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Department of Community Development  
Taped and Televised

**PLANNING COMMISSION**  
**Regular Meeting**  
**Monday, February 13, 2017**  
**7:00 PM**  
**Christine Nuernberg Hall**

**Minutes**

**1) Call to Order, Roll Call**

**Present:**

Chairman Dan Abendroth  
Alderman Pam Adams  
Commissioner John Mason  
Commissioner Brian Parrish  
Alternate John Stoker  
Commissioner James Schaefer  
Commissioner Rebecca Schaefer  
Commissioner Rick Lemke  
Commissioner Stephanie Hawley

- a) Approval of Minutes
- b) Planning Commission - Regular Meeting - Jan 11, 2017 7:00 PM

|                  |                                                                           |
|------------------|---------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>ACCEPTED [UNANIMOUS]</b>                                               |
| <b>MOVER:</b>    | John Mason, Commissioner                                                  |
| <b>SECONDER:</b> | Becky Schaefer, Commissioner                                              |
| <b>AYES:</b>     | Abendroth, Adams, Mason, Parrish, Stoker, B. Schaefer, J. Schaefer, Lemke |
| <b>ABSENT:</b>   | Choren                                                                    |
| <b>EXCUSED:</b>  | Strzelczyk, Hawley                                                        |

**2) Consent Agenda**

**RESULT:**

- a) St. John Properties for CrossFit Lozen. The applicant is seeking conditional use grant approval for a fitness center for the property located at 10520 N. Baehr Road.

**Action**

Commissioner Jim Schaefer made a motion to approve the consent agenda (items #2, #3, #4).

Commissioner Parrish seconded the motion.

*A voice vote was called; all voted yes (8-0)*

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|------------------|---------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>                                               |
| <b>MOVER:</b>    | James Schaefer, Commissioner                                              |
| <b>SECONDER:</b> | Brian Parrish, Commissioner                                               |
| <b>AYES:</b>     | Abendroth, Adams, Mason, Parrish, Stoker, B. Schaefer, J. Schaefer, Lemke |
| <b>ABSENT:</b>   | Choren                                                                    |
| <b>EXCUSED:</b>  | Strzelczyk Hawley                                                         |

- b) Alexandra Buchanan. The applicant is seeking setback waiver approval to allow for an addition on a single family residential home for the property located at 10662 N. Wauwatosa Road.

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|------------------|---------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [8 TO 0]</b>                                                  |
| <b>MOVER:</b>    | James Schaefer, Commissioner                                              |
| <b>SECONDER:</b> | Brian Parrish, Commissioner                                               |
| <b>AYES:</b>     | Abendroth, Adams, Mason, Parrish, Stoker, B. Schaefer, J. Schaefer, Lemke |
| <b>ABSENT:</b>   | Choren                                                                    |
| <b>EXCUSED:</b>  | Strzelczyk                                                                |

- c) Chaput Land Surveys, llc for Paul Ellsworth. The applicant is seeking 2 lot certified survey map approval for the properties located at 12543 and 12447 N. Farmdale Road.

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|------------------|---------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [8 TO 0]</b>                                                  |
| <b>MOVER:</b>    | James Schaefer, Commissioner                                              |
| <b>SECONDER:</b> | Brian Parrish, Commissioner                                               |
| <b>AYES:</b>     | Abendroth, Adams, Mason, Parrish, Stoker, B. Schaefer, J. Schaefer, Lemke |
| <b>ABSENT:</b>   | Choren                                                                    |
| <b>EXCUSED:</b>  | Strzelczyk                                                                |

**3) Public Hearing**

- 1) Michael Best & Friedrich LLP for Outpost Natural Foods Cooperative. The applicant is seeking conditional use grant approval to allow for additional delivery hours for the property located at 7590 W. Mequon Road (Outpost Natural Foods).

**Action**

Commissioner Parrish made a motion to open a public hearing

Commissioner Stoker seconded the motion.

*A voice vote was called; all voted yes (8-0)*

Cathy Czaja - 7539 W. Heron Pond Drive - is opposed and does not wish to speak.

Jo Wagner - 7344 W. Heron Pond Drive - is opposed and does not wish to speak.

Tom Czaja - 7539 W. Heron Pond Drive - is opposed and stated that the violations and existing issues at Outpost need to be addressed before allowing additional delivery hours. The main issue is the noise. He wants something to be done to mitigate the noise. He also feels that the value of the homes in Heron Pond have decreased due to Outpost and the noises from there. He does not feel that the proposed hydraulic lift will have any impact on lessening the noise issues. The fence provided has not done anything to lessen the noise. He would like the request denied due to the noise pollution, decreased property values, quality of life issues and truck deliveries that are already double the approved amount. They included a letter and log of violations in the board packet.

