church offices could be converted back to a single family house or other similar use when the new church was built and the offices were relocated to the church. In 2003, St. Anne began construction on the new church in the Prairie Ridge Development at 9091 Prairie Ridge Blvd. and took occupancy in October of 2004. The Church now intends to relocate the parish offices to St. Anne Church campus located at 9091 Prairie Ridge Blvd, thus this building will no longer be needed for the Church offices.

Under the Comprehensive Land use Plan Amendment, pursuant to the Comprehensive Plan this property is located within the Prairie Ridge Neighborhood. Pursuant to the Village Comprehensive Land Use Plan the area within the Prairie Ridge Neighborhood has the following designations:

- Upper Medium Residential throughout the neighborhood that's identified as orange on the slide;
- Commercial areas adjacent to STH 50 and CTH C and these are identified in the red on the slide;
- Government and Institutional areas located on the slide throughout the neighborhood including, St. Catherine's Hospital, Fire Station #2, Grand Prairie, Hospice Alliance, Pleasant Prairie Elementary School, Extended Love Child Care Center, St. Anne Catholic Church and Pleasant Prairie United Methodist Church;
- a Neighborhood Park associated with Pleasant Prairie Elementary School is shown; and
- Isolated Natural Areas scattered through out the neighborhood.

The petitioner is requesting to amend the Comprehensive Land Use Plan to change the land use designation of the property located at 8550 88th Avenue from blue color or the Government and Institutional land use designation to the orange color or the Upper Medium Residential land use designation.

The second item is the neighborhood plan amendment. The detailed Neighborhood Plan as approved by the Village Plan Commission on May 10, 2004 by Resolution #04-07, a portion of the Neighborhood Plan was amended on August 22, 2005 by the Plan Commission Resolution #05-11 for an area at 94th Avenue between CTH H and Bain Station Road for the proposed Ashbury Creek Subdivision; and an amendment to the area located on the northeast corner of Bain Station Road and CTH H which was on tonight's agenda; and Resolution #06-25 for the proposed Bain Station Crossing mixed residential development.

The petitioner is also requesting to amend this neighborhood plan, the Alternative A of Resolution #04-07 for the Prairie Ridge Neighborhood Plan which indicates this property is an Institutional Use. Her request is to change this land use from institutional to a single family residential land use lot.

Under the zoning map amendment, the property was zoned from M-2, Heavy Manufacturing District to the I-1, Institutional District to allow the building and lot to be used for the St. Anne Church offices and related functions on January 26, 1998. At this time is proposed to be rezoned into the R-4, Urban Single Family Residential District and the offices are proposed to be converted back to a single family home. Prior to the offices being converted to a single family house, proper building and zoning permits shall be issued for any remodeling proposed. In addition, prior to occupancy of the building as a single family home the Village shall issue a certificate of occupancy permit.

This is a public hearing for all three matters that are on the agenda. The petitioner as well as petitioner's agent are in the audience if you have any questions for them.

Thomas Terwall:

This is a matter for public hearing. Is there anybody wishing to speak on this matter?

Kathy Jalensky:

I'm Kathy Jalensky, owner of Jalensky Real Estate, 9716 84th Place. We respectfully request that you approve Items D, E and F for Louise Holz. As Jean has stated it has always been the intent of St. Anne Parish to move that operation from their offices once the church building has taken place. We've been very fortunate that Louise Holz as also a parishioner of St. Anne has an interest in purchasing this property. She is going to be living in the property. About 75 percent of that will be her residence and she's looking at 25 percent for a small business that she's going to operate. So we respectfully request that you approve these items.

Thomas Terwall:

Thank you. Is there anybody else wishing to speak? Anybody else? Hearing none, I'll open it up to comments.

Donald Hackbarth:

Are you going to modify the ramp area? Is that going to be filled in or it's going to remain?

Louise Holz:

I'm Louise Holz. I live at 6812 34th Avenue in Kenosha. I'm looking forward to coming back to Pleasant Prairie to live.

Thomas Terwall:

We're looking forward to having you.

Louise Holz:

Thank you. The ramp is going to stay as is.

John Braig:

I'm concerned with the mention of establishing a business in this location. I wouldn't want anything that we do tonight to indicate that we approve of that measure at this point.

Jean Werbie:

In your packets is a draft of the home occupation application that they have filed with the Village. Specifically, she is requesting to have a custom framing business as part of a home occupation in the basement of that house. That is an allowable use insofar as the standards that are set forth and the home occupation provisions are met by the petitioner and property owner, and she has agreed to those conditions, no different than anyone else who would be applying for a home occupation. The parking lot will stay as it is.

Jim Bandura:

Again, let the record reflect that I will be abstaining from the three items.

John Braig:

With that, I'd move approval of Plan Commission Resolution 06-26.

Mike Serpe:

Second.

Thomas Terwall:

MOTION BY JOHN BRAIG AND A SECOND BY MIKE SERPE TO ADOPT RESOLUTION 06-26. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered. Motion for 06-27?

Larry Zarletti:

Mr. Chairman, I'd so move.

Donald Hackbarth:

Second.

Thomas Terwall:

MOTION BY LARRY ZARLETTI AND A SECOND BY DON HACKBARTH TO ADOPT RESOLUTION 06-27. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered. And a motion to send a favorable recommendation to the Village Board for a zoning map amendment is in order.

Mike Serpe:

So moved.

Judy Juliana:

Second.

