AGENDA CITY OF STURGEON BAY CITY PLAN COMMISSION

Wednesday, June 20, 2018 6:00 p.m. Council Chambers, City Hall 421 Michigan Street

- 1. Roll call.
- 2. Adoption of agenda.
- 3. Approval of minutes from May 16, 2018.
- 4. Presentation of: Request from Mike Oleson to rezone property located at 1468 Egg

Harbor Road, parcel #281-62-11000103A, from General Commercial (C-

1) to Mixed Commercial-Residential (C-5).

5. Consideration of: Combined Preliminary/Final Planned Unit Development for Duquaine

Development LLP, for a 134-unit multiple-family development, located

on the southeast corner of Tacoma Beach Road and Clay Banks

Road/CTU, parcel #281-68-17000301A.

- 6. Consideration of: Conditional uses within Sturgeon Bay Zoning Code.
- 7. Consideration of: Minimum yards for accessory buildings.
- 8. Public comment on non-agenda Plan Commission related items.
- 9. Adjourn.

NOTE: DEVIATION FROM THE AGENDA ORDER SHOWN MAY OCCUR.

Notice is hereby given that a majority of the Common Council may be present at this meeting to gather information about a subject over which they have decision-making responsibility. If a quorum of the Common Council does attend, this may constitute a meeting of the Common Council and is noticed as such, although the Common Council will not take any formal action at this meeting.

Plan Commission Members:
Dennis Statz
Steven Hurley
Jeff Norland
Laurel Hauser
Mike Gilson

CITY PLAN COMMISSION

Wednesday, May 16, 2018

A meeting of the City Plan Commission was called to order at 6:09 p.m. by Vice-Chairperson Dennis Statz in the Fire Truck Bay, City Hall, 421 Michigan Street.

Roll Call: Members Dennis Statz, Mike Gilson, Jeff Norland, Steven Hurley, and Laurel Hauser were present. Also present were Alderpersons Barb Allmann, David Ward and David Hayes, City Administrator Josh Van Lieshout, City Engineer Chad Shefchik, Community Development Director Marty Olejniczak, Planner/Zoning Administrator Chris Sullivan-Robinson, Community Development Secretary Cheryl Nault, and various members of the public.

Adoption of the Agenda: Moved by Ms. Hauser, seconded by Mr. Hurley to adopt the following agenda:

- 1. Roll call.
- Adoption of agenda.
- 3. Approval of minutes from April 18, 2018.
- 4. Conditional use request from Door County Medical Center for a skilled nursing facility, located at 323 S. 18th Avenue, parcel #281-62-35000121A:
 - Presentation:
 - Public hearing:
 - Consideration of:
- 5. Comprehensive Plan amendment Future land use for Amity Field (parcel #281-23-0527260006):
 - Presentation:
 - Public Hearing:
 - Consideration of:
- Comprehensive Plan amendment- Future land use for Robert Goetz (parcel #281-68-17000301A):
 - Presentation:
 - Public Hearing:
 - Consideration of:
- 7. Consideration of: Combined Preliminary/Final Planned Unit Development for Phillips Development LLC, for a 34-unit multiple-family development, located in the 700 blocks of Erie and Florida Streets, parcel #281-23-0527260006 (aka Amity Field).
 - Presentation:
 - Public Hearing:
 - Consideration of:
- 8. Combined Preliminary/Final Planned Unit Development for Duquaine Development (Mau & Associates, LLP, Agent), for a 134-unit multiple-family development, located on the southeast corner of Tacoma Beach Road and Clay Banks Road/CTH U, parcel #281-68-17000301A
- 9. Public comment on non-agenda Plan Commission related items.
- 10. Adjourn.

Carried.

Approval of minutes from April 18, 2018: Moved by Mr. Norland, seconded by Mr. Statz to approve the minutes from April 18, 2018, with the following changes: On page 7, first paragraph change R-4 to R-3. Also, in the second paragraph insert "expressing concerns" after the

following people spoke. "The following spoke in favor" should be added before Lee Haasch. All ayes. Carried.

Conditional use request from Door County Medical Center for a skilled nursing facility, located at 323 S. 18th Avenue, parcel #281-62-35000121A:

Presentation: Mr. Sullivan-Robinson stated that the Door County Medical Center, 323 S 18th Avenue, is seeking a conditional use permit for an addition of a skilled nursing facility on the corner of Rhode Island Street and S. 16th Avenue. The proposed building will be approximately 25,000 square feet, single story, and 28 feet high at the highest peak. The purpose for the addition is to move the existing facilities to this new building. The new building will be located on the southwest corner of the property extending into two parking lots. The property is located in an R-4 zoning district. The current skilled nursing facility will be will be converted into storage or other medical uses. The Door County Medical Center is required to have 391 parking spaces. This project will be ultimately removing parking space, but there will still be 469 parking spaces available throughout the site.

The Aesthetic Design & Site Plan Review Board had recently approved the project on May 14th.

City staff recommended approval of the conditional use request with the following conditions:

- 1. Any new replacement parking lot fixtures must match existing parking lot light fixtures.
- 2. Final approval of the stormwater management plan by the City Engineer.
- 3. Replace six of the nine trees removed from the west parking lot to meet original parking lot tree requirements.
- 4. Meet setback requirements for an R-4 district.

Patrick Skaleki, representative from Berners-Schober Associates, stated that a courtyard is being developed and landscaped. This will be a campus-wide basis with full-time residents and in and out residents. The project is pending City Engineer review and approval. The building design will consist of a mixture of brown textures, including various sidings and stone masonary. The overall design was meant to contrast the hospital and give a residential feel. The existing driveway will be moved approximately 40 feet. It will be made easy for fire access. The landscaping will give character to the building. A five-foot fence will be installed on the west side of the buildings to enclose the open areas for the safety of the residents.

Public hearing: Vice-Chair Statz opened the public hearing at 6:24 p.m.

Scott Thomas, 1557 Tacoma Beach Road, stated that this is an awesome development.

Karen Lenius, 124 S. 16th Place, has concerns about the heavy truck traffic going up and down the street. The trucks should use a different route.

There were no written letters of correspondence. The public hearing was declared closed at 6:29 p.m.

Consideration of: The Commission discussed the request. Mr. Olejniczak commented that they need to defer to the City Engineer regarding streets.

Moved by Ms. Hauser, seconded by Mr. Gilson to approve the conditional use request, subject to staff's recommendation, as well as Parking & Traffic Committee and review of the streets by the City Engineer. All ayes. Carried.

Comprehensive Plan amendment — Future land use for Amity Field (parcel #281-23-0527260006):

Presentation: Mr. Olejniczak stated that the current Comprehensive Plan was adopted in February, 2010. A chapter on future land use in one of the elements of the plan. The recommended classification for this parcel is Public & Institutional. The Comp Plan should match the proposed use. The City has owned this parcel and for many years had been leased by the Sturgeon Bay School District, which no longer leases the site.

A proposed rezoning to a Planned Unit Development (PUD) is under consideration that would be for a development of 34 apartment units. Under state law, when a property is rezoned, the action is required to be consistent with the adopted Comprehensive Plan. If the PUD is approved for this parcel, an amendment to the Comprehensive Plan is needed. The suggested new use for this parcel is Multi-Family Residential.

