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Department of Community Development
Taped and Televised

**PLANNING COMMISSION
Regular Meeting
Monday, September 9, 2019
6:00 PM
Christine Nuernberg Hall**

Minutes

1) Call to Order, Roll Call

Mayor Wirth called the meeting to order at 6:00 p.m.

Present:

Chairman John Wirth
Alderman/Vice Chair Robert Strzelczyk
Commissioner Martin Choren
Commissioner John Stoker
Commissioner Rick Lemke
Commissioner Brian Parrish
Commissioner James Schaefer
Commissioner Rebecca Schaefer
Alternate Stephanie Hawley
Alternate Gregg Bach

Action

Ald. Strzelczyk made a motion to approve the July 22, 2019 meeting minutes.
Commissioner Stoker seconded the motion.
A voice vote was taken; vote passed (8-0)

RESULT:	APPROVED [8 TO 0]
MOVER:	Robert Strzelczyk, Alderman/Vice Chair
SECONDER:	John Stoker, Commissioner
AYES:	Wirth, Strzelczyk, Choren, Lemke, Parrish, J. Schaefer, R. Schaefer, Stoker

2) Consent

- a) John and Pamela Cooper. The applicant is seeking approval to vacate a Public Road Reservation that extends across the applicant's property and terminates at Outlot 3 of Knightsbridge Estates for the property located at 10961 N. Wauwatosa Road.

Action

Commissioner Stoker made a motion to approve the five consent agenda items.

Ald. Strzelczyk seconded the motion.

A voice vote was taken; vote passed (8-0)

RESULT:	APPROVED [8 TO 0]
MOVER:	John Stoker, Commissioner
SECONDER:	Robert Strzelczyk, Alderman/Vice Chair
AYES:	Wirth, Strzelczyk, Choren, Lemke, Parrish, J. Schaefer, R. Schaefer, Stoker

- b) SMJ International, LLC for American Tower. The applicant is seeking site plan amendment to allow for a backup generator to be installed inside the existing compound for the existing telecommunications tower located at 8320 W. Freistadt Road.

RESULT:	APPROVED [8 TO 0]
MOVER:	John Stoker, Commissioner
SECONDER:	Robert Strzelczyk, Alderman/Vice Chair
AYES:	Wirth, Strzelczyk, Choren, Lemke, Parrish, J. Schaefer, R. Schaefer, Stoker

- c) Wilmer Wetzel. The applicant is seeking certified survey map approval to allow for a 2-lot land division for the property located at 13104 -13106 N. Granville Road.

RESULT:	APPROVED [8 TO 0]
MOVER:	John Stoker, Commissioner
SECONDER:	Robert Strzelczyk, Alderman/Vice Chair
AYES:	Wirth, Strzelczyk, Choren, Lemke, Parrish, J. Schaefer, R. Schaefer, Stoker

- d) Mequon Nature Preserve. The applicant is seeking building and site plan amendment approval to allow for the installation of 2 greenhouse structures for the property located at 9011 W. Donges Bay Road.

RESULT: **APPROVED [8 TO 0]**
MOVER: John Stoker, Commissioner
SECONDER: Robert Strzelczyk, Alderman/Vice Chair
AYES: Wirth, Strzelczyk, Choren, Lemke, Parrish, J. Schaefer, R. Schaefer,
 Stoker

- e) Alliance Bible Church. The applicant is seeking site plan amendment approval to allow for additional parking areas for the property located at 13939 N. Cedarburg Road.

RESULT: **APPROVED [8 TO 0]**
MOVER: John Stoker, Commissioner
SECONDER: Robert Strzelczyk, Alderman/Vice Chair
AYES: Wirth, Strzelczyk, Choren, Lemke, Parrish, J. Schaefer, R. Schaefer,
 Stoker

Action

Commissioner Parrish made a motion to suspend the rules to allow for the last agenda item (4 C) to be heard first.

Commissioner Becky Schaefer seconded the motion.