Carol Butzke - 7541 W/ Heron Pond Drive - is opposed due to diminished property levels and quality of life issues. She stated that Outpost has far exceeded the allowed number of deliveries per week. She stated that there are about 64-94 deliveries a week. She stated that added deliveries on weekends takes away from their quality of life. She stated that the fence extension that was promised in 2013 is needed to help mitigate headlights. She feels that more landscaping along the north property line is needed. She submitted a letter that was included in the board packet.

Bill Lind - 7372 W. Heron Pond Drive - is opposed due to the noise issues. He does not feel that Outpost is doing much to mitigate the noise issues. He attended many meetings prior to Outpost opening and that they are not living up to their commitment to be “good neighbors” and he feels that Outpost does not do what they say they will do. He does not want the hours to be extended as Outpost already violates the allotted amount of deliveries. He feels the additional deliveries add more noise and continue to drive property values down in the Heron Pond neighborhood.

Patricia Borger - 7582 W. Heron Pond Drive - is opposed and she is very concerned about the diminished value of the homes in Heron Pond. She says that Outpost has not adhered with original agreements and in doing so has lessened the quality of life issues for her.

Robert Wagner - 7344 W. Heron Pond Drive - is opposed and is upset that his peaceful living has been disturbed since Outpost was built. He stated that Outpost has not kept the promises they made.

### **Action**

Commissioner Stoker made a motion to close the public hearing  
Commissioner Parrish seconded the motion.

*A voice vote was called; all voted yes (8-0)*

Asst. Dir. Zader stated that Outpost is seeking approval for additional delivery hours.

Grocery stores are permitted uses in the B-1 zoning district. The conditional use grant was originally required because they requested a waiver to the open space requirement as well as the front yard setback. The open space requirement is 40% for new construction and at final site plan approval Outpost was at 35%. The other setback waiver issue related to how far the building had to be from Wauwatosa Road. The building was pushed closer to Wauwatosa Road to provide more distance to the east property line.

The requested expanded delivery hours are:

Saturday until 2:00 pm (currently 12:00 p.m)

Sunday 10:00 am - 2:00pm with a box truck or a van making the deliveries.

He stated that all correspondence from the neighbors is included in the board packet. The neighbors and the staff from Outpost have been working together without city involvement. Prior to the application coming forward and the response from the neighbors, the city was unaware of the level of the violations. Going forward if there are continued violations, the city can document these and actions can be taken by the city.

Asst. Dir. Zader clarified a few issues regarding violations that were discussed:

1. The number of deliveries per week was not incorporated in the Conditional Use Grant when originally approved.
2. There is no limit to the number of deliveries that can take place, only the hours in which deliveries can take place.

The majority of the violations were either expansion of deliveries beyond the allotted hours and there were some parking issues related to the back parking lot. Employees are only allowed to park in the back parking lot during certain times of the day.

With regard to the conditional use grant findings, going forward, the change of hours is being looked at in terms of the impact to the surrounding properties, not revisiting what is currently in the conditional use grant. The zoning change to B-1 and the conditional use grant for the operations have already been approved. The current request is to expand the hours of operations by 2 hours on Saturday and add 1 truck delivery on Sunday. Staff did work with Outpost to limit the additional delivery on Sunday to only 1 truck. Outpost is willing to spend up to \$10,000 on the loading dock to change to a hydraulic lift in hopes that it that will quell some of the noise coming from the loading dock area. Staff does feel that the hours of operation requested are reasonable and are similar to other grocery stores in the City. Staff does recommend the changes of hours of operations based on the conditions and recommendations listed in the staff report.

The applicant's attorney, Nancy Haggerty from Michael Best & Friedrich, was joined by the General Manager, Pam Menhert and Ed Singer, Director of all Outpost store operations.

Ms. Menhert stated that they have always tried to work with the neighbors and she has been in contact with the two abutting neighbors since Outpost has been there. She stated that the issues have not had to come to the City because Outpost has responded to correct the issues

and prevent them from happening again. Regarding the fence, she stated that the fence was recently extended by 30 feet to avoid debris blowing into the neighboring yards. Prior to the fence extension, landscaping and plantings were added on the Outpost property line as a beautification buffer for the neighbors view. She stated that she was surprised that there were so many resident complaints at the meeting, because she had not previously heard from any of these neighbors prior to the meeting. She explained that they are asking for a small extension of hours to allow for their truck to deliver fresh product; 1 additional delivery 2 days a week. She reiterated that Outpost will always work together with the neighbors to mitigate any issues that arise.