Public Hearing: Vice-Chair Statz opened the public hearing at 6:38 p.m.

Bill Chaudoir, 324 Alabama Street, serving as Interim Executive Director for the Door County Development Corporation, stated that the #1 issue that we are dealing with today is workforce development. Young people are not going into trades. It is hard finding workers and keeping workers. Apartments play a much bigger role than in the past. He is in support of the Comprehensive Plan amendment. To research the problem, \$40,000 has been raised for a consultant to review Door County's housing market in depth. The study should be done later this summer or early fall. A lot of time and money went into moving a manufacturer from this area to provide for residential uses. Amity field is an attractive location for multiple-family development because this is a workforce housing neighborhood. This would be supporting local full time jobs that pay full benefits and keeps enrollment in schools.

Mr. Chaudoir also read a letter from Bill Behme, HR & Labor Relations Manager Fincantieri Bay Shipbuilding, regarding the need for adequate housing and to support those who have a vision for making affordable housing a reality to both new and existing families.

Hans Christian, 330 N. 3rd Avenue, is supportive of the development. The developer has been flexible and has shown sensitivity. He stated that this is a situation where the proposed development fits the location and use, and to keep those thoughts in mind when reviewing further development proposals.

Aaron Carmody, 1779 Shiloh Road, wondered why there is a housing shortage. He recommended that the City review short term rental regulations to reduce the restriction for permit approvals.

Ms. Nault read a summary of three letters in favor of the amendment from Dave Rolston, President and CEO of Hatco Corp.; Chris Moore, President/Owner of NEW Industries; and Michael Baudhuin, Vice-President WireTech Fabricators, Inc., who all agree regarding the lack of available workforce housing.

The public hearing was declared closed at 6:55 p.m.

Consideration of: Ms. Hauser asked if there was any Public or Institutional proposals in the past couple of years. Mr. Olejniczak responded that there were no new uses proposed. The

City and the County recently had facilities constructed. The only other thought would be potential use of the property by a church.

After further discussion, it was moved by Mr. Gilson, seconded by Ms. Hauser to recommend to Council approval of the Comprehensive Plan amendment for the future land use classification for the Amity Field parcel to be Multiple-Family Residential, with Mixed-Residential as the alternative. All ayes. Carried.

Comprehensive Plan amendment- Future land use for Robert Goetz (parcel #281-68-17000301A):

Presentation: Mr. Olejniczak stated that this item is a bit more controversial than the previous item. The recommended future land use classification for this parcel, located at the SE corner of Tacoma Beach Road and Clay Banks Road, is Single-Family Residential- Lower Density, except for a small area (approximately 1.5 acres) at the intersection, which has a recommended use of Transitional Commercial. The City had received a proposal to rezone the property to allow apartment buildings. The proposal was for 162 units and has now been brought down to 134 units. The site is not conducive for single-family lots.

An amendment to the Comprehensive Plan should be undertaken in addition to the rezoning if the Plan Commission and Council believe the proposed apartment development is an appropriate use for this parcel. The suggested new land use category is Mixed-Residential. Mr. Olejniczak also described other possible land use designations including: Single-Family Residential – Lower Density, which is the current land use classification; Single-Family Residential-Higher Density; or Multiple-Family Residential.

Staff recommends the future land use classification be Mixed-Residential with or without keeping the northwest corner as Transitional Commercial.

Public Hearing: Vice-Chair Statz opened the public hearing at 7:13 p.m.

Gerald Inman, 1500 Tacoma Beach Rd., Unit 5-3, spoke on behalf of 247 people that signed a petition in opposition to the proposed change of the Comprehensive Plan and to request the zoning be changed to R-2 Single-Family Residential.

Marti Spitell Ziegelbauer, 1573 Tacoma Beach Road, was present representing her and her husband, Gary. She is on the Board of Directors for Strawberry Creek Estates and contacted all the residents of Strawberry Creek Estates regarding this proposal. She asked that the proposal be denied. Traffic is a big issue.

Jeff Griffin, 1571 Tacoma Beach Road, stated that the people that live in the vicinity didn't think the social contract should be changed. The issue is traffic.

Bill Chaudoir, 324 Alabama Street, thought this was a perfect location for apartments, but the intersection needs to be improved. Workforce housing needs have to be addressed. This area is not a Single-Family district.

In response to a question from the Plan Commission, Mr. Olejniczak stated that currently there are only two locations within the City that allow Multiple-Family Residential use under both zoning code and the Comprehensive Plan. The first parcel sits between Target and some storage facilities. The second parcel would be the Peil Property located on Egg Harbor Road.

Jim Herbst, 839 E. Fathom Place, lives in Sawyer Subdivision, and stated there are severe water problems. He wondered what this development will do. Rents did not seem affordable.

Gerrit DeJonge, 944 Tacoma Beach Road, stated there is a need for additional housing, but where? We need people to work. You don't need to change a Comprehensive Plan to cater to an outside developer.

Brad Andreae, owner of Therma-Tron-X, stated that they have 260 employees, with high paid jobs. A 26,000 square foot addition was just added to their facility. If there is no housing, they would have to build their own apartments south of town or locate their facility elsewhere.

Hans Christian, 330 N 3rd Avenue, mentioned that the Bonovich's will be building apartments, as well as the properties south of town. The Peil property, the Palmer Johnson property on Egg Harbor Road, the West Side School, Target area, and the area around the skate park are developable sites. The current proposed area is a terrible location.

Kathy Hayes, 864 Circle Ridge Place, gave a history on the busy intersection.

Jim White, 1500 Tacoma Beach Road, said if density is changed the traffic changes. Most services/destinations are located on the other side of the bay.

Diane Brauer, 431 N. 11th Place, had concerns about density. The City does need housing. There are a lot of children in the area that are in the streets because there are no sidewalks. Adding more vehicles will increase traffic. This is asking for another fatality.

Rebecca Laughlin, 1231 Clay Banks Road, stated this area is wetlands. She did not believe the Ahnapee Trail was a good amenity because there are a lot of mosquitos. Goetz owns two pieces of land, so she wondered whether the developer would be building more units on that other parcel as well.

Jim Flanagan, 1546 Tacoma Beach Road, is a seasonal resident. The Comprehensive Plan should not sit for 10 years. The City should be more current with trends. He hopes the proposal does not pass, but if approved a stop and go light should coordinate with the bridge.

Nate Kramer, 728 E. Clay Banks Road, looked at the safety aspects and there are a lot of industrial trucks driving down County U.

Dave Hoffman, 644 Tacoma Beach Road, stated there are a lot of walkers, garbage trucks, and cars that speed in that area. Something was supposed to have been done when the Oxford Avenue Apartments were built. He would like to see a 4-foot bike/walking trail along Tacoma Beach Road.

Scott Thomas, 1557 Tacoma Beach Road, agreed with everyone that spoke. County U is the only road without a controlled intersection at the highway.

Bill Murphy, 1500 Tacoma Beach Road, stated that this property is meant for Single-Family with some Two-Family homes. The proposed Multi-Family use would lead to the largest apartment complex in the City. The area needs revitalization.

Randy Dixon, 1108 Rhode Island Street), is a professional archeologist who was hired to do a Phase 1 archeological survey on this property. He said the property does contain some

artifacts. He would do additional investigation to vary the two potential sites found, but that doesn't mean the property cannot be developed.

