City of Mequon

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Department of Community Development
Taped and Televised

PLANNING COMMISSION
Regular Meeting
Wednesday, January 11, 2017
7:00 PM
Christine Nuernberg Hall

Minutes

1) Call to Order, Roll Call

Present:
Chairman Dan Abendroth
Alderman Robert Strzelczyk
Commissioner James Schaefer
Commissioner John Mason
Commissioner Rebecca Schaefer
Commissioner Stephanie Hawley

a) Approval of Minutes

RESULT:	**APPROVED BY ROLL CALL VOTE [UNANIMOUS]**
MOVER:	Robert Strzelczyk, Alderman
SECONDER:	James Schaefer, Commissioner
AYES:	Abendroth, Strzelczyk, Mason, Schaefer, Schaefer, Hawley
ABSENT:	Choren, Parrish, Stoker, Lemke
EXCUSED:	Adams

b) PLANNING COMMISSION MEETING MINUTES

2) Public Hearing

1) **Michael Best & Friedrich LLP, for Outpost Natural Foods Cooperative. The applicant requested the item be removed from the agenda. It will be added to the next available meeting.**

3) Regular Business

a) **WE Energies. The applicant is seeking specimen tree removal approval to remove 16 trees for the above listed properties for the installation of a high pressure gas main.**

Asst. Dir. Zader stated that last year WE Energies was before the Planning Commission as part of the initial phase of the underground gas main. This time there are a total of 16 trees that will impacted by the installation of the underground main. The City Forester did visit the sites and he does recommend removal of the trees. There is one change to his report regarding the total inches of trees to be replaced. The total should be 228.75. Staff supports the recommendation to remove the trees.

The applicant, Pat Adams; representative from WE Energies, stated that this is a follow up to completion from when they were before the Planning Commission in May 2016. These 16 trees are the remaining trees that will need to be removed in Mequon.

Commissioner Becky Schaefer clarified whether the trees are located on residential properties and not only on Wayside Nursery and she asked for assurance that the residents have been notified.

Asst. Dir. Zader explained that there are a few trees that straddle the property line of a 10 acre parcel next to Wayside. The trees are located in the easement of that property. The resident is aware that this is taking place.

Mayor Abendroth stated that Wayside is supportive of the removal of these trees. He also stated that in rerouting this gas line to this location, WE Energies worked cooperatively with the city to choose this route specifically because it saved many more valuable trees in the Mequon Nature Preserve.

Action:
Ald. Strzelczyk made a motion to approve subject to the conditions in the staff report.
Commissioner Mason seconded the motion.
Voice vote was called; vote passed (6-0)

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Robert Strzelczyk, Alderman
SECONDER:	John Mason, Commissioner
AYES:	Abendroth, Strzelczyk, Mason, Schaefer, Schaefer, Hawley
ABSENT:	Choren, Parrish, Stoker, Lemke
EXCUSED:	Adams

b) **CelluSite, LLC. The applicant is seeking building and site plan approval for a cell tower located at 6131 W. Chapel Hill Road.**

Action:
Commissioner Becky Schaefer made a motion to remove this item from the table.
Ald. Strzelczyk seconded the motion.
Voice vote was called; vote passed (6-0)

Asst. Dir. Zader stated that this request for a cell tower at 6131 W. Chapel Hill was tabled from last month's meeting due to the request from the Planning Commissioners to hear an opinion from the City Attorney. Asst. Dir. Zader stated that the City Attorney is present in the audience tonight and available for any questions the Commissioners may have.

On a related manner, on November 16, 2016 the City passed an ordinance to change the offset for non-residential structures. The Common Council adopted an ordinance on 01.12.17 that states either the setback or the 1:1 height ratio; whichever one is greater, would be applicable to non-residential structures that abut residential properties. In this case, with the cell tower being 195 feet in height, it would require a 195 feet setback, which this request does not comply with.

The applicant did supply an updated plan late on Friday that shows the compound at a 25 foot setback. They do still show a PVC fence; which if there is a recommendation made tonight, the fence needs to be

replaced using a brick or masonry enclosure. The landscaping also should surround the entire perimeter of the enclosure. The east side of their plan does not show any trees.