A roll call vote was taken; vote failed (5-3) (No Votes: Wirth, Strzelczyk, R. Schaefer, Stoker, Lemke)

3) Public Hearing

- a) Missing Links Golf. The applicant is seeking conditional use grant and building and site plan amendment approval to allow for a miniature golf course and extended parking lot for the property located at 12590 N. Port Washington Road.

Action

Ald. Strzelczyk made a motion to go into a public hearing.

Commissioner J. Schaefer seconded the motion.

A voice vote was taken; vote passed (8-0)

Action

Ald. Strzelczyk made a motion to close the public hearing.

Commissioner Stoker seconded the motion.

A voice vote was taken; vote passed (8-0)

Action

Commissioner Lemke made a motion to approve the item.

Commissioner Stoker seconded the motion.

A voice vote was taken; vote passed (8-0)

RESULT:	APPROVED [8 TO 0]
MOVER:	Rick Lemke, Commissioner
SECONDER:	John Stoker, Commissioner
AYES:	Wirth, Strzelczyk, Choren, Lemke, Parrish, J. Schaefer, R. Schaefer, Stoker

4) Regular Business

- a) Ozaukee County Planning and Parks Department. The applicant is seeking fill permit approval to allow for the excavation and fill of soil up to 24,050 cubic yards. The excavation is associated with a stream and wetland restoration project for the property located at 9104 W. Mequon Road.

Asst. City Engineer Henk stated that the applicant is requesting fill permit approval for filing and excavating for the property located at 9104 W. Mequon Road; for the Little Menomonee Ecosystem Restoration project; which is a wetland and stream restoration project. They are anticipating a significant amount of haul-off. As part of the conditions of approval it is recommended that only county and state roads be used for that level of haul-off. City staff reviewed the plans and they do conform to the required specifications.

There was clarification that material will be hauled away from the site and that there is not fill being brought to the site.

Action

A voice vote was taken; vote passed (8-0)

RESULT:	APPROVED [8 TO 0]
AYES:	Wirth, Strzelczyk, Choren, Lemke, Parrish, J. Schaefer, R. Schaefer, Stoker

- b) Concordia University. The applicant is seeking building and site plan amendment to allow for a dome over the football field for the property located at 12800 N. Lake Shore Drive.

The applicant was represented by Dr. Rob Barnhill; Director of Athletics at Concordia University and Dave Fenton with Horizon Building Systems.

Asst. Dir. Zader stated that this request is for approval for a dome to be erected over the football field at Concordia University. In 2014, they were before the Commission for a consultation for a dome over the softball and soccer fields which were 72 feet in height and exceeded the height code requirement. They have moved the location of the requested dome over to the football field and reduced the height of the dome to 52 feet which complies with the zoning code requirement. The site renderings included in the packet were shown. Staff prefers this location as it is set back further from public view and it is mostly blocked by the parking structure. There are two

different types of structures with different illumination levels at night. One type is opaque and the other one has a skylight view. The Commission was asked to provide feedback on which type of dome they prefer. Regarding the issue of noise; it is relatively quiet to inflate the dome and to keep it inflated. A condition is included that the noise level cannot exceed 65 decibels at the property line. Staff is supportive of the request and recommends approval based on the conditions in the staff report.

Dan Bradley, 344 W. Bonniwell Road – is opposed to this proposal and stated that the packet did not include renderings from the north or the northeast where most of the residents live. He stated that the 65 decibel level restriction needs to be monitored as he lives a mile away and he can hear everything from Kapco Field. He has questions about the light bleed from the dome as it was not included in the packet.

Dr. Barnhill explained that the residential growth of students as well as athletic teams and student athletes has grown tremendously over the past several years; from 15 teams and 300 student athletes to 32 teams and 700 student athletes. They have outgrown their ability to provide student athletes and non-student athletes with recreational play space. They have one indoor field house facility that supports volleyball, basketball and indoor track. They have added a training center to support the baseball and softball teams with pitching and batting practice but because of the 6,000 sq. ft. footprint, it is a limited space for larger field sport teams and they are not able to practice there. During January through March, when there is the overlap of winter and spring sports, there are ten competing organizations trying to get into the field house for practice time.

