

Please note: Minutes are unofficial until approved by the Plan Commission at the next regularly scheduled meeting.

PUBLIC HEARINGS

6:00 P.M. (3)TK R-6-07 Mike Dillett – 2530 S. Johnson Rd. – Rezone from R-1/R-2 and C-2 to R-1/R-2 and C-2 to Field Delineate the Wetlands.

NEW BERLIN PLAN COMMISSION

JUNE 4, 2007

MINUTES

The public hearing relative to the request by Mike Dillett for a rezoning at 2530 S. Johnson Road from R-1/R-2 and C-2 to R-1/R-2 and C-2 to Field Delineate the Wetlands was called to order by Mayor Chiovatero at 6:02 P.M.

In attendance were Mayor Chiovatero, Mr. Sisson, Mr. Gihring, Mr. Felda, Alderman Ament, Ms. Groeschel, and Ms. Broge. Also present were Nikki Jones, Planning Services Manager; Amy Bennett, Associate Planner; Tony Kim, Associate Planner; Eric Nitschke, Storm Water Engineer; and Mark Blum, City Attorney.

Mayor Chiovatero explained the procedure for a public hearing saying that he would ask for questions for clarification and then ask three times for anyone wishing to speak in favor of the application and then three times for anyone wishing to speak in opposition of the application.

Ms. Jones read the public hearing notice and stated there was proof of publication.

Mr. Kim gave a brief presentation describing the request and showed maps indicating the location.

Mayor Chiovatero asked three times for comments or questions for the purpose of clarification, seeing none.

Mayor Chiovatero asked three times if there was anyone wishing to speak in favor of this application, seeing none.

Mayor Chiovatero asked three times if there was anyone wishing to speak in opposition of this application, seeing none.

Mayor Chiovatero asked for comments or questions from the Commission?

Alderman Ament – The way I would read it in the Wetland and Waterway Consultant's letter, is this requires DNR and U.S. Army Corp. approval. In the staff report, on the last page under Findings it says there is a wetland report from the consulting firm and a concurrence letter from the DNR. It does not say anything about the Army Corp. Is this

not required?

Mr. Kim – It was not included as part of the staff report, but there is a letter from the Army Corp. along with the DNR as part of the file.

Mayor Chiovero asked for further comments or questions from the Commission, seeing none.

Mayor Chiovero closed the public hearing at 6:08 P.M.

6:01 P.M. (5)NJ R-7-07 The Preserve at Weatherstone Meadows – 4200 S. Cambridge – Rezone from R-4.5/PUD, C-2/PUD and C-1 to R-4.5/PUD, and C-2/PUD to Field Delineate the Wetlands and update/amend PUD Ordinance # 2108.

NEW BERLIN PLAN COMMISSION

JUNE 4, 2007

MINUTES

The public hearing relative to the request by John Senkerik, c/o Thomson Corp. for a rezoning at 4200 S. Cambridge from R-4.5/PUD, C-2/PUD and C-1 to R-4.5/PUD, and C-2/PUD to Field Delineate the Wetlands and update/amend PUD Ordinance # 2108 was called to order by Mayor Chiovaturo at 6:08 P.M.

In attendance were Mayor Chiovaturo, Mr. Sisson, Mr. Gihring, Mr. Felda, Alderman Ament, Ms. Groeschel, and Ms. Broge. Also present were Nikki Jones, Planning Services Manager; Amy Bennett, Associate Planner; Tony Kim, Associate Planner; Eric Nitschke, Storm Water Engineer; and Mark Blum, City Attorney.

Mayor Chiovaturo explained the procedure for a public hearing saying that he would ask for questions for clarification and then ask three times for anyone wishing to speak in favor of the application and then three times for anyone wishing to speak in opposition of the application.

Ms. Jones read the public hearing notice and stated there was proof of publication.

Ms. Jones gave a brief presentation describing the request and showed maps indicating the location.

Mayor Chiovaturo asked for comments or questions for the purpose of clarification.

Bernard Green, 4151 Sunny Slope Road – My property adjoins this project. When they put the first phase in, they promised me that no part of it would be built higher than my property. Yet, they built a berm which caused me to dig out along the side of my home and put all new drainage in. (Mr. Green indicated on the map where there is water problems) I don't want any problems with the property owner, but I don't want the water on my property either. I'd be happy to agree to approve everything if they could guarantee me that I wouldn't have any more water problems.

Mayor Chiovaturo – Part of our process is working with the applicant to make sure that no other properties are affected by situations such as yours.