Asst. Dir. Zader stated that based on the recommendation of the City Attorney, staff recommends denial based on the ordinance that was adopted at the Common Council meeting on 01.12.17.

Dennis and Jane Hockerman - 6024 W. Chapel Hill - opposed and do not wish to speak.

Jim Ott, State Representative from the 23rd Assembly District; which includes the Chapel Hill area, stated that he was not aware of the December Planning Commission meeting because he does not live close enough to be notified but he did hear about the issue from the constituents in his district. Once he heard how upset the neighboring residents were about the proposed cell tower, he contacted T-Mobile and spoke to two of their representatives. One was a legislative liaison for T-Mobile based in Chicago. He related to them that in terms of customer relations; that this proposed cell tower was causing a lot people in the area to be very upset about the plans to put the tower in neighbor's backyard. He heard back from T-Mobile and was told that they were having difficulties with the City of Mequon in negotiating a new contract with the Fromm Food Company for the position on the Fromm Food tower. They suggested that if they could get help in negotiating a better deal, similar to what they had, that they wouldn't be at such a financial disability. City Administrator, Will Jones, confirmed to State Rep. Ott that the City of Mequon has nothing to do with the tower; the City does not own the tower and does not take part in any negotiations.

A T-Mobile representative; who signed the affidavit presented in the December Planning Commission packet, communicated to State Rep. Ott that they would be at a $725,000 disadvantage over the next 30 years if T-Mobile could not get the same deal they had with Fromm Foods and that is why they need to build a new tower.

The applicant, Derek McGrew representative from Parallel Infrastructure and T-Mobile along with his attorney Michael Long was present. Mr. McGrew stated that the only reason that the staff recommendations were not completed is due to a misinterpretation of the recommendations. The word enclosure was interpreted to mean the equipment and that building was changed to brick. He stated that they agree to the fence enclosure being brick as well.

Ald. Strzelczyk stated that he struggles with this issue. He thanked State Rep. Ott for his diligence on this issue. In regards to the spirit of the law, he does not feel that a cell tower is appropriate in a platted neighborhood. He also feels that the setback has not been met and that a commercial use is not allowed in a residential neighborhood. He reached out to the owner of Fromm Foods and learned that he had not been contacted by the applicant. He does not feel that diligent effort for colocation was made as stated by the applicant. He feels that the numbers seem arbitrary and he does not agree that a financial hardship would he incurred over the next 30 years. He feels that there are many other options for colocation nearby: MATC, the County tower and the Fromm Food tower. Ald. Strzelczyk stated that he feels that the applicant is taking advantage of how the law reads. The neighbors were not considered in this situation. He offered the applicant to reach out to him to be put in contact with the owner of Fromm Food to have a conversation. He is not supportive of approving this request.

Mr. McGrew stated that Fromm Foods would have been contacted prior to him getting involved 1 and ½ years ago. He firmly stated that T-Mobile did contact Fromm Foods. With respect to the financial hardship, he explained that it is a simple mathematical equation comparing the two leases over 30 years including the maintenance on a water tank and including the escalator; which is different on the water tank than it would be on this tower.

He also stated that he supplied signed and stamped real estate appraisals to Asst. Dir. Zader that state that there are no detrimental effects to placing cell towers near homes in residential neighborhoods. He stated that it is proven that there are no negative financial efforts to neighboring homes.

Ald. Strzelczyk stated that he strongly disagrees with these statements.

Commissioner Becky Schaefer stated that she agrees with Ald. Strzelczyk. She stated that she feels that there is deception from the applicant given the information from State Rep. Ott. She stated that she feels the first priority would be to contact Fromm Foods and determine if that tower is still an option.

State Rep. Ott clarified that he was told on Sunday from a T-Mobile rep that the difference between the current contract with Fromm Food and the new contract for the proposed tower is $1,000/month. T-Mobile also stated that they prefer to keep their location on Fromm Food tower if a deal could be reached.