He stated that the dome would allow for more value out of the current facility but utilizing it seasonally from October through early April. This would virtually remove the field sports from the field house and would allow for some intramural and campus recreation sports to expand their offerings in the dome. This is the most economical option available for the university. The timing is important as the football turf field is 12 years old on a 10-year warranty and they want to put the containment system around the field at the same time the bubble dome is installed.

It was stated that the dome would be about 10 feet higher than the parking structure. There was discussion regarding the timing of the lights to be turned off in the dome. The Institutional zoning district allows for these permitted uses. The building and site plan approval process allows the Commission to recommend restrictions on the illumination but not on the hours of operations.

The applicant, Mr. Fenton, explained the lighting trespass issue for the two dome options. The skylight dome interior lights are off to the sides and produce a dim glow through the fabric; it is less than parking lot lighting. The opaque dome uses all LED lights and the lumens that go out are about 1/10 of the indoor lights. The disadvantage is that the lights always need to be flipped on when using the opaque dome as opposed to the natural light through the skylight dome. He stated that if light is a sensitive issue, the dome choice should be the opaque one. Mr. Fenton stated that the opaque dome is fully opaque with no light coming through it.

Asst. City Eng. Henk explained that the existing master storm water plan (MSWP) shows the football field as pervious but based on the information that the field is artificial turf and is

looking to be replaced; the entire MSWP will be reviewed and updated to verify whether additional storm water controls are needed as that area changes from pervious to impervious.

There was discussion about the rendering showing the evergreens on the north property line as misleading and that the evergreens are about 25 feet tall and they will not obscure the dome from being seen.

Action

Commissioner Stoker made a motion to approve an opaque dome based on staff recommendations with a midnight cut off for the lighting.

Ald. Strzelczyk seconded the motion.

A roll call vote was taken; vote failed (4-4) (No Votes: R. Schaefer, Parrish, J. Schaefer, Strzelczyk)

RESULT:	FAILED [4 TO 4]
MOVER:	John Stoker, Commissioner
SECONDER:	Robert Strzelczyk, Alderman/Vice Chair
AYES:	Wirth, Choren, Lemke, Stoker
NAYS:	Strzelczyk, Parrish, J. Schaefer, R. Schaefer

- c) Fred Bersch & Paul Apfelbach. The applicant is seeking preliminary plat, development agreement and rezoning recommendation; from R-1/OA (Rural Residential Detached/Agricultural Overlay) to R-1B (Rural Residential Detached 2.5 acre minimum), approval to allow for a 6-lot single-family subdivision for the property located at the southwest corner of N. Birchwood Lane and W. Hemlock Lane.

Commissioner Stoker recused himself from this item.

Asst. Dir. Zader stated that this is a request for rezoning recommendation, preliminary plat and development agreement approval for a 6-lot subdivision on the southwest corner of Birchwood and Hemlock Lanes. It is about 15.23 total acres after the dedication of right of way. A map was shown of the zoning in the surrounding area; with that the majority of the zoning in the area being R-2, R-1B or R-2B. He explained that prior to 2000 the area was zoned at 2.5 acre lot density. In 2000, the City went through a rezoning process where the entire city outside the sewer boundary was rezoned to a 5-acre minimum. The situation is that this parcel is zoned 5-acre but is surrounded by smaller lot sizes. In 2012 this policy issue was discussed by the Common Council as a number of property owners requested rezoning back to the previous zoning. At the time it was discussed whether individual property owners shall be allowed to request rezoning or whether a whole scale rezoning should be done; it was decided at the time that individuals would request rezoning as desired. A map of the surrounding area shows acreage size ranges from much smaller than the 5-acre zoning requirements; with most lots around 2 acres. The land use plan has mostly remained unchanged over the years as it is a well-established neighborhood.