Mr. Nitschke, Storm Water Engineer – We are not going to guarantee that you won't

have any more water problems. As soon as I do that, we will get ten inches of rain and that is not what we designed for, but what is being done and what we have been working with the engineer to do is, especially back in the southwest corner of your lot by the wetland, we are looking at trying to maintain the water level that is there, but once it starts to fill up, there is an inlet that takes the water away from your property and into the wetlands further to the west.

Mr. Green – When the City Engineers were down by that lower section, they said they took the snow line, but that is not where the water line was. If they would have gone down further on the property, they would have seen that. They lowered the culvert that goes between the temporary road that goes around through there. All the water coming through the side rushes down our property.

Mr. Nitschke – That will change when they set the inlet. The inlet that they have in there is set at an elevation so that it does not run down your property and your neighbor's property to the north, but that it goes into the inlet and heads into the storm sewer that goes south and west.

Mr. Green – That is what they told me before, and that is exactly what they didn't do.

Mr. Nitschke – Sometimes in a construction situation, inlets or culverts are not set at the appropriate elevation.

Mr. Green – Can they raise their land higher than me? Down at the lower section the last house is 4 or 5 ft. higher than my section. It all runs off on my land. To do that, they will have to move the houses. I don't want them to have to do that, I just want the water problem to go away. All that would need to be done is to lower that one hole and get it back to where it used to be.

Mr. Nitschke – We will take another look at that because from my recollection of my review, they were supposed to have a swale on their property so the drainage didn't go onto your property.

Mayor Chiovero asked three times for further comments or questions for the purpose of clarification, seeing none.

Mayor Chiovero asked three times if there was anyone wishing to speak in favor of this application, seeing none.

Mayor Chiovero asked three times if there was anyone wishing to speak in opposition of this application, seeing none.

Mayor Chiovero asked for comments or questions from the Commissioners?

Ms. Groeschel – Nikki, can you go back to the side by side view that you showed before. (Referring to the map, Ms. Groeschel asked about the approved view for Cambridge

showing a dotted line going up to the North. Was there a plan in the future to connect up there?)

Ms. Jones – In the research that I did and some of the videos that I watched from when this was approved at separate times, initially the plan was for Cambridge Drive to go up and connect to the Farrell project, which is now called The Villas and is part of the whole area with the condominium complex. It was all based on that time that the DNR would agree to let them cross the wetlands. Just to the north of this area is a large wetland complex that has wetland and Butler's Garter Snakes. We have a conservation easement in that area. At the time the DNR decided there wasn't going to be a crossing, the development proceeded with the cul-de-sac.

Alderman Ament – I'm looking at several different maps and it looks like Cambridge Drive is going to be very tight to the other three properties to the north and the east, that gentleman's land being one of them. Are they meeting the required setback for that road?

Ms. Jones – Typically, it is a 5 ft. setback. Obviously, this is not an ideal situation but in watching some of the videos the idea was that at least the three long parcels would have some sort of access if they ever decided to come together and do a future project. That was one of the discussions that I heard when I was watching the videos that it was important that the back area have some future opportunity. Whether that actually ever happens will depend on the market and what these individuals decide to do. They would have to at that time buy into Thompson's development because they would need access to their road. That is the history. Five ft. is the typical setback. However, there was some thought put into having the road being able to connect to those other properties.

Alderman Ament – Those three properties and the southern two look like they could have access if they needed to, but not the farthest one north

Ms. Jones – That one would likely need to combine with one of these to have access. In the first plan they probably would have been able to access on their own. To do any development back there, they would need to coordinate together to look at storm water, a road that would provide access, land divisions, etc.

Alderman Ament – Are we land locking that one furthest to the north?

Ms. Jones – There is still access off of Sunny Slope Road.

Alderman Ament – What if it was divided?

Ms. Jones – He would have to prove that he had some sort of frontage. Even right now if they didn't work together with the Thompson Corp., they would have to do something along Sunny Slope Road.

Alderman Ament – I'm looking at two aerial pictures and, according to what I see,

there is still C-1 on the other properties. It is hard to tell from the aerials if there is a full tree line that goes out quite away from the west side of those three properties. That road would be right up to within 5 ft. of that property line.

Ms. Jones – They included a letter.

Alderman Ament – Is that the letter that describes that the trees are not much good?

Ms. Jones – Yes. Back in 1999 and 2001 when these projects went through, the rules were slightly different. Mr. Kessler and I are going to walk out to the site again to look at these trees. Being a Forester, obviously he does not want to encourage Buck Thorn and any of the undesirable trees. There may be a need to get a replacement to help offset the quality trees being removed. At the time, that was not an issue that was reviewed. They simply went ahead with the project. At this time, we are trying to apply as many of the things that we are doing now, but also to be within reason since it was an approved project at that time.