Thomas Terwall:

MOTION BY MIKE SERPE AND SECOND BY JUDY JULIANA TO SEND A FAVORABLE RECOMMENDATION TO THE VILLAGE BOARD FOR CONSIDERATION OF THE ZONING MAP AMENDMENT SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

G. PUBLIC HEARING AND CONSIDERATION OF A CONDITIONAL USE PERMIT INCLUDING SITE AND OPERATION PLANS on behalf of Ronald Zechel, agent for US Cellular, to construct a 100 foot high Commercial Communications Structure (monopole cellular tower) including 12 attached paneled antennae and an associated 12' x 20' equipment shelter within a leased area on Village-owned property located at the southern terminus of 45th Avenue, between the Graystones Subdivision and the City View Mobile Home Park.

Tom Shircel:

This is the request of Ronald Zechel, agent for US Cellular, to construct a 100 foot high commercial communications structure, which will be a monopole cellular tower, including 12 attached paneled antennae and an associated 12 foot by 20 foot equipment shelter within a leased area on Village owned property located at the southern terminus of 45th Avenue between the Graystones Subdivision and the City View Mobile Home park.

As a part of the hearing record, the Village staff has compiled a listing of findings, exhibits and conclusions regarding the petitioner's request as presented and described as I'll state now.

1. U.S. Cellular is proposing to install a 100 foot high cellular tower including 12 attached paneled antennae and an associated equipment shelter located within an initial 40' x 30' leased area on Village-owned property.
2. The project site is located at the southern terminus of 45th Avenue, between the Graystones Subdivision and the City View Mobile Home Park on Tax Parcel Number 91-4-122-111-0086. The tower and associated improvements would be located at the extreme northern end of the 4.74 acre Village-owned property. This property currently serves, and will continue to serve, as a Village storm water management facility.

3. Parcel Combination - The Village owns Tax Parcel Number 91-4-122-111-0086 which is that storm water retention facility and the vacant property to the immediate north Tax Parcel Number 91-4-122-111-0062. In order for the proposed monopole tower to meet the requirements of Section 420-89 B. (1) of the Village Zoning Ordinance, which requires collapsible monopole towers shall be setback half the height of the tower, the Village has commenced the process to legally combine these two parcels. Once combined, the tower will meet property line setback requirements which in this case would be 50 feet.
4. The Village Zoning Ordinance requires that communication towers shall be setback the height of the tower to all principal structures on adjacent properties and requires that communication towers be setback half the height of the tower, which I just discussed which would be 50 feet in this case to any property line. Therefore, the plans shall show the setback distances to all of the closest principal structures, including the nearest mobile home in the City View Mobile Home Park. According to applicant-submitted plans, the proposed monopole cellular tower would be located approximately:
 - 100 feet from the nearest mobile home unit in City View MHP, and to further specify on that, the applicant needs to provide further details on the plan to ensure this setback is in compliance because the 100 foot setback is very close to that near City View Mobile Home Park unit.
 - 670 feet south of 75th Street (STH 50).
 - 245 feet from the rear of the nearest Graystones lot which is at 7641 46th Avenue, Munroe residence.
 - 325 feet from the existing single-family dwelling located to the northwest at 4519 76th Street, Hamdia residence.
 - 93 feet from the western property line of the City View Mobile Home Park.
 - 52 feet from the eastern edge of the unimproved 45th Avenue right-of-way.
 - 27 feet from the north property line of Tax Parcel Number 91-4-122-111-0086.
 - The equipment shelter is setback approximately 35 feet from the eastern edge of the unimproved 45th Avenue right-of-way.
5. According to the US Cellular application, this proposed tower would serve to upgrade and fill-in some problem or low-service areas in this area that are voids or have low service in its system currently. The reason for this tower location is to cover the STH 50 area along a stretch in a service valley that is centered on 45th Avenue. Extensive business and residential cell use has strained the capacity of this entire area forcing limited or no service areas in this region. This tower location would relieve the limited service considerably.
6. U.S. Cellular is not proposing a stealth design for the tower at this location due to stealth towers severely limit the ability to add additional carriers and Village/County equipment. The applicant states that a stealth tower design could be considered, but U.S. Cellular

would caution against a stealth tower due to the heavy cell use within the STH 50 corridor and, therefore, the inability for co-location on a standard monopole tower.

7. Access to the U.S. Cellular facility would be via the 45th Avenue right-of-way along with an access easement. In order to access the site within the 45th Avenue right-of-way and easement there will be a 10 foot wide asphalt paved drive extending from the 45th Avenue pavement terminus to the U.S. Cellular facility.
8. The 12 U.S. Cellular antennas are proposed to be located at the 100 foot elevation, atop the tower. The tower will be designed and engineered to accommodate/co-locate an additional two carriers, obviously at lower tower elevations with additional ground space available to the east for future lessees. The potential of future co-location of antenna facilities will decrease the possibilities of the proliferation of communication towers within the Village.
9. The tower shall also accommodate the existing Kenosha County Civil Defense Siren that is currently located on a wooden pole located just northeast of this proposed site. Additionally, the existing wooden pole to which the Civil Defense Siren was attached shall be completely removed and the area shall be restored.
10. The 100 foot tower and antennas shall be painted the same color white as the existing tower located on the Village Hall property.
11. The property is zoned I-1, Institutional District and commercial communication structure and associated equipment requires a Conditional Use Permit. The portion of the property where the tower and related appurtenances are to be located is manicured lawn. The site area, adjacent to the storm water basin, slopes to the south. Therefore there is a need to construct a retaining wall along the south side of the lease area.