Commissioner Becky Schaefer stated that it is difficult to approve this request with the information communicated from State Rep. Ott as well as the issues raised by Ald. Strzelczyk; setback and use.

Mr. Long, attorney for the applicant, stated that there are vested rights from when the application was made and not from when it was approved by the City. He feels that the zoning standards that should apply should be the requirements that were in place back in November of 2016 when the application was made and not the new standards that were adopted last night.

Mr. Long stated that in conversations with the City Attorney it was communicated to him that the City has done its due diligence and the new standards apply to the cell tower. He suggested that a middle ground could be reached. He explained that they could provide a letter to the City that the tower is able to be designed to collapse into itself in an area smaller than the applicable setback. The setback requirement would than not apply.

Mayor Abendroth stated that applies to the setback but the ordinance specifies the side yard offset. It has nothing to do with the tower being able to collapse into itself. It has to do with the height of non-residential structures that are adjacent to residential structures.

Mr. McGrew explained that Mr. Long was referring to state code 64.04040 that states that if a letter is provided that states that the tower will collapse within a smaller radius than the setback, then the setback doesn't apply. He feels that it is not legal to change the ordinance in the middle of deciding this issue. He stated that they were in compliance of the offset at the time of the application in November 2016.

Commissioner Mason asked the applicant if they are willing to go back to Fromm Food to try to negotiate a deal with them as this is the most desirable outcome for everyone.

Mr. McGrew stated that he can relay to T-Mobile that the desire is for T-Mobile to work with Fromm Food. He is not able to make that decision.

Asst. Dir. Zader explained that they applicant would need to agree to an extension from the 90-day deadline. The 90-days are up on Friday. If they do not agree then a decision needs to be made this evening.

Mr. McGrew stated that the want a decision tonight.

Action:
Ald. Strzelczyk made a motion to deny the request based on the application not being complete or accurate, the lack of effort to collocate as stated and the fact that they do not meet current offset requirements.
Commissioner Becky Schaefer seconded the motion.

City Attorney, Brian Sajdak, stated that statue that is being referenced was not part of his review. He has not done an analysis of whether it applies or not, although at first glance it does appear to apply. He stated that it is a drastic change from the state of the law. The building permit application was normally the trigger point. There is not a building permit in this case. He cautioned the Planning Commission that there may be vested rights involved that were not part of the discussion in his memo.

Mayor Abendroth state that historically the City has operated that vested rights are something that is awarded once something is acquired. Filling out an application does not warrant vested rights.

Ald. Strzelczyk added an amendment to his motion that there is a discrepancy of the financial hardship claimed by the applicant.
Commissioner Becky Schaefer accepted the amendment.

A roll call was taken; vote passed 5-0 (No: Mason)

RESULT:	**RECOMMENDED [4 TO 1]**
MOVER:	Robert Strzelczyk, Alderman
SECONDER:	Rebecca Schaefer, Commissioner
AYES:	Abendroth, Strzelczyk, Schaefer, Hawley
NAYS:	Mason
ABSENT:	Choren, Parrish, Stoker, Schaefer, Lemke
EXCUSED:	Adams

c) **Mallary & Zimmerman for Forward Dental. The applicant is seeking exceptions to the Town Center Window Area Obstructions per section 58-301(1)(2)(c) for the property located at 6048 W. Mequon Road (Forward Dental).**

Asst. Dir. Zader stated that this was before the Planning Commission last year with a building and site plan amendment request to put up blinds in Forward Dental in the Town Center. The Planning Commission denied that request. Since then, city staff and the Common Council have worked on an ordinance pathway to allow for some guidelines for window coverings. It also provided an exception if those requirements are not being met. The applicant has the same request today to use the window blinds at limited times, but in order to mitigate the impact of those blinds, the applicant has been working with staff to come up with some design alternatives. Renderings were shown of the Forward Dental space with awnings on the west, south and north elevations. The awnings have been increased to 60 inches in depth; this is the primary difference between what is shown in the packet. They are also showing a decorative band with some lettering and some stripping. Staff is supportive of the awnings. The only issue is that there are too many instances of the name being presented. Staff would like to eliminate the middle two bays and suggested that they could add their logo other places. Staff will continue to work with the applicant on a final design, but staff does recommend approval.