The plat shows a 6-lot subdivision which meets the 2.5 acre minimum. In terms of frontage, there is no infrastructure proposed for an additional road. There is access to Lake Shore Drive, Birchwood Lane and Hemlock Lane. Lot 5 is the only lot that does not show frontage on an existing road. The plat shows an easement through Lot 1 to discharge on Hemlock Lane. Staff has concerns as it crosses through a wetland area and staff recommends a shared access connecting with Lot 6 with discharge onto Lake Shore Drive. There are a number of specimen trees located on this site with the majority of them located along the south property line. The applicant has placed a 30 foot tree preservation easement there. There are 3 specimen trees on Lot 3 which shall be protected by the tree preservation protection during development.

After the packet was published, the applicant submitted an addendum; in response to a neighborhood meeting, to increase the setback on the south property line from the required 30 feet to 50 feet to provide a larger buffering to the neighboring subdivision. There is a large wetland complex which drains from east to west; development shall remain out the wetland setback. The area is full of dead ash trees which the applicant has agreed to remove as part of the development of the subdivision.

The development agreement allows for the construction of one single-family home prior to final plat as well as other conditions that protect the city in terms of development of the parcel. The rezoning recommendation will be in front of the Council in November. The preliminary plat and development agreement are on hold until after action on the rezoning. Staff recommends approval of this development subject to the conditions in the report and the addition of the 50 foot southern property line setback.

The applicant is represented by developers Fred Bersch and Paul Apfelbach as well as the property owner Linda de la Mora.

Public registered as opposed but do not wish to speak at the meeting:

Harris and Heidi Ladd
Nassif and Amy Madi
Sarada Prasad
Marjorie Horvat
Gary Kastelic
David Mangeth
Frank and Barbara Sandberg
Louise Dernehl
Tim Dunar
Edward King

Ann McDonald – 13826 N. Birchwood Lane – is opposed as she has concerns regarding the continued growth development north. She would like to keep this area as green space and undeveloped. She worries that the 6 lots will cause run off issues as there is existing flooding on Lake Shore Drive. She believes there is more work to be done regarding well contamination, flood plain considerations and storm water management.

Theo Frankel – 584 W. Bonniwell Road – supports this project as he personally knows Mr.

Bersch as a conscientious developer and he encourages everyone not to make this a personal issue. He is supportive of the 6-lot proposed subdivision.

Matt Sullivan – 350 W. Hemlock Lane – opposes the project as his property faces this proposed development. He worries about protecting the wetlands during development. His concerns are regarding the aquifers and possible well replacement due to overdevelopment and the costs that he would incur. He stated that many of the surrounding neighbors signed a petition showing opposition to this proposed development.

Dr. Fred Horwitz – 13622 N. Lakewood – is opposed because he is concerned about subsurface water flow direction and possible bluff erosion. He feels that 6 homes instead of 3 homes sets rezoning precedent and the additional homes will negatively impact the surrounding homes.

Stephen De Guire – 10207 N Haden Court – he is supportive of this project because he supports smaller lots being offered in the city; especially on the east side of the city.

Chuck Schmidt – 424 W. Hemlock Lane – is opposed and he is concerned about the water table and the need to have it down even further and that he prefers 3 mound systems instead of 6.

Carol McCoy – 14138 N. Birchwood Lane – is opposed as she believes it sets precedents and that the city should follow the existing land use plan. She also has concerns about the wetlands on the site as they provide many functions. She believes that once the parcels are formed the individual home owners may fill the wetlands which could affect water quality downstream.

Daniel Dunar – 13708 N. Lake Shore Drive – is opposed and requests that the Commission follow the established land use plan as he feels that not following it undermines the strategy which has been in place and effective and has protected the landscape and quality life in the city.

Dan Bradley – 344 W. Bonniwell Road – he is opposed and many of his concerns have been previously mentioned. He stated that he was part of the Blue Ribbon Vision Committee that created the land use plan and he clarified that part of the intention was that existing parcels in that area were to remain as is and were not to influence the future going forward. He stated the policy was aimed at vacant land and not land that had existing homes on them. He feels that the most important issue is the precedent being set; specifically for vacant land. He does support 3 homes built there but not 6 homes.