With the previously noted parcel combination, the proposed 100 foot monopole tower with antennas complies with the requirements of Section 420-89 B. of the Village Zoning Ordinance entitled Commercial Communication Structures.

12. The approximate 14 foot high 240 square foot equipment shelter, to be located immediately west of the tower base, is proposed to have exterior brick walls with a pitched, shingled, gable roof similar to other telecommunications equipment shelters in the Village. The final design of the equipment shelter shall be approved by the Village staff.
13. For security purposes, the leased area will be enclosed with a six foot high chain-link fence with three runs of barbed-wire atop the fence. The fencing area may be decreased to accommodate landscaping on the outside area of the fence, but within the lease area.
14. The landscaping around the perimeter of the facility, in the form of 27 dark green arborvitae, planted at five feet in height, are proposed to be planted along all sides of the facility.
15. U.S. Cellular will need to enter into lease/maintenance agreements and easement agreements with the Village. Prior to issuance of permits for the construction/installation of the cellular tower and associated improvements, the proper easement documents and

lease/maintenance agreements shall be executed by the petitioner and the Village. Recorded copies of the easements shall be provided to the Village.

16. The Village IT Department shall be allowed future access to the tower for the possible installation of a wireless access point for Village business use. This access point would operate on a 4.9 MHZ frequency for Public Safety and a 2.8 MHZ frequency for Public Works.
17. U.S. Cellular shall provide a port on the monopole and shall allow the Village the proper access to the facility for the potential future installation of a receive only radio antenna for the Village Police Department. The port shall be installed at a height as determined appropriate by the Village Police Chief.
18. According to the Kenosha Regional Airport Overlay Zoning Districts Map, the proposed Tower site is located just outside of this district in the extreme most boundary. Therefore, City of Kenosha Airport Site Plan Review is not required.
19. For additional information you can refer in your packet to the Site and Operational Plan Application.
20. The Communication Act of 1934 is the Federal regulation, which governs the telecommunications industry; Section 322 of said Act, as amended by subsection (6) (iv) of the Act of 1996, provides guidelines to state and local governments regarding the citing of antenna facilities. One such guideline governs what information may be considered during the zoning approval process. That is, as long as the antenna facility complies with emissions standards established by the FCC in Section 704(b), it is considered that there are no health or safety risks posed by the equipment. Specifically, local Zoning Authorities, that being Plan Commissions, may not directly or indirectly consider health and safety issues during the zoning process when considering a telecommunications facility, which falls under this Section.
21. According to the Village Attorney, specifically Section 704 of the 1996 Telecommunications Act prohibits the state/local units of government from denying a wireless communication company's request for local zoning approval based upon environmental or health effects and concerns if the wireless communication company complies with the regulations on RF emissions set by the FCC.
22. The petitioner and all of the abutting and adjacent property owners within 300 feet were notified via U.S. Mail on November 27, 2006. Notices were published in the *Kenosha News* on November 27, 2006 and December 4, 2006.
23. The Village emailed/faxed the petitioner a copy of this staff report on or about December 8, 2006.
24. According to the Article XVIII of the Village General Zoning and Shoreland/Floodplain Zoning Ordinance, which is the Village Zoning Ordinance, the Plan Commission shall not approve a Conditional Use Permit unless they find after viewing the findings of fact, the application and related materials that the project as planned, will not violate the intent

and purpose of all Village Ordinance and meets the minimum standards for granting of a Conditional Use Permit.

With that, I know Mr. Zechel is in the audience to answer any questions.

Thomas Terwall:

This is a matter for public hearing. Is there anybody wishing to speak?

Ronald Zechel:

Good evening, just for the record Ronald Zechel, 3545 North 124th Street, Brookfield, Wisconsin for U.S. Cellular. We've been working on this area. We have a very bad area in the 50 corridor going to 45th Street. It's kind of like a valley area. Of course, Highway 50 is heavily traveled and there's a lot of residential to the east or to the south and the surround area. So we're looking to get some kind of installation into this area. We did ask the Village if they had any property around there that they were interested in because of the lack of any co-location structures in the area. We looked at several and this site seemed to look very good because of the existing warning siren and so forth.

The area has a Village retention pond, however where we're proposing is the very, very high side. It's up about 40 feet on the top toward the far north side of 45th Street. So it seems to be out of the retention area. Of course we're verifying everything. And we submitted a plan basically based on a similar application to the Village Hall, something that would look very similar to this. It would have a couple areas for co-location leased to a second and third carrier. We could have gone and proposed to go more tight mounted on the antenna for a more stealth design, but obviously that really takes away the effect and people don't really notice it that much as far as the antenna. So you're going to end up putting a Village siren on there and a couple other possible police antenna whips on there. So you may have up to six different pieces of equipment on this tower, possibly more.

The way we designed the site is so that additional carriers can come off to the east and they would put each additional building or cabinet array to the east. We looked at a retaining wall situation on the south area where you see that jog in there and then surrounded it with arborvitae, so we tried to design a plan that was comparable or would work for now and then for the future expand out to the east. We meet all our setbacks. We've verified by surveys that we've got the setbacks to the nearest structures of 100 feet. This should upgrade the service area in that area along with providing the Village with some revenue base for the future.