Kathy Hayes, 264 Circle Ridge Place, stated that archeology is important.

Ms. Nault read a summary of letters in opposition to the proposal.

Michael Olesen – 1500 Tacoma Beach Rd., stated that the Board of Directors of Strawberry Creek Estates has made contact with the owners in Strawberry Creek Estates and they are in opposition to the proposed change to the Comprehensive Plan or zoning for this parcel. The rezoning to mixed-residential would be in conflict with the use that the Comp Plan presently recommends for this parcel. There would be significant increase in traffic. The project should be denied. The Board of Directors would like the subject parcel rezoned to R-2 Single-Family Residential.

Scott & Linda Thomas, 1557 Tacoma Beach Road, do not want a change to the Comp Plan. The property will be an extremely stressful point for traffic & safety. This property doesn't represent Sturgeon Bay as a classy place to live.

Betsy Rossberg, 544 Tacoma Beach Road #34, is uncomfortable with a complex this large and recommends an environmental & economic impact study, as well as a traffic study be completed. Sturgeon Bay needs affordable housing.

Gerrit & Lonnie DeJonge – The Comprehensive Plan and the proposed PUD do not match. Other concerns are traffic issues, density too great for this location, does not conform to the existing development pattern of this neighborhood, existing wetlands will create issues, there's an archaeological site located on the property, and there have been a number of concerned citizens representing disapproval of the project.

Bill & Joanne Patterson -926 & 932 Tacoma Beach Road, stated many times when the bridge is open traffic backs up for 15 minutes or more. Adding more vehicles would be disastrous. The project does not conform to the Comp Plan.

Scott Bader – 1275 Tacoma Beach Road, doesn't know why this development has gotten this far. We should be able to rely on zoning when purchasing and living in our neighborhoods.

Greg Daanen - 920 Tacoma Beach Road, is opposed to the project.

Dennis & Barbara Hare- 1500 Tacoma Beach Road, Unit 2-1, stated the proposal would have a detrimental effect on the quality of life for citizens, as well as creating dangerous situation. The proposal is not consistent with the best interests that the Comp Plan was established for.

Norbert & Patricia Lenius- 1052 & 1066 Tacoma Beach Road, is not in favor of changing the Comp Plan and zoning. This has too much density for the area.

Lynne Weborg, 450 Tacoma Beach Road, is against changing the zoning. There are a lot of dangerous traffic conditions.

Gilbert Cichy, no given address, stated this project will disrupt the area forever. There are other suitable areas in Sturgeon Bay.

Heidi Kratcha, no given address, stated there are no sidewalks on Tacoma Beach Road. They often take their kids on walks and bike rides to the Ahnapee Trail. A lot of people walk their dogs. She is concerned with heavy traffic.

Hans Christian, 330 N 3rd Avenue, thought it would be appropriate for staff to change their mind on this project and no longer show any support.

Scott and Amy Richard, 941 Tacoma Beach Road, has concerns and is opposed to the proposed change in zoning and to any zoning that is not specified by the City of Sturgeon Bay Master Plan.

The following letters received were neither for or against:

Robert Perlewitz- no given address-stated the only way an apartment complex can be built is if a stop & go light or round about is built.

Chris Olson- 46 E Redwood St., stated that if approved, he would like to see all exterior lighting fixtures utilizing full cut-off optics. Also, he would like to see impervious surface all mitigated with an onsite stormwater plan installation.

In addition to the 247 signatures on the petition, plus an additional four signatures that Mr. Inman submitted, 20 emails had been received supporting the petition.

The public hearing was declared closed at 8:28 p.m.

Consideration of: Discussion was held after hearing testimony. Moved by Ms. Hauser, seconded by Mr. Norland to deny the Comprehensive Plan amendment for future land use for the Robert Goetz parcel.

Mr. Gilson stated that there is something wrong with the Comprehensive Plan. He didn't see any desire to build Single-Family homes.

Ms. Hauser stated that the Plan Commission will resolve the housing problem, but this site isn't the only possibility. The Comprehensive Plan will be reviewed in the next year.

Mr. Gilson stated that this is a reasonable site. The City needs to push this. The City should pressure the D.O.T. for intersection improvements.

Mr. Statz mentioned that the intersection needs to be improved. The State requires deaths for something to happen. Traffic going out onto the highway is a safety issue.

Ms. Hauser asked why have a Comprehensive Plan if it is not followed? There are other locations to build apartments.

Mr. Hurley thanked everyone for sharing their comments.

A roll call vote was taken on the motion to deny the Comprehensive Plan amendment. Motion carried, with Mr. Statz and Mr. Gilson voting no.

Consideration of: Combined Preliminary/Final Planned Unit Development for Phillips Development LLC, for a 34-unit multiple-family development, located in the 700 blocks of Erie and Florida Streets, parcel #281-23-0527260006 (aka Amity Field): Mr. Sullivan-Robinson stated that Phillips Development is petitioning for approval of a PUD for a 34-unit multiple-family development. The project consists of three 8-unit and one 10-unit townhome buildings. There were concerns brought up last month at the public hearing, which included traffic issues, increase in density, living between multi-family facilities, having an onsite manager, and enclosing the detention pond.

The Aesthetic Design & Site Plan Review Board recently approved this layout and design of the project subject to the addition of some wetland plants and additional lighting.

Ms. Hauser questioned the park & playground fee. Mr. Olejniczak responded that every residential unit pays a park & playground fee of \$300 that is used for public equipment. It is not designed for private property.

Jon LeRoy, Mau & Associates, stated that they have added sidewalk, more landscaping, and the living room areas are on the outside of the properties. There will be a berm planted on the northwest corner of the property.

Ms. Hauser commented that the units looked pleasing and that they did a nice job.

Mr. Hurley said there was not a good spot for a playground. The equipment across the street would be sufficient.

Mr. LeRoy stated the townhomes inspire a maritime Door County feel.

After further discussion, it was moved by Mr. Statz, seconded by Ms. Hauser to recommend to Council approval of the PUD subject to final approval of the City Engineer for the stormwater management plan. All ayes. Carried.

Consideration of: Combined Preliminary/Final Planned Unit Development for Duquaine Development (Mau & Associates, LLP, Agent), for a 162-unit multiple-family development, located on the southeast corner of Tacoma Beach Road and Clay Banks Road/CTH U, parcel #281-68-17000301A: Since the item to amend the Comprehensive Plan was denied, members wondered if this item should still be considered. Mr. Olejniczak mentioned that it could be tabled, it could be acted on at this meeting, or the Plan Commission could approve a modified PUD. The ordinance provides a time limit for action.

After a short discussion, it was moved by Ms. Hauser, seconded by Mr. Norland to deny the combined Preliminary/Final Planned Unit Development for Duquaine Development for all the reasons given during the public hearing, including traffic safety, density, existing wetlands, and an existing archeological site. Roll call vote. Motion failed, with Mr. Gilson, Mr. Hurley, and Mr. Statz voting no.

Steve Beida, Mau & Associates, was available for any questions. Mr. Hurley suggested tabling the issue to see if the developer would revise the proposal.

Moved by Mr. Statz, seconded by Mr. Gilson to table until next meeting. All ayes. Carried.