Alderman Ament – On that side by side map there are 38 condominium homes, correct?

Ms. Jones – Correct.

Alderman Ament – What is the code for how many homes can be connected with only one outlet?

Ms. Jones – We have new rules that regulate that, but at the time that this went through I don't believe they had a minimum number of homes on a cul-de-sac.

Alderman Ament – I don't have a problem with that, but the reason I asked that is to make sure we don't need a waiver rather than just approving it the way it is. I know this issue has come up before. It looks like we are keeping them at the old code. This is part of that same question. They are not required to meet the new codes even though they are coming back in for a change?

City Attorney Blum – Was the section that we are amending the one you are referring to now?

Ms. Jones – They are having the same road layout, just slightly different. They are not proposing any addition access points.

City Attorney Blum – In the extent that you are making a modification to the PUD to a particular section, it would be logical that that modification would have the code at the present time be applied to it.

Ms. Jones – As far as text in the PUD, they are not planning to change number of units, setbacks, they will be maintaining all of those.

City Attorney Blum – So, just the road layout to comply with the new pond design?

Ms. Jones – That is correct.

City Attorney Blum – To answer your question Alderman Ament, if assuming that the changes as they are described being necessitated as a result of governmental requirements being modified, I don't think we would ask them to go back and try and modify things to the new code.

Alderman Ament – Then it would not be required for them to ask for a waiver?

City Attorney Blum – I think to the extent that you are approving this, in essence you are acknowledging that there is this provision, but yet as a result of the nature of the modifications that are being made, you are still consenting to it, so even though it is not a waiver, it is implied by the action you are taking especially under the circumstances of it being a modification to an existing application.

Ms. Jones – Typically in the past if someone is looking for things like changing density or a major architectural change, we would be looking at all the things we worked on in the zoning code.

Alderman Ament – I just wanted to make sure we weren't missing something procedurally. At least, it could be corrected by the time it gets to the Council level.

Ms. Jones – I will look into that more.

Alderman Ament – It states somewhere that the expiration date of the PUD hinged on the availability of sewer.

Ms. Jones – You are correct.

Alderman Ament - In reading the PUD, I don't see anything that refers to the trigger. When I look at Page 6 of the revised PUD, it just says they have two calendar years from the effective date of this ordinance and the PUD overlay district ordinance shall expire and become null and void.

Ms. Jones – If you start at the top where it says time limits, there are four separate sections. Should I go through them?

Alderman Ament – I don't need that if you are comfortable with it. I just didn't see it in there.

Ms. Jones – Basically, it breaks it down into four sections. The first section is typical to many of the PUDs you have looked at. It talks about if a PUD development has not commenced as evidenced by securing a building permit, which is what you see out there with Building Permits for Phase I and start of construction within two calendar years

from the effective date of this ordinance it shall expire and become null and void. That part has been accomplished. They have pulled building permits and started construction on Phase I.

Then it goes on to talk about how you would secure an extension if necessary for that Phase. (C), says “Phase I of the development shall constitute all structures and it lists the numbers for Phase I. Although the completion of Phase I will be a function of the market demand and economic conditions, the anticipated development period is three years”. So, at the time they were just putting it in there, they suggested it might take three years to get Phase II up and running and sold. (D), talks about, “Phase II of the development shall constitute all structures tributary to the sanitary sewer service from Regal Manors Interceptor Sewer including Buildings #10-21 and 29-33. Although completion of Phase II will be a function of market demand and economic conditions, the anticipated development period is three years from the date of the sanitary sewer availability”. So, what I was saying in the beginning is the project to the north, Farrell or The Villas has now finished installing their sewer service. In our eyes they would now have three calendar years in order to start pulling permits and providing evidence that they are securing them and working on the project.

It sounds like they understood at the time that Phase II wasn't going to happen until we had additional sewer capacity that was going to flow from this. They are coming from two different basins, as I understand.

Alderman Ament – I am still not clear where it uses the sewer as the trigger.

Ms. Jones – They could take as long as they wanted if that second part was not there. What they are doing is putting a trigger in that once the sewer is available, once it came from Honeyager Fields, once it came through the Farrell project and Fohr Drive through Dennis's project, and once it would hit this project, it would be available.

Alderman Ament – You have obviously researched this.