Ms. Haggerty stated that due to the nature and size of their store there is a need for more frequent deliveries but they are using smaller trucks.

Mr. Singer explained the findings from 10 weeks of delivery logs:

- 135 deliveries per week
- Break down of trucks:
  - 20.6 semis weekly
  - 52 box trucks (similar to picture in board packet)
  - 56 cargo vans

He stated that the truck needs to arrive later than noon on Saturday in order to deliver fresh food that is cooked and prepared during the morning. They are very conscientious of the noise impact on the neighbors. Their business has grown since they opened which has required more deliveries and more employees. They have worked with their vendors when they have received complaints from the residents. They have dealt with their grease trap vendors to ensure they are complying within the allotted hours. He stated that as of today they installed a non-permanent barrier to prevent any movement from behind the building from 2:00 p.m. to 7:00 a.m. They also gave corrective action to employees parked in the area not allowed for parking. He feels they are being proactive.

Ms. Haggerty summarized that the bulk of the neighbor complaints are about employees parking in 5 parking spaces outside of the permitted hours. The second complaint is about the hours of deliveries, which Outpost is continually monitoring. The request today is for the approval of one delivery from a box truck or van on Sundays between 10:00 a.m. and 2:00 p.m. and to extend the Saturday delivery hours by two hours.

Mayor Abendroth stated the Outpost is a valuable business to the residents and the City wants Outpost to succeed. The issue is the noise from the business is causing problems for the neighbors. He feels that something needs to be done to mitigate the noise issues before extending the hours and amending the conditional use grant.

Commissioner Mason asked about whether the fence is within the original guidelines. He also asked if the landscaping was fully in place as approved to create a visual barrier and help mitigate the lights from coming around the corner. He also asked about the current allowed timing for deliveries.

Asst. Dir. Zader answered that the fence is in and that additional sections were added after the fact. He stated that at the time of receiving occupancy, the landscaping was inspected.

Commissioner Mason stated that he thinks the approval should be stated that only 1 delivery is allowed in their truck. He also asked about the hydraulic lift.

Mr. Singer explained that switching to a hydraulic lift will eliminate the banging normally caused by the current lift system which is a steel plate. This is being done to help reduce the noise.

Commissioner Stoker clarified that the Saturday amendment is not for an additional delivery but to amend the hours to allow for a later delivery that day. He also stated that he feels that a hydraulic loading dock is significantly quieter than a mechanical one. He asked if the truck is diesel with a backup alarm.

Mr. Singer answered that the truck is CNG (compressed natural gas) with diesel refrigeration which is turned off once the truck enters the property. It does have a backup alarm which is DOT required.

Commissioner Stoker stated that this is a difficult conversation. This is a very busy corner in Mequon; with semi-truck traffic. He is supportive of the request for the additional delivery hours.

Mayor Abendroth stated that his concern is not on the number of deliveries or the hours of deliveries but the noise issues and the negative impact on the neighbors. He feels that more needs to be done at the back of the property to block the noise from the trucks.

Ald. Adams stated that she agrees with the Mayor and that this is an opportunity to figure out some of the solutions as these issues have been present.

Mr. Singer explained that they have discussed options for a higher fence and learned that in order to mitigate the noise that a padded freeway wall, which would need to be several feet higher than the tallest truck, would need to be installed. They do not feel that this is a practical solution for the residents or for them.

Commissioner Stoker asked the applicant if they have attended a Heron Pond homeowner's association meeting in order to better understand the complaints from the residents that live there. He recommends that they attend a meeting. He also stated that there is noise there because it is a very busy intersection. He does agree that if something can be done to mitigate the noise that would be great but there are many other factors there that contribute to noise in that area.

### **Action**

Commissioner Mason made a motion:

- To allow for one delivery on Saturday from 12:00 p.m. until 2:00 p.m.
- To allow for one delivery on Sunday between 12:00 p.m. and 2:00 p.m.

- The deliveries must be in a 37' Outpost box truck or cargo van.
- A hydraulic lift must be installed by July 1, 2017.