The applicant, Peter Young from Forward Dental, was present and appreciates the time staff has put into finding a resolution.

Commissioner Mason thanked the staff and applicant for working together to find a solution. He commented that he is glad that Forward Dental is part of the community and he is supportive of this request.

Commissioner Jim Schaefer feels that they have reached a good compromise and he likes how it looks. He does agree that there are too many name signs.

Mr. Young agreed with that and stated that they will flush out details with staff.

Action:
Mayor Abendroth made a motion to approve subject to staff comments.
Ald. Strzelczyk seconded the motion.

Ald. Strzelczyk thanked Forward Dental for taking the time to work with himself and staff.
Voice vote was taken; vote passed 6-0.

RESULT:	**APPROVED [6 TO 0]**
MOVER:	Dan Abendroth, Chairman
SECONDER:	Robert Strzelczyk, Alderman
AYES:	Abendroth, Strzelczyk, Mason, Schaefer, Schaefer, Hawley
ABSENT:	Choren, Parrish, Stoker, Lemke
EXCUSED:	Adams

d) **Dermond Property Investments. The applicant is seeking specimen tree removal approval to remove 13 trees to allow for a 3-story, 33 unit multiple family residential development located at 11130 N. Buntrock Avenue.**

Clair Miller Krause - 8824 W. Highland Road - opposed, does not wish to speak.

Asst. Dir. Zader stated that this project has been in front of the Planning Commission several times. The ordinance was passed in 2015. At the time there were 2 specimen trees that were approved by the Planning Commission to be removed. The building location was changed a few times in efforts to save some of the trees. All the approvals have been granted and they are beginning to dig and in the process of applying for their building permit when it was discovered that some of the trees that were identified on the plan were not in the exact location they were thought to be. There were four trees previously tagged by the City Forester that are located in the building pad not shown on the approved plan. There are a total of 13 trees that the applicant wishes to have removed. The City Forester looked at the site and determined that if the building pad does not get moved, that those trees would not survive. The trees are in good shape and the City Forester does not recommend removal unless the Planning Commission feels that the building pad should stay in that location. It is unfortunate that the trees need to be removed; Staff feels that due to having been through all the procedures and processes; including a development agreement that includes some TIF incentive financing, that this is a valuable project and staff supports the request to remove the trees. Staff has a concern about the north elevation now being exposed, until the brewery site gets developed. The applicant did provide a landscaping plan but Staff does not feel that it is significant enough to make up for the lack of screening due to the removal of the trees. It is noted in the staff report to revisit the north elevation to look at material changes; possibly adding some additional brick. The

applicant has communicated that instead of changing building materials, they would prefer to spend the money on larger landscaping than what is currently proposed. Larger trees are desired there although there is limited space to plant there.

The applicant was represented by Nora Pecor from Dermond Property Investment, Joe from Graef and Jim Peterson from Catalyst Construction.

Mayor Abendroth asked the applicant if they have considered any alternatives to taking down the trees; moving the building or changing the size of the building.

Ms. Pecor answered that they have considered those options but their site is very tight and the project works financially with the proposed 33 units. If they change the size they would lose the number of units. They have spent a lot of time getting the project to work and they do not feel that any other options are viable for them. They are committed to planting new trees and they will spend the money needed to make sure the trees are mature enough and they will work with the city to ensure that the staff is supportive of what will be planted there. She stressed that they would like to move forward at this point.

There was discussion about the possibility of moving the building or adding an extra story on top. The applicant communicated that adding an extra story is quite expensive.

Mayor Abendroth stated that the tree ordinance states that request for tree removal shall be submitted prior to preliminary plat or land division approval shall be granted. This request should have been made before the approvals were granted and this violates the tree ordinance. City staff, the City Forester and the Planning Commission has the right to request alternative options from the applicant. It is understood that there is not much flexibility on this site. This can be waived and considered a hardship or unreasonable difficulty. By not increasing the building size or increasing the density; is an issue because it violates the tree preservation ordinance. He asked if there is a way to find a compromise to these issues.