Public comment on non-agenda Plan Commission related items: No one spoke on non-agenda items.

Adjourn: Moved by Mr. Norland, seconded by Ms. Hauser to adjourn. All ayes. Carried. Meeting adjourned at 9:15 p.m.

Respectfully Submitted,

Cheryl Nault

Community Development/Building Inspection Secretary

Christopher Sullivan-Robinson Planner/Zoning Administrator 421 Michigan Street Sturgeon Bay, WI 54235



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Fax: 920-746-2905
E-mail: csullivan-robinson@sturgeonbaywi.org
Website: www.sturgeonbaywi.org

MEMO

To: Plan Commission

From: Christopher Sullivan-Robinson

Date: June 15, 2018

Subject: Zoning Map Amendment for Mike Oleson

Michael Oleson is the owner of the property located at 1468 Egg Harbor Rd (parcel #281-62-11000103A). This property is zoned C-1 (General Commercial) which is intended for goods and services oriented business or facilities that support these types of business. Mr. Oleson's use is residential, which is considered a non-conforming use under zoning code. The Comprehensive Plan also shows that the property's future land use as being Community Commercial.

The surrounding zoning is all commercially zoned, with the exception of the neighboring property to the west, which also has a non-conforming residential use.

At this time, the property owners are trapped because the owners are trying to sell a property that is has a classification issue. The owners have only residential buyers interested, but due to the non-conforming status, the buyers are unable to get bank support to purchase the property. They are petitioning for a zoning change to C-5, which is Mixed Commercial and Residential.

Zoning Code Information

20.175 Use regulations for C-5 district

(1) Permitted uses are:

- (a) Single-family dwellings established within an existing building, including repairs/reconstruction of such dwellings and additions up to 50 percent of the original floor area.
- (2) Conditional uses are:

(a) New single family dwellings.

(c) Additions to existing dwellings that exceed 50 percent of the original floor area.

As described in zoning code, the first step for zoning map amendment is the initial presentation to the Plan Commission. This allows for petitioners to explain the proposal and the members of the Commission offer their feedback, ask questions, and to have general discussion. At the stage, there is no formal action taken. At the next meeting a public hearing will take place followed by a recommendation by the Plan Commission to Council.

Mr. Chris Sullivan-Robinson Community Development Dept. 421 Michigan Street Sturgeon Bay, WI 54235

RE: 1468 Egg Harbor Rd. - Sturgeon Bay

Dear Mr. Sullivan-Robinson,

I am attaching the paperwork and fee associated with our Rezoning Application for the above property. We are requesting approval to change the zoning from C-1 to C-5 so that the house could continue to be used as a residence and rebuilt if it were damaged by more than 50 per cent. This property has been used as a single family dwelling since 1940.

My brother and I own the property now, since Mom and Dad passed away. We have had the property listed with Starr Realty for three years now. The only real interest in purchasing the property has been to use it as a residence. There has been next to no interest from a commercial buyer. Just a short time ago, we accepted an offer from a buyer who wanted to use the house as a residence, however the buyers financing fell thru when the bank discovered that the house could not be rebuilt as a residence (C-1) after a disaster.

It is our understanding that C-5 zoning would permit a single family dwelling and allow the structure to be rebuilt as a dwelling.

Thank you for your consideration,

Mike Oleson

8 Oak St.

Marblehead, MA 01945

781-639-4558

mmmoleson@verizon.net

Date Received:	5-3	-18	
Fee Paid: \$	400	+ 500	1 grides
Received By:	CN		00

CITY OF STURGEON BAY ZONING/REZONING APPLICATION

	, APPLICANT/AGENT	LEGAL PROPERTY OWNER
Name	Mike Oleson	OLESON REVOCABLE TR
Company		
Street Address	8 OAK ST.	
	MARbicherd, MA	
City/State/Zip	01945	
Daytime Telephone No.	781-639-4558	
FORNO. E-MAIL	MMM OLESONE VERIZON,	NET
STREET ADDRESS OF SU Location if not assigned a	JBJECT PROPERTY: 1468 E.G. a common address: STURGEON	BAY, WI
TAX PARCEL NUMBER:	28/-62-11000103	A
CURRENT ZONING CLAS	SIFICATION: C-1	
CURRENT USE AND IMP	ROVEMENTS: SINGLE FAMILY	Residence
ZONING DISTRICT REQU		
COMPREHENSIVE PLAN	DESIGNATION OF SUBJECT PROPERTY:	COMMUNITY COMMERCIAL
North: COMMUNITY South: WBLIC AN	D INSTITUTIONAL	EHENSIVE PLAN:

ZONING AND USES OF ADJACENT SURROUNDING PROPERTIES:
ZONING AND USES OF ADJACENT SURROUNDING PROPERTIES: North: OLES MINIOS TORAGE / WALMART
South: CVS .
East: NIGHTINGALE RESTAURANT
West: Seiler Home - RENTLA SFD
HAVE THERE BEEN ANY VARIANCES, CONDITIONAL USE PERMITS, ETC. GRANTED PREVIOUSLY FOR
THIS PROPERTY? IF YES, EXPLAIN: It has been used as SINGLE FAMILY DWELLING SINCE 1940
SINGLE FAMILY DWELLING SINCE 1990
Attach a full legal description (preferably on disk), 8-1/2" X 11" location map, and Agreement for
Reimbursement of expenses.
Min Nearly 12 1/2
MIKE OLESON MICHOEL F. Close 5/2/18
Property Owner (Print Name) Signature / /Date
Applicant/Agent (Print Name) Signature Date
is Laure call
Applicant/Agent (Print Name) Signature Date VIA Phone call
I, /// KY 0050W , have attended a review meeting with at least one member of staff and understand that I am responsible for sign placement and following all stages listed on the check list in
regard to the applicant.
classes miles of the superior
S/2//8 Applicant Signature Staff Signature
Date of review meeting Applicant Signature Staff Signature
Attachments:
Procedure & Check List
Agreement For Reimbursement of Expenses
STAFF USE ONLY
Application conditions of approval or denial:
Date Community Development Director

2017 Property Records for City of Sturgeon Bay, Door County

May 3, 2018

Tax key number: 281-62-11000103A Property address: 1468 Egg Harbor Rd

Neighborhood / zoning: Res. Nbhd 10 / C-1

Legal description:

Traffic / water / sanitary: Heavy / City water / Sewer
Legal description: TRACT 1 CSM#1212 V.7 PG.113 SEC. 5-27-26 NENE SUBD 11

Summary of Assessment				
Land		\$39,500		
Improvements	1	\$50,300		
Total value		\$89,800		

Summary of Last Valid Sale				
Sale date				
Sale price				

Qty Ta	x Classification	Unit of Measure Width			Waterfront	Description	Assess Value
1	Residential	Square feet	18,276	0.420	None	Heavy Traffic (from split of tax key number 2816211000103)	1
				1		Total land	; \$39,500
				Residential Bu	ilding		
	4040	Full basement:	720 SF				
Year built:	1940 1 story w/attic	Crawl space:	240 SF				
Story height:		Rec room:			•	· **	
Style:	Old style	FBLA:					3 F F