Thomas Terwall:

How many feet is the tower north of the point at which the detention slope begins.

Ronald Zechel:

It's right on the edge. We're pushing right to the edge. You can see the grade on the left side there. On the left picture you can see those lines which I think are two foot contours. They drop down substantially right down there. And right to the far left that's an area where you have right

at the bottom a storm sewer in there or whatever. So it drops off about ten feet into the gap. So we're right up on the top.

Mike Pollocoff:

It's on the high end of the basin, not on the free board side of the basin.

John Braig:

At what height is aircraft warning lights required.

Ronald Zechel:

In this area, and I've put one at Dairyland, and this area doesn't have a clear FAA on this so we don't have any airport issues here. Matter of fact it's outside the airport district limitations, because they've got an overlay map and we're outside the district.

Larry Zarletti:

That's good because it would blink in my bedroom window.

Ronald Zechel:

That's one of the first things I look at is the airport situation.

Thomas Terwall:

I'm a U.S. Cellular customer and I have a problem now where when I pull out of this building and try to call home it tells me I'm in a roaming area so I'm picking up an Illinois tower. Is this going to put an end to that problem or not?

Ronald Zechel:

I think you're going to start to see with the one additional tower down at ML that we're putting up right now and this one—what happens is when you have so much capacity what happens in the area is mostly you don't have the dropped calls in the area but it will pull from the other towers. It will put a strain on say the four or five surrounding towers around the area. Each tower that we add in here should add more to that.

John Braig:

Another question. Towers have to accommodate the existing County civilian defense siren. Who is going to be responsible for relocating the siren from its existing wood pole to this structure?

Ronald Zechel:

We will. We'll remove the existing pole.

Larry Zarletti:

It is in my backyard. I don't have a problem with it. I don't think it will be any kind of an eyesore or anything else. It's the best location you could have chosen for it. I do have a question about the civil defense siren. Do you have other towers up that have sirens on them?

Ronald Zechel:

This one right here. We had this one and we had to do a side mount on this installation where you actually bring it outside and it's down on the tower that mounts.

Larry Zarletti:

And there was no problem when that monster is going off and people are trying to use their phones?

John Braig:

Is the power for the siren single or three phase?

Ronald Zechel:

I think it's single phase.

Mike Pollocoff:

Actually, they were able to with this one come up with a better—the County and whoever they use to lay these things out tell them they'll give U.S. Cellular the elevation, but they were able to improve service with this one by bringing it up. Then the other one that was done a few years back is on Sheridan Road by the Village Restaurant.

Larry Zarletti:

If there's nothing further I'd move approval.

Donald Hackbarth:

I've got a comment. The tower is 100 feet high. How far away is the nearest mobile home trailer?

Tom Shircel:

A little over 100 feet.

Ronald Zechel:

105. We kind of pushed it as far as we could away. Otherwise we would have looked at possibly having an expandable tower here if somebody wanted to come on and go higher. But we're right at the limit.

Donald Hackbarth:

When we're saying here the distance to the adjacent property line can be half the distance of the tower?

Tom Shircel:

The setback is half the distance correct of the tower.

Ronald Zechel:

Monopoles are designed in the worse case scenario . . . improved design. We can make them drop at 25 percent and we do so in the City of Milwaukee. We can be 25 feet off of or 25 percent of the pole height. Matter of fact, you see towers all over. We put them on buildings and everywhere. They're actually better structurally designed than half the buildings out there right now. So as far as the structural capability we've stated that we'll make this one 50 percent, but your ordinance says half the distance.

Donald Hackbarth:

The reason I bring that up is years ago Nextel was looking at the church to put a tower up. I don't know if my numbers are right, but for the church you had to be a tower and a half or 150 percent or something like that, and for municipal it could be half the tower height. So if that was every going to happen on a 100 foot tower we had to be 150 feet away from the property line and I never understood that.

Tom Shircel:

I know it depends on the type of communication tower. The monopole, and correct me if I'm wrong, they're designed to collapse on themselves.

Donald Hackbarth:

That's what this was. Nextel was putting up a monopole.

Ronald Zechel:

Didn't you instate an ordinance in 2003?

Tom Shircel:

We did have a zoning ordinance text amendment around that time. We rewrote all the requirements for towers.

Ronald Zechel:

Very few ordinance around—there are some that require a distance and a half and that really limits a lot of locations where you can put towers and it actually restricts the counties and the cities more.

Mike Serpe:

Ron, a couple things. Are we adding a tower because we want to improve or we're covering a dead spot, or are we adding towers because it's just so much more use of cell phones?

Ronald Zechel:

There's more capacity. I can give you a very good examples. We work with universities all the time. I went over to Whitewater and put a pole on top six years ago and then we came back two years later and they have, by fiber optics, they had two additional. There's so much capacity and so much free air time that people are using phones longer and more people are coming on.

Mike Serpe:

I guess what I'm getting to is we're going to see a lot more towers going up.

Ronald Zechel:

You're seeing a lot of consolidation in the industry, too. You're down to five or six main players now so that's why you're starting to see all the gaps filled in, the money is coming out. You're going to see the service quality come up quite a bit. But then again we're moving from a land line base to wireless side.

Mike Serpe:

I'm glad you're going to manufacture this thing to hold two more carriers and that's good as well. Just one other technical question because I'm really ignorant when it comes to this. How far away does my cell phone have to be before a tower picks up the signal?