Asst. Dir, Zader stated that the Planning Commission has the authority to support the hardship definition; which is subjective. The argument can be made that there is a functional utility in terms of the size of a lot and that by reducing the overall development area of a lot there is undue hardship.

He added that staff is also uncomfortable that the trees need to be removed after making such efforts to save them, but given that the project is so far along in the process it makes sense to do so for this specific project. He added that given the spirit and intent of the process, these trees were originally planted as screening and are not old growth forest with the primary intent of the specimen tree ordinance in terms of preservation.

Ald. Strzelczyk asked for confirmation that the City Forester did not recommend the removal of the trees.

City Forester, Mike Gies, stated that he went line by line of the tree preservation ordinance guidelines and he does not feel that there is a hardship presented. There were major mistakes made. If the building is allowed to remain where it is, there is no chance for the trees there to survive. There is already silt fence put through the roots of these trees that would normally not be allowed from the beginning of the process. He marked the trees in November and at that time there was no proposal to remove any of the trees. He marked them to make sure they stayed preserved during the initial removal phase. He wrote his report based on the ordinance.

Ald. Strzelczyk stated that he feels that this is a great project but he is hesitant. It is a very high density on a very small lot. He feels that a lot of the decisions made by the Planning Commission were based on a well screened area by the property line to the north. This is a TIF incentive property with a density higher

than the city would normally be comfortable; although Town Center does allow higher density. He feels that to remove the screening at this point is a struggle, he would like alternate options, but he does want the project to move forward.

Mayor Abendroth asked Mr. Gies about the applicant replacing the trees there and what could be expected.

Mr. Gies answered that there are limitations on what can be planted there due to the small space. A small variety of Evergreen could be used there. If approved, he will work with the landscaper to provide some texture there. The trees there are in very good shape. He stated that even if the building was shrunk by 10 feet that would probably still not be enough space to save the trees. Most of the trees there are in the 14 - 16 DBH range and would have lived another 20-25 years if nothing had been done to them.

Commissioner Jim Schaefer stated that he is not happy that materials on the north side of the building were previously approved because of the screening provided by the trees that were on the north elevation and now those trees are going to be removed but additional materials are not going to be added to the building. He does not want to approve taking the trees down and he feels that the applicant needs to find another solution.

Asst. Dir. Zader stated that staff is comfortable with the idea but he feels that the applicant does not want to table this approval as they are ready to dig and remove the trees prior to the next Planning Commission meeting.

Ms. Pecor stated that she is agreeable to most of the requested revised plans but they do want a footings and foundation permit granted to start work on the rest of the building. She is willing to pay the $13,400 to the tree fund. They will revisit the north elevations but they are not able to do all brick; as it is too expensive. The proposed trees will grow to 20-30 feet tall. They too want their residents to see trees and not brick.

Mayor Abendroth stated that the north elevation does not need to be all brick. The Planning Commission felt that it was too plain but the trees were there which help add to the façade. He stated that a really good landscape plan needs to be brought back before the Planning Commission for approval.

Action:
Mayor Abendroth made a motion to approve the item with the $13,400 paid to the tree fund, applicant needs to return with a landscape plan and revised north elevation.
Commissioner Mason seconded the motion.
A roll vote was called, vote passed 6-0

RESULT:	**APPROVED [6 TO 0]**
MOVER:	Dan Abendroth, Chairman
SECONDER:	John Mason, Commissioner
AYES:	Abendroth, Strzelczyk, Mason, Schaefer, Schaefer, Hawley
ABSENT:	Choren, Parrish, Lemke, Stoker
EXCUSED:	Adams
NOT PRESENT:	

4) Announcements

5) Adjourn

Action:
Ald. Strzelczyk made a motion to adjourn.
Commissioner Hawley seconded the motion.
A voice vote was taken; vote passed 6-0

Meeting adjourned at 8:23 pm.