Use: Single family 960 SF First floor: Second floor: Exterior wall: Asbestos/Asphalt 300 SF Asphalt shingles Finished attic: Roof type: Gas, forced air Unfinished attic: Heating: A/C, same ducts Unfinished area: Cooling: Enclsd porch, frame, lower 108 SF Bedrooms: Family rooms: 1 full, 0 half Baths: Total rooms: Whiri / hot tubs: Masonry FPs: Metal FPs: Masonry adjust: Gas only FPs: D+ Bsmt garage: Shed dormers: Grade factor: Condition: Average Percent complete: 100% Gable/hip dorm:



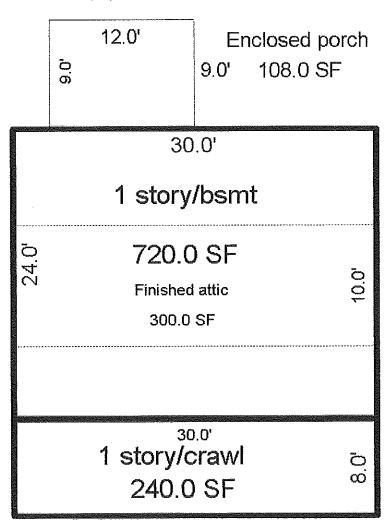
Residential assessed building value: \$47,000 Total square feet: 1,260

GARAGE

2017 Property Records for City of Sturgeon Bay, Door County

May 3, 2018

Other Building Improve	ments	····				Other Improvements	
Qty Description	Width	Depth	Height	Assess Value	Tax Class	Description	Assess Value
1 Garage, detached, frame or cb	20	32		\$3,300		<u> </u>	
		Ī	otal OBIs:	\$3,300		Total other improvemen	ts:



Location Map - Mike Oleson Property from the Web Map of ... //www.co.door.wi.gov)

Printed 06/15/2018 courtesy of Door County Land Information Office



Door County, Wisconsin ... for all seasons!



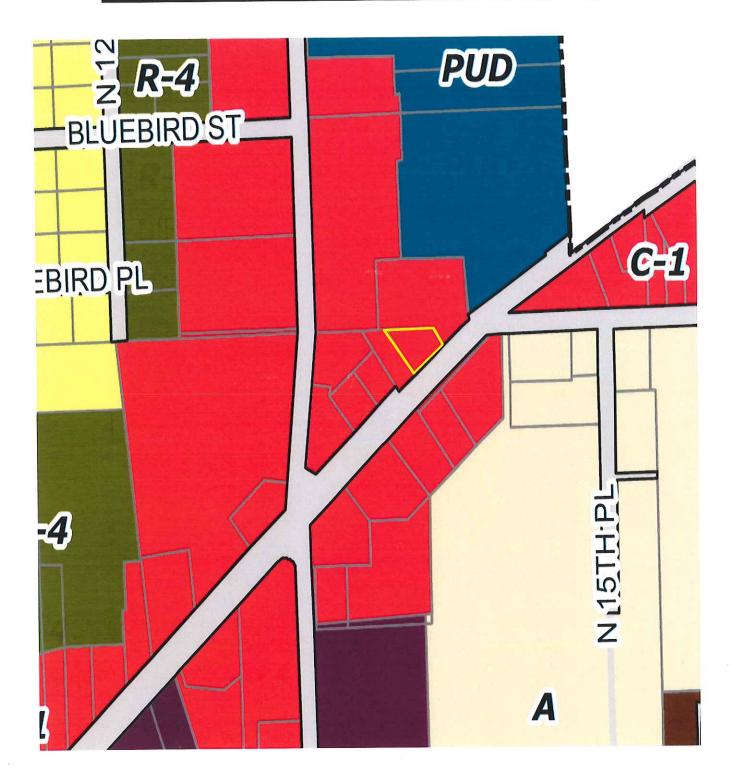


Door County can not and does not make any representation regarding the accuracy or completeness, nor the erro-free nature, of information depicted on this map.
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Aerial View of Oleson's Property



Current Zoning Map of Oleson's Property



Christopher Sullivan-Robinson Planner/Zoning Administrator 421 Michigan Street Sturgeon Bay, WI 54235



Phone: 920-746-2907
Fax: 920-746-2905
E-mail: csullivan-robinson@sturgeonbaywi.org
Website: www.sturgeonbaywi.org

MEMO

To: Plan Commission

From: Christopher Sullivan-Robinson

Date: June 15, 2018

Subject: Consideration of Ahnapee Trail Apartments PUD

At the May 16th meeting, the Comprehensive Plan amendment was reviewed for changing the Future Land Use Classification of the Goetz property located off of Tacoma Beach Rd. After review by the board and staff, the petition was ultimately denied. The Plan Commission also reviewed the Ahnapee Trails Apartments PUD, which was tabled until the next meeting to allow the developer to come back with a revised plan. The developer has submitted a letter requesting a 90-day extension to allow them to revise their plans.

The Plan Commission shall make a recommendation within 90 days of the submittal of the Preliminary PUD, unless such time period is extended by mutual agreement with the applicant. If action on the Planned Unit Development application is delayed more than 120 days from the date of the public hearing, a new public hearing shall take place.

The Plan Commission has the following options:

- 1. Grant an extension of 90 days.
- 2. Deny the PUD request.

Staff recommends to allow the 90-day extension to give the developer an opportunity to submit revised plans.

Nault, Cheryl

From:

Olejniczak, Marty

Sent:

Thursday, June 14, 2018 5:06 PM

To:

Nault, Cheryl

Subject:

FW: Request for a 90 Day Extension for Ahnapee Trail PUD

From: Keith Duquaine [mailto:aptbuilder2@yahoo.com]

Sent: Thursday, June 14, 2018 4:53 PM

To: Sullivan-Robinson, Christopher; Olejniczak, Marty

Subject: Request for a 90 Day Extension for Ahnapee Trail PUD

Chris / Marty

Please forward this communication to the Planning Commission Members

To: All Planning Commission Members

Due to the neighbors concerns about the Ahnapee Trail Apts proposed development on Clay Banks Rd Duquaine Development would like to revise the plan

for consideration at the July Meeting. We respectfully request that you do not act on this matter at the June meeting and postpone any vote until we can re-submit the revised plan for the July Meeting We also request an extension to the 90 Day Rule for Submission to the City Council so that we have time for these revisions to be completed

Thank You

Keith Duquaine

President Duquaine Development Inc. 4329 Nicolet Drive Green Bay, WI 54311

cell: 920-371-1973 fax: 920-465-3346

aptbuilder2@yahoo.com

Christopher Sullivan-Robinson Planner/Zoning Administrator 421 Michigan Street Sturgeon Bay, WI 54235



Phone: 920-746-2907 Fax: 920-746-2905 E-mail: csullivan-robinson@sturgeonbaywi.org Website: www.sturgeonbaywi.org

MEMO

To: Plan Commission

From: Christopher Sullivan-Robinson

Date: May 16, 2018

Subject: Consideration of Multi-Family PUD for Duquaine Development LLP

Duquaine Development, LLP is petitioning for approval of a Planned Unit Development (PUD) to be located on parcel # 281-68-17000301A at the corner of Tacoma Beach Rd and Clay Banks Rd. The project now consists of four 16-unit and four 18-unit apartment buildings for a total of 134 units. There will be eight 7-stall detached garages and 96 attached garages for a total of 152 garage stalls. Zoning allows 12.4 units per acre and this development will have 10.66 units per acre. The subject lot is zoned Two-Family Residential (R-3). Under this zoning classification, multiple-family development is a conditional use and is limited to 4-units per building. Thus, the PUD is necessary in order to have the 16-unit and 18-unit buildings. The project is intended to be built in three phases.