Ronald Zechel:

It depends what tower. If I'm down at Summerfest grounds I've got three or four applications down at Summerfest grounds.

Mike Serpe:

I mean is it a mile or two miles?

Ronald Zechel:

No, in rural areas it could be three or four miles to. Closer to it will be just a stronger tower, whatever tower is close to it, so it's a variable answer.

Mike Serpe:

You want to panic America just take away the cell phones.

John Braig:

I'll second Larry's motion.

Thomas Terwall:

BASED ON A MOTION BY LARRY ZARLETTI AND A SECOND FROM JOHN BRAIG TO APPROVE THE SITE AND OPERATIONAL PLAN SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered. We need a motion to take H and I together.

John Braig:

So moved.

Jim Bandura:

Second.

Thomas Terwall:

MOTION BY JOHN BRAIG AND A SECOND BY JIM BANDURA TO CONSIDER H AND I TOGETHER. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

H. PUBLIC HEARING AND CONSIDERATION OF A ZONING TEXT AMENDMENT to amend Article V related to zoning fees.

I. PUBLIC HEARING AND CONSIDERATION OF AN AMENDMENT TO THE LAND DIVISION AND DEVELOPMENT CONTROL ORDINANCE to create Section 395-87 E related to other application and development fees.

Jean Werbie:

The first request is to amend Section 420-28A (1), (2), (3) and (4) related to zoning permit fees which shall be amended as follows. As you know, the staff annually reviews the fees that we charge, and we track time down to the minute as to how much time we spend on various projects and approvals through the developer tracking system that we have. And then we can track exactly what it costs us to review projects, and we also track how much time it takes to review permits for zoning purposes as well. Based on that evaluation we're recommending that new single family building zoning permits go from \$75 to \$100 per building; new two family buildings go from \$105 to \$125 per building; and new multiple family buildings go from \$130 to \$150 per building. New principal commercial, industrial, governmental or institutional structures or buildings we're recommending that that increase go from \$105 to \$125 per building or structure.

The next section is 420-29E (1) related to the application fee for wetland stakings. We're recommending that it be amended as follows: That application fee go from \$280 to \$400 per parcel. Again, this is based on the time and resources and inspection time that we spend on those particular wetland stakings.

Then the only other modification is the effective date for these ordinances should say January 1, 2007.

I'm sorry, I skipped 420-27 E (3) related to other application fees shall be created to read as follows: Extension of site and operational plan approval and for Plan Commission approvals. Right now I think that it does read that it's only staff or by staff only, and there are certain circumstances that very detailed site and operational plans come before the Plan Commission similar to the situation where we had the target project come back and we had to do some significant review on that. So we wanted to make sure that there's an application fee associated with any projects that come to the Plan Commission for extension.

Then the second ordinance that you have before you are fee adjustments to the Land Division and Development Control Ordinance. The first is Article 395-87E, under E., Other Fees, an application fee of \$200 shall be paid when any of the following request for a time extension to satisfy the requirements of the approval is requested. This is for conceptual plans, preliminary plats, preliminary condominium plats, final plats, final condominium plat or assessor's plat. We're finding that there is a significant amount of time and effort that goes into the staff's re-review and bringing projects up to date with respect to ordinance changes and getting notices out and conversing with the developer and other things, so we wanted to add an extension fee to the Village's fees collected. This is new.

We did some checking with some of our adjacent neighbors and we find that while we didn't charge for any type of fee extensions, one of our closest neighboring communities charges \$500 for every extension. So we felt this was not out of the ordinary with respect to the extension and the time that's involved to review their information.

The second item is an application fee of \$500 shall be paid when requests for time extensions to satisfy certified survey maps or lot line adjustments has been required. Again, the only other modification I have is at the bottom. The effective date would be January 1, 2007. The staff recommends approval of both of these zoning text amendment and Land Division and Development Control Ordinance text amendments you have before.

Thomas Terwall:

This is a matter for public hearing. Is there anybody wishing to speak in this matter? Anybody wishing to speak? Anybody wishing to speak? Hearing none, I'll open it up to comments and questions from Commissioners and staff.

John Braig:

This by no means is meant as any criticism as staff, but in a good part of my working years whenever we looked at a situation that was taking us more time or costing us more money, it was a situation where we would pass these charges or costs onto the petitioner or the customer or whatever term you want to use, something we always wrestled with is even though it's costing us more and we're passing on these costs, is it being done as inexpensively and cheaply as we possibly can and are we really efficient in doing it? I'm not suggesting in any way that the staff is not, but it's something we should keep in mind in making the request for an increase in fees or something like that. In some way I would like the assurance that there's been that effort or check made.

Mike Serpe:

John, I spend a lot of time here, and I assure you there is very little idle time in this department, very, very little idle time. As a matter of fact there's more overtime not charged to the Village for work being done than what we really see. I have nothing against development. I also believe that existing taxpayers should not fund development and fees like this certainly defray those costs. I would move approval of the zoning text amendment consideration.

Jim Bandura:

Second.

Thomas Terwall:

Before we take the question, Jean, you're assuring us that our rates are comparable or in line with surrounding communities, is that correct?

Jean Werbie:

That's correct.

Thomas Terwall:

Salaries are out of line but fees are in line, is that what you're getting at? That's just an editorial comment that I got out of the *Kenosha News*.