Commissioner Stoker seconded the motion

Commissioner Becky Schaefer stated that she is conflicted about approving this issue mostly because there are already other issues there. She would like to find a compromise. She would like the existing issues to be resolved before approving additional hours.

Ald. Adams stated that she likes that there have been some solutions proposed to solve the issues. It is a difficult situation to honor the residents who are unhappy with the situation as well as be supportive to Outpost. She addressed that the alderman from this district wrote a letter to deny the requested approval. He feels so strongly about this that if it gets approved, he will take the item before the Common Council. Ald. Adams stated that she would like to see the Planning Commission work this out.

### **Action**

Ald. Adams made a motion to table this item.

Mayor Abendroth seconded the motion.

*A roll call vote was called; motion failed 4-4 (No votes: Parrish, Mason, Lemke, Stoker)*

Commissioner Stoker stated that he does not feel that many solutions have been discussed tonight besides the hydraulic lift. He wants the Commissioners to understand that the request is for 1 additional delivery per week. He feels that if the neighbors have noise issues than the City should deal with those complaints in another setting, but that they are not violating their conditional use grant. He feels that Outpost has done a good job of being good neighbors

Commissioner Lemke asked if the Saturday deliveries could be traded out and what the average number of deliveries is on Saturday.

Mr. Singer answered that there is an average of 9 deliveries starting about 8:00 a.m.

Mayor Abendroth reiterated that the current operation is causing a nuisance to the neighbors. There is not a specific definition for noise but in this instance the known entity is the trucks and the lift making noise at the back of the property.

Ms. Haggerty stated that all the noise complaints are normal noises from a grocery store. There is not extra noise than what is normal for these uses. The use is the intended use per the conditional use grant.

Commissioner Stoker stated that issues like the parking during the restricted times are violations that need to be rectified. He does not feel that additional landscaping will have any impact on reducing the noise.

Commissioner Mason stated that the hydraulic lift definitely needs to be part of a motion for approval as he feels that it will help alleviate some of the noise.

Mayor Abendroth stated that he also feels that additional landscaping and fencing needs to be required.

Commissioner Lemke stated that he does not think it is fair to hold up one additional truck delivery and their Sunday business while trying to fix other issues at the property.

**Action**

Commissioner Lemke made a friendly amendment to Commissioner Mason's motion to change Saturday deliveries from starting at 7:00 a.m. to starting at 8:00 a.m.

Commissioner Mason accepted the friendly amendment.

Commissioner Stoker seconded that friendly amendment.

*A roll call vote was called; motion failed 4-4 (No votes: Becky Schaefer, Jim Schaefer, Ald. Adams and Mayor Abendroth).*

Mayor Abendroth made the same motion but added a condition that the applicant meet with City staff and the homeowners to discuss further screening (landscaping, fencing) to help mitigate the noise.

Commissioner Stoker seconded that motion.

*A roll call vote was called; motion passed 8-0*

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|------------------|---------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [8 TO 0]</b>                                                  |
| <b>MOVER:</b>    | Dan Abendroth, Chairman                                                   |
| <b>SECONDER:</b> | John Stoker, Alternate                                                    |
| <b>AYES:</b>     | Abendroth, Adams, Mason, Parrish, Stoker, B. Schaefer, J. Schaefer, Lemke |
| <b>ABSENT:</b>   | Choren                                                                    |
| <b>EXCUSED:</b>  | Strzelczyk                                                                |

- 2) MSI General for Riteway Bus LLC. The applicant is seeking conditional use grant, building and site plan amendment and landscape plan approval to operate a transportation terminal (Riteway Bus transportation service) for the property located at 6926 W. Donges Bay Road.

**Action**

Commissioner Stoker made a motion to go into a public hearing.

Commissioner Becky Schaefer seconded the motion.

*A voice vote was called; all voted yes, vote passed 8-0*

No discussion

**Action**

Commissioner Stoker made a motion to close the public hearing.

Commissioner Becky Schaefer seconded the motion.

*A voice vote was called; all voted yes, vote passed 8-0*

Asst. Dir. Zader stated that this is a request to operate a transportation terminal for Go Riteway. Their primary client is the Mequon-Thiensville School District. They are currently

located on Industrial Drive in the Town Center district. This district is zoned B-5 which requires conditional use grant approval for a transportation terminal. The proposed site plan shows a 3,300 sq. ft. building, a parking lot designed to accommodate 54 buses and 37 vehicles and 2 retention ponds. Access to the site is from Donges Bay Road. The access point is a little larger than usual to allow for the turning radius of the buses.