Ms. Jones – Yes, I have been researching this to understand the thought process from back then.

Alderman Ament – I was comparing the original PUD to the revised PUD. There were a couple thing that were changed.

Ms. Jones – Marilyn Gauger, our City Clerk does things a little bit different now. Any time we do a new ordinance, like the one we are working on now for the revisions, it will have a brand new number so it will be very easy to follow the progress, whereas in 2001 when they were working on this amended version, they actually used a track change function and changed some of the items like the number of units, some of the units with the different styles of architecture.

Alderman Ament – If I remember correctly, the revised was approved in February of

2001.

Ms. Jones – Correct.

Alderman Ament – But, it wasn't signed until sometime later on in the year.

Ms. Jones – There was some paperwork in the file. I did watch the Feb. 2001 meeting to make sure that it was actually approved. At that time, there was public hearings held at Council and things were done differently. I can't say exactly why it wasn't signed close to that date it was approved. I know at that time we had a deputy City Clerk so perhaps there was a transition of when items got signed. I do know it was approved on February 2001.

Alderman Ament – It just struck me that it was approved on February 2001, but wasn't signed until November 2002. I was wondering if you have seen any reason for this.

Ms. Jones – I can keep looking. I did borrow the Clerk's file and there was some dialogue as far as getting it signed and making sure it was all taken care of. It could have been a clerical error.

Alderman Ament – On the original PUD on Page 3 under Setbacks and Yards, Item #5 says, "There shall be a minimum building setback from Sunny Slope of 70 ft." and the revised PUD does not have that. Is that because they are more than 70' away anyway?

Ms. Jones – I noticed that. The setback from Sunny Slope is at least 75' or greater. I did not personally review any of the building permits for Phase I. They were done prior to me having this position.

Alderman Ament – They are not making any changes to #8 Traffic, Loading, Parking, and Access. It says, "All internal streets shall be privately owned and maintained by the Preserve at Weatherstone Meadows Condo Assoc." So, it is not the City's responsibility to plow, or maintain in any way?

Ms. Jones – That is correct.

Alderman Ament – Is the pedestrian trail internal to the development?

Ms. Jones – I did some research on that too. It looked like there was supposed to be a trail in the wetland areas. From the research I have done so far, and in talking with Dean who is the original person from Thompson who took care of the project, there was some discussion that the DNR and possibly Army Corp. didn't want a large trail through that area since it was sensitive and had a wetland base. But you are correct, there are no trails identified on the Alternative Transportation Plan. I will still continue to research this part of the internal trail.

Mayor Chiovatero asked for further comments or questions from the Commissioners,

seeing none.

Mayor Chiovatero closed the public hearing at 6:41 P.M.

NEW BERLIN PLAN COMMISSION

JUNE 4, 2007

MINUTES

PRIVILEGE OF THE FLOOR

The Plan Commission Meeting was called to order by Mayor Chiovaturo at 6:43 P.M.

In attendance were Mayor Chiovaturo, Mr. Sisson, Mr. Gihring, Mr. Felda, Alderman Ament, Ms. Groeschel, and Ms. Broge. Also present were Nikki Jones, Planning Services Manager; Amy Bennett, Associate Planner; Tony Kim, Associate Planner; Eric Nitschke, Storm Water Engineer; and Mark Blum, City Attorney.

Motion by Alderman Ament to approve the Plan Commission minutes of May 7, 2007. Seconded by Mr. Sisson. Motion passes with Mr. Felda voting present.

PLAN COMMISSION SECRETARY'S REPORT - NONE

CONTINUED BUSINESS

1. (1)TK U-13-07 Highland Memorial Park – 14875 W. Greenfield Ave. – Garden of the Apostles Columbarium.(Tabled 5/7/07)

Motion by Alderman Ament to remove this item from the table. Seconded by Mr. Sisson. Motion carried unanimously.

Motion by Alderman Ament to approve the request for Use, Site and Architectural Approval to construct a new columbarium for the entombment of 1,040 cremated remains on the property located at 14875 West Greenfield Avenue subject to the application, plans on file and the following conditions:

- 1) Plan of Operation
 - a) Hours of operation: Will coincide with cemetery hours.
Entombment Service Hours: M-F: 9AM-3:30PM, Saturdays: 9AM-1PM (None on major holidays). Cemetery is open for visitation from sunrise to sunset.
 - b) Employees: No new Employees will be added.
Currently: 6 full-time grounds, 3 full-time office 5 part-time. 6-12 seasonal.
 - c) 50-100 entombments a year. Each entombment service lasts an average of a half hour.