Jim Bandura:

Tom, just a comment on that. In my occupation I have to start submitting for permits for what I do, and I definitely believe that the Village is reasonable beyond a doubt as far as what they charge for any of the fees. I've gone through a number of municipalities that are just outrageous. In my opinion I think the Village has done a great job on maintaining fees and being reasonable.

Thomas Terwall:

I just want to make sure we're in line with surrounding communities. If I find out that the suburbs of Green Bay are lower than we are I'm going to be upset about this. Why we're not concerned about what they're doing in Mt. Pleasant and Caledonia is beyond me, but as long as we're in line with the suburbs up there that we're being compared to. So a motion and a second to send a favorable recommendation to the Village Board to approve the zoning text amendment to increase the fees. All in favor signify by saying aye.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

Mike Serpe:

Move approval of the Land Division and Development Control Ordinance.

Jim Bandura:

Second.

Thomas Terwall:

IT'S BEEN MOVED MIKE SERPE AND SECONDED BY JIM BANDURA TO SEND A FAVORABLE RECOMMENDATION TO THE VILLAGE BOARD TO APPROVE THE AMENDMENT TO THE LAND DIVISION AND DEVELOPMENT CONTROL ORDINANCE. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered. I have to go back and state that my comment was facetious.

J. Consider the request of Micklosh Szabo, property owner, for a Certified Survey Map to subdivide the property located at 11218 10th Avenue to create one (1) additional single-family lot.

Jean Werbie:

Mr. Chairman and members of the Plan Commission, the petitioner is requesting to subdivide the property located at 11218 10th Avenue. It's identified as Tax Parcel Number 93-4-123-304-1191 to create one additional single family lot.

On February 26, 1991, the then-property owners combined Lots 23 and 24, Block 4, Carol Beach Estates Subdivision Unit No. 1 into one property. With this CSM application, the current property owner is seeking Village approval to re-divide Tax Parcel Number 93-4-123-304-1191 back into the original platted lot configuration of Lot 23, proposed CSM Lot I, and Lot 24, proposed CSM Lot II, as originally platted.

The property is zoned R-6, Urban Single-Family Residential District. Pursuant to the Village Zoning Ordinance, the R-6 District requires lots to have a minimum of lot area of 6,000 square feet and a minimum lot width of 60 feet on an improved public road. The minimum street, rear and side setbacks for a house in the R-6 District are 30 feet, 25 feet and 8 feet respectively. Pursuant to the Village Land Division and Development Control Ordinance, all lots are to have a minimum lot depth of 125 feet.

The subject property is not located within the limits of the 100-year floodplain, is not located within a shoreland jurisdiction and does not contain any wetlands.

Lot I is proposed to be 9,900 square feet in area, is proposed to have 75 feet of frontage on 10th Avenue and have 132 feet of lot depth. Lot I is improved with an 824 square foot single-family ranch dwelling, which was constructed in 1952 and with a 600 square foot detached garage and associated driveway, which was granted zoning and building permits in 1968. With the proposed division of the property, the existing single-family dwelling will remain a conforming structure. There are some existing nonconformities, however.

- Pursuant to the CSM, the following nonconformities are present on the proposed Lot I:
 1. The existing single-family dwelling will remain nonconforming in that the R-6 District requires a minimum floor area of a dwelling to be 1,200 square feet, whereby the existing dwelling has only 824 square feet.
- Existing Illegal Structures - Pursuant to the CSM, the following illegal structures are present on the proposed Lot I:
 1. Detached Garage - According to Village records, a Kenosha County Zoning Permit was issued on October 23, 1968 and a Town of Pleasant Prairie Building Permit was approved on October 28, 1968, to Robert Steven Zwickey-the then property owner, for the existing 576 square foot detached garage. As a part of the 1968 detached garage zoning permit application, the applicant hand-drew on a Plat of Survey the proposed location of the garage. According to that sketch and according to setback requirements in effect at the time of the garage construction,

the garage was to have a required side setback of a minimum 5 feet to the north property line. However, according to the current CSM, the detached garage is setback only 4.5 feet from the side or the north property line.

On November 14, 2006 Tom Shircel, Assistant Planner, had a telephone conversation with Jeff Rampart of JKR Surveying, Inc. Mr. Rampart explained that he measured the setback of this detached garage from the garage frame to the nearest side property line. According to Village Ordinance, setbacks are measured from the foundations of structures to nearest property lines. While Mr. Rampart and the Village understand that surveying techniques and accuracy have vastly improved over that last 35 years, a six inch setback discrepancy is highly unlikely and is likely not a surveying error. Moreover, re-surveying to measure the setback from the foundation instead of from the frame would at best increase the setback by 1-2 inches.

Prior to the CSM being recorded at the Kenosha County Register of Deeds Office, this illegally constructed detached garage will have to be brought into setback conformance. The detached garage will either have to be relocated on the property to meet all setback requirements, will need to be razed. I guess there's a third option and that would be the petitioner applying for a variance. Prior to the relocation or removal of the detached garage, the required permits shall be applied for and obtained from the Village.

2. According to Village records, the approximate 80 square foot detached shed, located in the northwest corner is also an illegal structure. The shed is illegal on two counts:

- a. According to Village records, a required permit was never applied for, thus never issued for the shed.
- b. The shed does not meet the required setback of three feet to side and rear property lines for this sized detached accessory structure. The existing detached shed is setback only 2.5 feet from the rear or west property line.