The development proposal is not consistent with the recommended future land use in the Comprehensive Plan. An amendment to the comprehensive plan is needed and is currently being considered.

Public Hearing: There are two concerns that have resonated most. The traffic impact was one, especially at the highway intersection. The second is the density and building scale compared to the typical 4-unit buildings that are currently allowed in the R-3 district.

Options: The Plan Commission has the following options for its recommendation to Council:

- Approve the project as presented
- 2. Approve only the first phase of the project
- 3. Approve the project with a maximum density (i.e 100 units or less.)
- 4. Deny the proposal

Recommendation: Staff is supportive of the development plan but there are some items to address with this development. If the Commission elects to make its recommendation, staff recommends approval of the PUD, but subject to the following conditions:

- 1. Amending the Future Land Use Map of the Comprehensive Plan to change this parcel Mixed residential (or other similar designation).
- 2. Approval of the Aesthetic Design and Site Plan Review Board.
- 3. Compliance with the parking lot landscaping requirements.
- 4. Final approval of the City Engineer for the storm water management plan.
- 5. Installation or payment for the cost of installation of the right-turn lane on Clay Banks Road (County Highway U) at the highway.

6. Reducing the scope of the project to not more than 134 units and not more than 8 buildings.

In addition, due to the high number of units, it would make sense to consider each phase separately rather than consider the entire project at once. This provides a chance to make sure the development is progressing smoothly and verify the market for the units, with an opportunity for the developer to make adjustments as needed. Therefore, staff recommends granting approval for the first three buildings, with future phases to come back to the Plan Commission.

STAFF REPORT Combined Preliminary/Final PUD for Ahnapee Trail Apartments 150-unit Apartment Complex

Proposal: Duquaine Development, LLP is petitioning for approval of a Planned Unit Development (PUD) to be located on parcel # 281-68-17000301A at the corner of Tacoma Beach Rd and Clay Banks Rd. The project consists of six 16-unit and three 18-unit apartment buildings for a total of 150 units. There will nine 7-stall detached garages and 94 attached garages for a total of 157 garage stalls. The site is 14.08 acres gross, but nets to 12.56 after deducting street right-of-way. The subject lot is zoned Two-Family Residential (R-3). Under this zoning classification, multiple-family development is a conditional use and is limited to 4-units per building. Thus, the PUD is necessary in order to have the 16-unit and 18-unit buildings. The project is intended to be built in three phases.

At the concept review, the Plan Commission approved using the combined preliminary/final review process. This process requires the completion of four items: a public hearing at Plan Commission, Plan Commission review/recommendation to Council, and two separate readings of the PUD ordinance at Common Council. On April 18th, a public hearing takes place before the Plan Commission and then at a subsequent meeting the Plan Commission could make a recommendation to Council. The Plan Commission does not make its recommendation at the same meeting as the public hearing unless all members are ready to take action.

Existing Conditions: The subject parcel is vacant land. There is a portion of wetlands along the east side of the property and a low spot in the center also believed to be wetlands. The elevation slopes down towards the west property line approximately 12-16 feet. This property also abuts a property owned by the DNR that contains a portion of the Ahnapee Trail and wetlands. Within 300 feet there are no homes and within 600 feet there are 13 homes.

The adjoining zoning and land uses are:

- North: Residential (R-2) HWY R/W with a church and assisted living facility beyond
- South: Residential (R-3) Recreation trail and vacant land beyond
- East: Residential (R-3) Recreation trail and wooded wetlands beyond
- West: Residential (R-3) Vacant land and SBU well station

Comprehensive Plan: According to future land use map found in the City of Sturgeon Bay's Comprehensive Plan, this area is planned to be single-family residential (low-density) with a small portion on the northwest corner being transitional commercial. The Comprehensive Plan defines the type of single-family residential as an area predominantly comprised of single-family homes at a density of up to 4 units per acre. Transitional Commercial is defined as an area that provides lower density and neighborhood commercial uses or a mixed of uses. Thus, the development proposal is not consistent with the recommended future land use in the Comprehensive Plan. Under Wisconsin law zoning map amendments are required to be consistent with the Comprehensive Plan. If the proposed apartments are supported by the Plan Commission and Council, an amendment to the Future Land Use Map of the Comp Plan should be commenced to comply with the required consistency.

Site Plan and Design Consideration: The following is a summary of the major site and design subjects:

Building Layout: There will be six apartment buildings facing the street right-of-way while the rest are located on the interior of the property. The detached garages are stationed on the

interior of the parking facilities and the attached garages on the back side of the buildings. There are groupings of buildings, five in the north part and four in the south part. The two halves are connected by a pedestrian path but not by vehicular driveway. The site plan does not correctly show the building length. The buildings are longer than on the site plan. To address this, the developer has indicated he could either shorten the middle building along the northern portion of Clay Banks Road by eliminating a couple of units or could potentially eliminate one building altogether.

<u>Driveway Access</u>: There will be three entrances installed including one off of Tacoma Beach Rd, and two off of Clay Banks Rd. One access point will be installed at each phase of construction. The first two phases of construction will have interconnected park facilities with access from Clay Banks Rd, and Tacoma Beach Rd. The third phase of construction, located at the south end of Clay Banks Rd, and will have only one access point.

<u>Density</u>: The zoning code allows a maximum density of 12.4 (units/acre). The density with 150 units is 11.9 (units/acre), which is within regulation. The proposed density is similar to but slightly denser than other nearby apartment projects – Orchard Estates (10.3) and Oxford Ave Apartments (11.3).

Building Design: The buildings are nearly identical in footprint and exterior. These are two story buildings with attached garages. The garages are constructed under the second floor so they do not stick out. The proposed buildings are approximately 28 feet in height with approx. 8700-9100/sqft footprint. These buildings will have pitched roofs with a combination of dormers over the balconies. There will be a variety of materials used on the exterior to break up the long building design. There will be a mix of 1-3-bedroom units that will be served by a single common entrance. The larger units on the ends of the first floor will have separate entrances through the garage. The lower units will each have their own patio entrance and the upper units will have balconies. Each unit will be entirely on either the first or second floor.

Mix of Units: The proposed apartments will consist of (72) 1-bedroom units, (72) 2-bedroom units and (6) 3-bedroom units. If need dictates, the developer is able to adapt the floor plan to change the mix of units. The 18-unit buildings will have 6 units on the first floor and 12 units on the second floor. The 16-unit building will have 5-6 units on the first floor and 10-11 units on the second floor depending on the mix. There also is a 14-unit option with (12) 2-bedroom units and two 3-bedroom units.

Parking: There are 157 garage stalls and 167 surface parking spaces for a total is 324 parking spaces. Zoning code requires 246 stalls so this requirement is met. The design requirements are met regarding the stall dimensions, drainage, and surfacing, but to comply with the landscape requirements the developer must have install canopy trees (1 tree/6 stalls) within 10 feet the parking areas.