Sarah Kerkman Dwyer – 14045 N. Birchwood Lane – supports the project as she believes that the property owner should be able to do what they want to do with their land. She feels that a lot of thought and time has gone into the proposed development and it has been well vetted. She feels that the concerns expressed from the previous speakers are based on fear.

Asst. City Eng. Henk responded to the public statements:

- There is not floodplain on this parcel.
- Storm water management is required and the applicant must show that the water leaving the site will not be any greater after the development than it currently is today and that it

flows in the same direction.

- The ash trees will be cut down but they will not be allowed to grind the stumps as that is considered wetland disturbance which requires a special permit.
- The DNR regulates the water table. All wells go through the DNR approval process. Packet page 167 #2 lists all the conditions the developer must establish for digging a well.
- Since 1998/1999 about 2,000 homes have been removed from the aquaphor and are now on city water. Concordia used to be a large draw and they are also now on city water.
- The aquaphor is about 160 feet deep in this area; about 140-150 feet are clay soils that the septic has to filter through.
- Experts have reported that the aquaphor is very strong in this area at this time.

The developer, Mr. Bersch, stated that the proposed rezoning should be evaluated on its individual merits; as stated in the staff report. He further stated that this parcel is surrounded by comparable sized single-family lots, and like those properties, the proposed lots will have septic mounds and private well systems. They have performed soil testing to identify 6 acceptable mound sites. There are no new public improvements required for this subdivision. He stated that this development will resolve the localized flooding at the northwest corner on Lake Shore Drive. Additionally this proposal has addressed all the required civil and engineering issues including street tree preservation, street trees, a \$50,000 Cistern contribution, wetland preservation and storm water management. He added that there is no objective evidence that septic mounds and private wells on 2.5 acre lots will have any adverse public health or public safety impact. He believes the proposed homes will enhance the property values of the surrounding lots and that many potential home owners prefer the smaller size lots (1.5 – 2.5 acre range).

Some of the Commissioners expressed concern that precedent would be set and that it would affect the 77 acre parcel north of this site.

Mayor Wirth stated that the 2010 Vision report was created by a non-binding committee that made a recommendation. This applies to the Blue Ribbon Vision Committee from 2000 as well. He feels that the blanket zoning applied at that time did not consider individual properties or individual areas. The property owners have the right to ask for changes to their land. He believes that good planning decisions are based on the evaluating the surrounding area and whether the rezoning request is compatible. He reminded the Commission that their job is to evaluate the parcel as it is today and not base it on previous plans. He believes that science supports the aquaphor as being very strong and that there are strict state rules that ground water problems are not being created by this development. He will vote to support this project. He is supportive of a note to the motion that the north 77 acre parcel not be granted this zoning.

Action

Ald. Strzelczyk made a motion to approve the item with a clear statement that this decision does not set a precedent for other surrounding large parcels to be rezoned to smaller lots.

Commissioner Lemke seconded the motion.

A roll call vote was taken; vote passed (5-3) (No Votes: R. Schaefer, J. Schaefer, Parrish)

RESULT:	APPROVED WITH CONDITIONS [5 TO 3]
MOVER:	Robert Strzelczyk, Alderman/Vice Chair
SECONDER:	Rick Lemke, Commissioner
AYES:	Wirth, Strzelczyk, Baka, Choren, Lemke
NAYS:	Parrish, J. Schaefer, R. Schaefer
RECUSED:	Stoker

5) Announcements

The next meeting is Monday, October 7, 2019 at 6:00 p.m.

6) Adjourn

Action

Commissioner Parrish made a motion to adjourn.

Commissioner Lemke seconded the motion.

A voice vote was taken; vote passed (8-0)

The meeting concluded at 8:10 p.m.

Respectfully Submitted,

Jac Zader