Prior to the CSM being recorded at the Kenosha County Register of Deeds Office, this illegally constructed detached shed will have to be brought into setback conformance. The detached shed will either have to be relocated on the property to meet all setback requirements, will need to be razed, or again possibly a variance could be sought for this request. Prior to the relocation or removal of the detached shed, the required permits shall be applied for and obtained from the Village.

A letter dated November 22, 2006 was sent to Mr. Szabo explaining the illegal status of both the detached garage and detached shed. The Village cannot allow the recording or final approval of that CSM where the illegal structures exist on the property.

Lot II is proposed to be 9,900 square feet in area, is proposed to have 75 feet of frontage on 10th Avenue and have 132 feet of lot depth. Lot II is vacant and unimproved.

Both proposed lots meet and exceed the minimum requirements of the R-6 District regulations.

Both municipal water and municipal sanitary sewer are available in 10th Avenue. However, there are no existing sanitary sewer or water laterals stubbed to the property line from the mains. When a new single-family dwelling is constructed on Lot II, it will be required to connect to both municipal water and sewer. A licensed utility contractor or a licensed Master Plumber will need to install the laterals at the owner's expense.

According to Village records, there are no outstanding taxes or assessments on this property. There would be a \$1,600 per residential unit sewer connection fee, which is subject to change depending on when the permit is pulled, for any new connections to the sanitary sewer system. Any new construction would require a \$1,490 per unit impact fee.

Pursuant to Mr. Rich Hooper at WE Energies, no additional easements are required on this property.

The Village Engineering and Street Departments have reviewed the proposed CSM and concluded that there are no storm water drainage issues at this time. The land division conforms with the Land Division and Development Control Ordinance, Village Zoning Ordinance and all other relevant ordinances and requirements of the Village subject to the discussions that I have just explained to you with respect to those illegal garages and sheds as well as the comments as outlined in the staff memorandum.

The only other thing I'd like to add is that the property owner will likely need more than 30 days to satisfy these requirements due to the time of the year so we should look at granting a longer time period than 30 days which is in Item 8.

Mike Serpe:

Is there a possibility that the property owner could buy six inches of land from Lot 22?

Jean Werbie:

The north lot is only 60 feet in lot width so it would not be a possibility.

Mike Serpe:

All the rest of them are 75 feet there.

Jean Werbie:

Tom, do you want to check that out real quick?

Thomas Terwall:

If he would apply for a variance that would go to the Board of Appeals?

Jean Werbie:

Yes, it would go to the Zoning Board of Appeals. It's a self-imposed variance that would be needed, but it obviously was not this property owner, it was someone way long previous to this property owner.

(Inaudible)

Jean Werbie:

So I don't know that they would approve it.

John Braig:

I think we all feel that we can't speak for the Board of Appeals but six inches and the parties involved really didn't create the violation. I've got to believe that they'd look at it favorably.

Jean Werbie:

I know that with current requests for such a request when foundations don't meet the setbacks they typically request those foundations to be cut or moved or adjusted. So I don't know if there's something that can be done to cut, move or adjust this particular garage in order for it to meet compliance. The only this that's different is this happened so long ago and it was an existing property that was purchased. The problem is that the Land Division Ordinance does not allow us to issue any type of land division approval when the existing parcels are in violation of the zoning. So we're kind of caught that something would have to be done. I don't know if the staff has had any conversations with the property owner as to what they have any interest in doing or what condition the garage is in. The good news is that the lot to the north is 75 feet in width. We wouldn't even require—the whole side lot line change by six inches, but that portion that's adjacent to the garage. I think that we should give the property owner some additional time to see if he could get something worked, especially if he's looking to work through this.

John Braig:

Let me get a clarification on that time. You're saying that currently he would have to comply within 30 days?

Jean Werbie:

Correct, that's the requirement. But I just don't know that with the holidays and with the time of the year that he's going to be able to.

John Braig:

And what does it take to change that 30 days? Can we do it here tonight?

Jean Werbie:

Yes, your recommendation and your recommendation would go to the Village Board.

Larry Zarletti:

I'd like to move approval with an amendment to number 8 to extend the 30 days to 60 days.

John Braig:

90, it's winter.

Mike Pollocoff:

180. You've got four months of winter so he's not going to really be able to do any meaningful construction.

Larry Zarletti:

180 just like I was thinking.

John Braig:

Second.

Thomas Terwall:

MOVED BY LARRY ZARLETTI AND SECONDED BY JOHN BRAIG TO SEND A FAVORABLE RECOMMENDATION TO THE VILLAGE BOARD TO APPROVE THE CERTIFIED SURVEY MAP SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM WITH THE MODIFICATION OF THE PERIOD FROM 30 DAYS TO 180 DAYS. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

K. Consider the request of Eric Lockwood, agent for Focus Products Group LLC for Site and Operational Plan approval to occupy 100,000 square feet of the building located at 9501 80th Avenue for the storage and distribution of steel and wire tubing products including steel and aluminum shower rods, bakeware and wire shelving.

Jean Werbie:

Mr. Chairman, members of the Plan Commission and the audience, this is the request of Eric Lockwood, agent for Focus Products Group LLC, for Site and Operational Plan approval to occupy 100,000 square feet of the building located at 9501 80th Avenue for the storage and distribution of steel and wire tubing products including steel and aluminum shower rods, bakeware and wire shelving.

Focus Products Group LLC is requesting to occupy 100,000 square feet of the approximately 149,630 square foot building located at 9501 80th Avenue.