<u>Pedestrian Access</u>: Pedestrian movement to and from the site can be provided by the Ahnapee Trail which runs alongside the project. The developer intends to provide pedestrian connections from the development to the Ahnapee Trail. Sidewalks are not proposed for the abutting streets, which have rural profiles with ditches. It might be difficult to have sidewalks on these streets unless they are upgraded to urban cross sections because of steep grades.

<u>Traffic:</u> A traffic impact analysis has not been completed for the project. The Wisconsin DOT did a corridor study in 2010 that included the intersection of County Highway U with the state highway. The study factored in future growth and 35% increase in future traffic. The only

upgrade proposed by the DOT is the addition of a right-turn lane for northbound traffic on County Highway U. The City Engineer has not required the developer to complete a traffic impact analysis, but would like to see the improvement made. There have been concerns from the property owners that the intersection of C.T.H U/HWY 42/57 is dangerous and the traffic from the new development project will exacerbate the situation. An option supported by staff is to require the developer to install the right-turn lane at that intersection at his expense in lieu of conducting the TIA. The estimated cost of installing the additional lane would be \$5,000 - \$7,500, which is likely similar to the cost of the TIA. The developer has agreed to this option. Otherwise, the City can require the TIA to be completed if there is a need for additional information.

<u>Utilities</u>: Sturgeon Bay Utilities will require the installation of four power poles to loop the service and will also need a 12-foot easement following the route. Sanitary sewer will be privately owned extending off the east property line. Water services will be extended off the north property line from the existing watermain. There are no foreseen issues with adding this development to the existing services. This development contains one garbage pickup station located within the first development phase.

Storm-water Management: This project has a proposed impervious surface ratio of about 27.6%, which is well within regulation. The developer is proposing the construction of a detention pond in the northeast portion of the property. Drainage from the buildings and parking areas is collected into a storm sewer system and piped to the pond. The pond is intended to reduce sediments and the rate of water leaving the site. The stormwater management plan will still need a full review and approval from the city engineer.

Landscaping: The developer is meeting the required street trees along the right-of-way lines for both Clay Banks Road and Tacoma Beach Rd. They are proposing to install Maple, Honey Locust, and Linden trees. There are also Pine, Spruce, and Juniper trees throughout the site. As required by the zoning code, the developer is required to install trees around the parking areas equaling one tree per 6 surface parking stalls. This will have to be revised to show the additional tree needed. There are no additional landscaping requirements, but a heavy emphasis is put on the visual creativity with the site plan by the Aesthetic Design and Site Plan Review Board review guidelines. The developer will be installing a variety of plants and shrubs on the non-parking lot sides of the buildings including Spirea, Weigela, Ninebark, and Juniper.

Recreation facilities: The developer has chosen to use the Ahnapee Trail as one of the site amenities by including an internal crushed limestone trail which will connect to Ahnapee Trail on the south and east property line. The trail will also extend from the second phase to the third phase of development (around the low spot). A gazebo will be installed on the northeast corner of the detention pond and a play area installed north of the third phase of development.

<u>Lighting</u>: As shown in the electrical plans, wall-pack LED lighting will be placed around all the apartment buildings and detached garages. The style and position of these lights are typically preferred by the Aesthetic Design and Site Plan Review Board. See the packet for more location and specifications.

Signage: No signage plans have been submitted.

Construction Schedule: There are three phases of construction proposed for this development. Phase one includes the three buildings to the north, which will be constructed in summer of 2018. Phase two includes the two buildings just south of phase one and will be constructed in

2019. The four buildings on the south end will be installed in 2020. The project is expected to be completed in 2021.

Miscellaneous: Besides the Comprehensive Plan consistency issue, there are also some addition items that need to be resolved:

- A formal wetland delineation will need to be completed before the site plan can be approved. The current site plan is based upon estimated wetlands. The developer has committed to complete the delineation but must wait for the growing season to start per DNR regulations. If the wetlands are significantly different, the site plan may have to be altered.
- Prior to disturbing the ground, the site will need an archeological review because it is located in a general area that could have archeological sites. Randy Dickson from Midwest Archeological Services has been commissioned by the developer to perform that service.

PUD Review Criteria: The Plan Commission and the Council must consider the following:

- Project compatibility with the Comprehensive Plan.
- Land use compatibility both internally and surround uses.
- Enhancement to the community and creative approaches to development.
- Preservation and conservation of environmentally sensitive areas.
- Open space and recreation needs for future residents.
- Are public works, utilities, fire department, police department needs met?
- Are safe transportation and pedestrian facilities provided?
- Economic practicality
- Any variations from the normal zoning requirements justified by the overall conformance to the purposes and intent of the zoning code

It is noted that for this PUD no deviations from the typical zoning rules are requested, except for allowing the buildings to more than the 4 units allowed in R-3. The PUD is also required due to the project having more than 25 units total.

Aesthetic Design & Site Plan Review Board: The project will require the review and approval of the design review board. That review body has authority to require changes or conditions relating to the external features of the development.

Fiscal Impact: The project is expected to generate more than \$75,000 in annual property taxes to the City at full build out. In addition, the park and playground fees of \$45,000 would be collected. Since no new streets or public infrastructure is proposed, the impact on city services is not expected to be significant.

Public Comments: At the time of agenda preparation, the City had allowed received a number of public comments. In addition, the developer hosted a neighborhood meeting for Tacoma Beach Road residents at which a number of concerns were aired. There are two concerns that have resonated most. The traffic impact was one, especially at the highway intersection. This concern is discussed earlier in this report.

The second is the density and building volume of the project compared to the typical 4-unit buildings that are currently allowed in the R-3 district. The larger buildings do provide for greater density and staff estimate that likely about 80 units or so (20 buildings) could be reasonably accommodated if 4-unit buildings were developed. But the larger buildings do allow for greater

massing such that the total amount of "building wall" along the street could be less under the proposed plan. The current proposal also has the advantage of eliminating driveways compared to typical 4-unti or duplex development. But it has more residents per acre which is good for compact development and potentially bad for neighborhood impacts.

Recommendation: Staff is supportive of the development plan but there are some:items to address with this development. The Plan Commission has the ability to make its recommendation after the public hearing if all members are ready to act. Otherwise, it can hold the item to the next meeting and can ask for additional information or revisions, if necessary. For this project it would be beneficial to have an updated site plan and confirmation of the wetland boundary prior to final action.

If the Commission elects to make its recommendation, staff recommends approval of the PUD, but subject to the following conditions:

- 1. Amending the Future Land Use Map of the Comprehensive Plan to change this parcel Mixed residential (or other similar designation).
- 2. Approval of the Aesthetic Design and Site Plan Review Board.
- 3. Compliance with the parking lot landscaping requirements.
- 4. Final approval of the City Engineer for the stormwater management plan.
- 5. Installation or payment for the cost of installation of the right-turn lane on Clay Banks Road (County Highway U) at the highway.
- 6. Reducing the scope of the project to not more than 134 units and not more than 8 buildings.

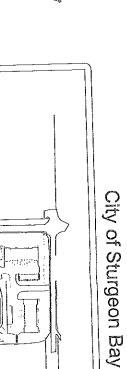
In addition, due to the high number of units, it would make sense to consider each phase separately rather than consider the entire project at once. This provides a chance to make sure the development is progressing smoothly and verify the market for the units, with an opportunity for the developer to make adjustments as needed. Therefore, staff recommends granting approval for the first three buildings, with future phases to come back to the Plan Commission.