The building will be constructed with brick masonry units with metal wall panels and the overall height of the building is 20 feet. There is an overhead garage door on the east elevation to help with bus maintenance. There are a few changes to the building plan that are recommended by staff. The two elevations to the west and the north are lacking fenestration details. It was suggested that some transom windows be added to break up the wall expanse as well as mirroring that some pattern on the overhead door.

A lighting plan was submitted which shows 11 LED parking lot lights and 3 building wall packs. Because the building is 20 feet in height, the code requires that the lights be no higher than 15 feet. They also need to comply with the full cutoff classification as well as the wall packs on the building.

The landscape consultant made several recommendations which are listed in the report. The applicant is prepared to work with staff regarding the landscape consultant recommendations.

The proposed area is zoned mostly B-5 and industrial and the nearest residential property is about 700 feet away. The hours of operation are mostly in the morning and afternoon. Staff does not feel that the use will have a negative impact on the surrounding neighborhood. Staff does recommend this approval according to the conditions in the report.

The applicants, Ben Freeland from MSI General, R.J. Bass from Go Riteway and Aaron Koch from Pinnacle Engineering, were present to answer any questions from the Commission.

Mayor Abendroth suggested that weekend hours be added to the conditional use grant.

Commissioner Parrish asked about the acceleration lane and if the entrances are wide enough.

Commissioner Jim Schaefer stated that he feels that the building is good looking but agrees with staff recommendation to add the transom windows to the building and the garage.

### **Action**

Commissioner Stoker made a motion to approve the item per staff recommendations.

Commissioner Becky Schaefer seconded the motion.

*A voice vote was called; all voted yes, vote passed 8-0*

|                  |                                                                           |
|------------------|---------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>                                               |
| <b>MOVER:</b>    | John Stoker, Alternate                                                    |
| <b>SECONDER:</b> | Becky Schaefer, Commissioner                                              |
| <b>AYES:</b>     | Abendroth, Adams, Mason, Parrish, Stoker, B. Schaefer, J. Schaefer, Lemke |
| <b>ABSENT:</b>   | Choren                                                                    |
| <b>EXCUSED:</b>  | Strzelczyk                                                                |

#### 4) Regular Business

- a) NWIH LLC DBA Dairy Queen. The applicant is seeking sign waiver approval for new logo signs for the property located at 10996 N. Port Washington Road (Dairy Queen).

Asst. Dir. Zader stated that this is a request for a 22 sq. ft. wall sign for the Dairy Queen located in the Mequon Pavilions. This sign does comply with the Pavilions Master Sign Plan but in Section 62.4 of the Sign Code, staff is deferring to the Commission in terms of the approval of the sign because staff does not feel that it aesthetically meets the intention of the sign code. The lettering on the wall sign is not in proportion with the façade and staff feels that it will be difficult to see from Port Washington Road; specifically during the day time. Proportionally the size between the sign and the raceway is not in proportion because of the small lettering of the sign. Under the Sign Code they are allowed to go up to 3 ft letter height, but in this case it is 1 foot, 6 inches. According to the applicant, the sign has already been fabricated, but staff recommends the sign be modified according to the conditions in the report.

The applicant, Ihab Habash owner of the Dairy Queen, started that the corporate office changed the logo and that is the reason for the new signs.

Ald. Adams stated that she supports family businesses in the city and she does not feel that the residents care about the size of the sign. She does not support staff recommendation.

##### Action

Commissioner Jim Schaefer made a motion to approve the sign as shown.

Commissioner Stoker seconded the motion.

*A voice vote was called; all voted yes, vote passed 8-0*

##### Action

Commissioner Stoker made a motion to adjourn

Commissioner Parrish seconded the motion.

*A voice vote was called; all voted yes, vote passed 8-0*

|                  |                                                                              |
|------------------|------------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [TO 0]</b>                                                       |
| <b>MOVER:</b>    | James Schaefer, Commissioner                                                 |
| <b>SECONDER:</b> | John Stoker, Alternate                                                       |
| <b>AYES:</b>     | Abendroth, Adams, Mason, Parrish, Stoker, B. Schaefer, J. Schaefer,<br>Lemke |
| <b>EXCUSED:</b>  | Strzelczyk                                                                   |
| <b>ABSENT:</b>   | Choren                                                                       |

**5) Announcements**

The next meeting is Monday, March 13<sup>th</sup>

**6) Adjourn**

The meeting adjourned at 8:37 p.m.