Pursuant to Section 420-54 A. (1) (a) of the Village Zoning Ordinance, the Village Plan Commission shall have the authority to review and decide any application for an initial or amended Site and Operational Plan when the new tenant or company occupies 50 percent of the building.

Pursuant to the application, Focus Products Group. LLC is a growth-oriented holding company whose operations serve hospitality, food service and consumer markets. They specialize in the design and marketing of functionally superior housewares, bakeware, personal care, storage systems and kitchen electrics. Focus is headquartered in Vernon Hills, Illinois. The Vernon Hills location is one of three warehouses that Focus already utilizes; Pleasant Prairie will be its fourth.

Focus will be distributing steel and wire tubing products out of the new facility. There will be no manufacturing done in this facility. It is not a business that utilizes hazardous materials. Steel and aluminum shower rods, bakeware and wire shelving will be the primary products shipped and received from this warehouse. The facility will be strictly a distribution operation that will run from approximately 6:00 am to 6:00 pm. They anticipate approximately 10 employees in the warehouse facility. They will be installing a basic steel pallet rack system in the facility. There are no plans for any mezzanine , conveyer at this time.

According to Article IX of the Village Zoning Ordinance, the Plan Commission shall not approve any site and operational plan application without finding in the decision that the application, coupled with satisfaction of any conditions of approval, will comply with all applicable Village ordinance requirements and will comply with all other requirements of applicable federal, state or local statutes, regulations and ordinances.

The Village staff recommends approval of the site and operational plans subject to the comments and conditions as outlined.

John Braig:

So moved.

Judy Juliana:

Second.

Thomas Terwall:

Moved by John and second by Judy to approve site and operational plan subject to the staff comments.

Jean Werbie:

Do we have a representative from Focus? I think it would be great to hear from him since he's been here for two and a half hours. I think it would be awesome if he can come up and say something for us.

Eric Lockwood:

Eric Lockwood, 120 Lakeview Park, Vernon Hills, Illinois representing Focus Products. I'm Chief Operating Officer for the company. We're currently in 75,000 square feet over in the Jelly Belly building right now. We're going to relocate to 100,000 square feet at the property address. We're ready to go with the pallet racking installation sitting and waiting for delivery subject to your approval tonight. We've got steel wire tubing product ready to move over. We're ready to do distribution. We've got five people hired in the Jelly Belly and we're looking to hire five more for the building. Our headquarters is down in Vernon Hills and we're looking for growth up in this building. We'll be taking about 40 percent capacity of the building and looking to do additional acquisitions to go in the building and grow more in the community.

Thomas Terwall:

THANK YOU. COMMENTS OR QUESTIONS? IT'S BEEN MOVED BY JOHN BRAIG AND SECONDED JUDY JULIANA TO APPROVE THE SITE AND OPERATIONAL PLANS SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

L. Consider Plan Commission Resolution #06-28 to initiate a zoning text amendment to the M-1, Limited Manufacturing District.

Jean Werbie:

Mr. Chairman and members of the Plan Commission, the Plan Commission through Resolution 06-28 is initiating a zoning text amendment, and the Plan Commission may initiate any amendments to the zoning ordinance which may include the rezoning of property, change in zoning district boundaries or changes in the text of the ordinance.

The Village staff is proposing to have the Plan Commission initiate a zoning text amendment to evaluate if electronic components and accessories, including electrical lighting and wiring equipment and electrical industrial apparatus, and the warehouse and distribution of plastic related materials could be allowed as an M-1, Limited Manufacturing principal use.

The staff would like to do the evaluation and bring it back before the Plan Commission. The Plan Commission by the initiation of this resolution is not making any final determinations regarding the merits of the proposed request but is only initiating the process by which a determination can be made through a public hearing and evaluation. The staff is recommending approval of the resolution as presented.

Judy Juliana:

Move to approve.

Mike Serpe:

Second.

Thomas Terwall:

MOTION BY JUDY JULIANA AND A SECOND BY MIKE SERPE TO ADOPT RESOLUTION 06-28. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

Jean Werbie:

Mr. Chairman, I would recommend, based on conversations that I had last week, that Items M and N be withdrawn from the agenda at this time and brought back at a later date.

John Braig:

So moved.

Mike Serpe:

Second.

Thomas Terwall:

MOVED BY JOHN BRAIG AND SECONDED BY MIKE SERPE TO WITHDRAW ITEMS M AND N FROM THE AGENDA. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Thomas Terwall:

Opposed? So ordered.

Mike Serpe:

I have a question before we adjourn. When is the next Plan Commission meeting?

Jean Werbie:

January 8th so it will be the first Monday meeting in January will be the Plan Commission meeting. Second Monday, first meeting of the year because January 1st is the holiday.

John Braig:

I don't know if it would be something within the control of this group, but there's a certain furniture store in this community that has had more going out of business sales than I have had birthdays. Do we have any kind of ordinance governing going out of business sales, and if we do maybe we should review it and see if it has any efficacy at all.

Jean Werbie:

We do have an ordinance and my understanding from some of the other tenants is that this is their last going out of business sale but I will check into it.

8. ADJOURN.

Larry Zarletti:

Move adjournment.

Donald Hackbarth:

Second.

Thomas Terwall:

All in favor signify by saying aye.

Voices:

Aye.

Meeting Adjourned at 7:45 p.m.