- 2) Structure and site shall be ADA compliant as per ICC/ANSI A117.1 chapter 4. The approved accessible route is as per Comm 62.1104(1) to and around the site and structure. The current proposal shows that the first fifty feet (50.0') from the access drive is being put down at approximately (4.9%). The next couple of segments appear to be put down at (2.7%) and then (1.6%) around the Columbarium.
- 3) The proposed elevation for the "new" location of (858.25) for the base of the structure, as shown on the Plan sets, appears to be acceptable at this time.
- 4) Limits of Disturbance shall not extend thirty feet (30.0') in all directions from the structure.
- 5) This application must meet all of the Inspection Department requirements.
- 6) Any and all criteria/requirements that Mr. Nitschke P.E., Water Resource & Drainage Engineer, must be met.
- 7) Any grading changes shall be reviewed by staff.

Seconded by Mr. Sisson. Motion carried unanimously.

2. (5)AB U-14-07 Sprint – 12700 W. Beloit Rd. – Change Number of Antenna from Nine to Twelve and Install a 11.5 x 20' Enclosure to House Equipment.(Tabled 5/7/07)

Item remains tabled per applicant's request.

3. () PG-516(a) 2020 Comprehensive Plan Consultant

No Action

NEW BUSINESS

4. (3)TK R-6-07 Mike Dillett – 2530 S. Johnson Rd. – Rezone from R-1/R-2 and C-2 to R-1/R-2 and C-2 to Field Delineate the Wetlands.

Motion by Mr. Sisson to recommend to Common Council adoption of an ordinance that approves the rezoning of the property located at 2530 South Johnson Road from R-1/R-2 and C-2 to R-1/R-2 and C-2 to field delineate the wetlands.

Seconded by Ms. Broge. Motion carried unanimously.

5. (5)NJ U-5-99 The Preserve at Weatherstone Meadows – 4200 S. Cambridge – Continuation of U-5-99 – 4177 S. Sunny Slope – Phase II Modification of Use, Site, and Architecture from Original Application.

Motion by Alderman Ament to table the modification to the Use, Site, and Architectural Approval for Zoning Permit # U-5-99 to amend PUD Ordinance Number 2108 (via a separate application R-7-07) and to modify the site plan and road layout slightly to accommodate a revised layout based on DNR required storm water pond modifications and a wetland field delineation at the property located at 4200 S. Cambridge Drive, subject to the application plans on file, satisfaction of all engineering concerns, and the following reason for tabling:

- 1) Plan Commission will need to act on the rezoning and PUD amendment prior to any action on this Use Approval modification. The applicant is required to have the updated zoning in place first.

Seconded by Ms. Broge. Motion carried unanimously.

6. (6)NJ U-14-94 Stonegate – 13125-13265 W. National Ave. (original application at 13401 W. National Ave.) – Modification of Use, Site, and Architecture from Original Application.

Motion by Alderman Ament to table the Modification of Condition #7 of the Use, Site, and Architectural Approval for Zoning Permit #U-14-94 for the construction of the last four (4) apartment buildings within the Stonegate Apartment Complex (Buildings#: 15, 16, 17 and 18) to allow buildings to encroach within the 50' Ordinary High Water Mark (OHWM)/Shore setback located at approximately 13125-13265 W. National Avenue, subject to the application plans on file, satisfaction of all engineering concerns, and the following reason for tabling:

- 1) Applicant shall first make an application to the to the City of New Berlin Board of Appeals to determine if they be able to grant a variance for the reduction in setback from the 50' OHWM/Shore setback outlined in Zoning Code under Section 275-33-1 (table).

Seconded by Mr. Felda. Motion carried unanimously.

7. (7)TK SG-27-07 New Berlin Park & Rec. Dept. – Movies in the Park – 2600 S. Sunny Slope Road (Hickory Grove) and Malone Park – Temporary Signs.

Motion by Mr. Gihring to approve two signs for Movies in the Park. One location for Malone Park (where the event is taking place and where one sign was approved last year) and one at Hickory Grove, as long as it is outside the right-of-way of Sunny Slope Road and Cleveland Avenue and outside the vision triangle.

Seconded by Mr. Sisson. Motion passes with Mayor Chiovatero, Mr. Gihring, Mr. Sisson, Mr. Felda, Ms. Broge, Ms. Groeschel voting Yes and Alderman Ament voting No.

Motion by Mr. Sisson to adjourn the Plan Commission Meeting at 7:35 P.M. Seconded by Ms. Groeschel. Motion carried unanimously.