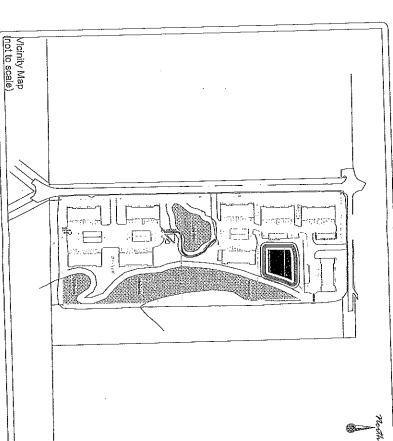
Prepared by:	Christopher Sullivan-Robinson City Planner/ZA	4/13/18 Date
Prepared by:	Marty Olejniczak Community Devel. Director	4//3/18 Date
Reviewed by:	Chad Shefchik City Engineer	Date
Reviewed by:	Josh VanLieshout City Administrator	-1/13/18 Date (



Thompoo Tai Aparments

Preliminary / Final Planned Unit Development Site Plan





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Project Information

Owner(s): Robert A Goetz Project Name:

Ahnapee Trail Apartmenta Protect Dosorbillon:

Project Address: SE Corner Clay Banks (CTH U) and Tscoma Beach (3) 18 Unit Apartment Buildings(6) 16 Unit Apartment Buildings

Contact Information

Owner(s): Robert A Goetz W16699 Lake Rd Birnamwood, WI 54414

Engineer:
Mau and Associates
Comtact: David Meister, PE
400 Security Blvd
Green Bay, WI 54313
(820) 494-9670

Avon of Entire Parcets 14.06 acres
Land Use: Planned Multi-Partilly Routidestilal Development
Planned Units: 150
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Greenspace / Recrootional Space: 75.4%
Buildings and Garages: 15.7%
Trails: Appx: 410 feet
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Asprok and Concrete: 8.0%
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Three Buildings 18 Units (6) Two Bedroom Units (12) One Bedroom Units

Three Buildings 16 Units
(4) One Bedroom Units
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(8) One Bedroom Units
(6) Two Bedroom Units
(2) Three Bedrooms Units

*Alternative footprint option for 3 bedroom units includes (12) Two Bed, (2) Three Bed

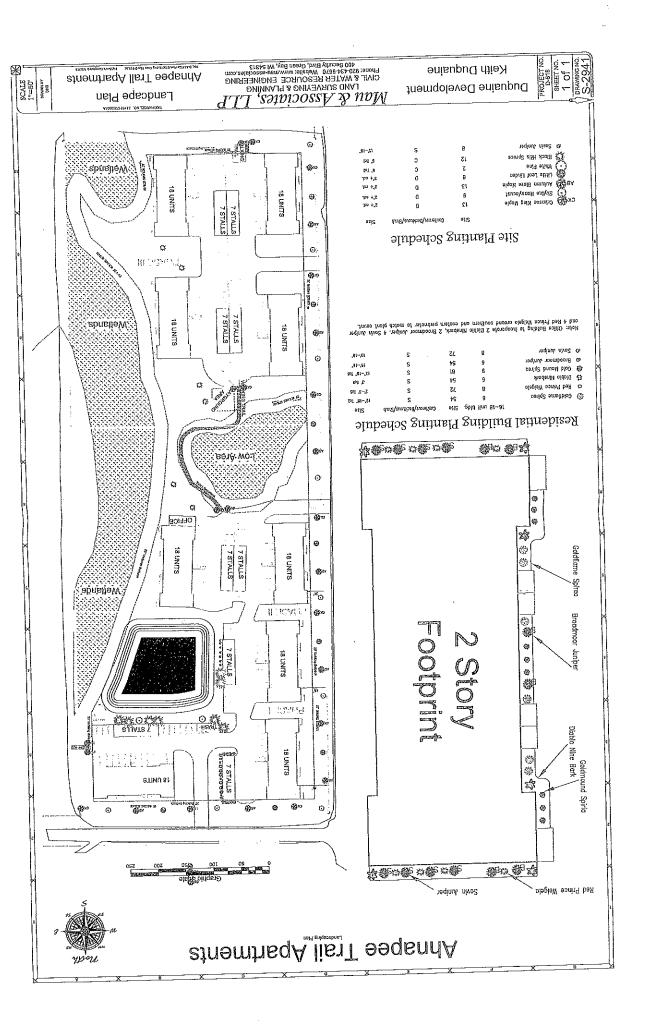
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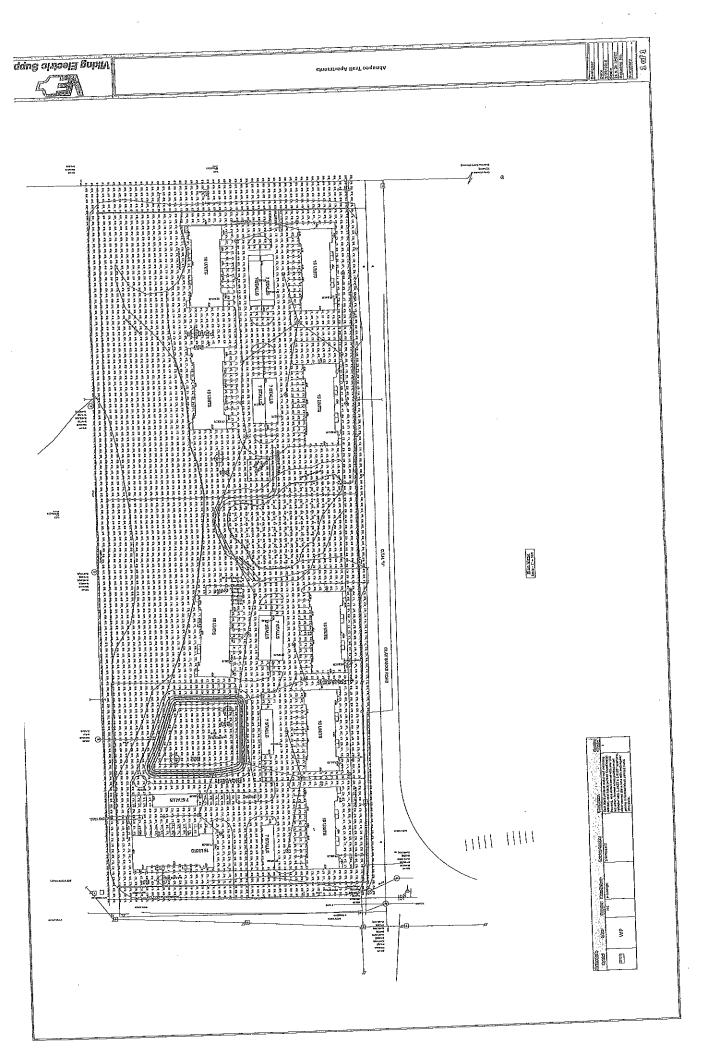
LAND SURVEYING & PLANNING CIVIL & WATER RESOURCE ENGINEERING Phone: 920-434-9670 Fax: 920-434-9672

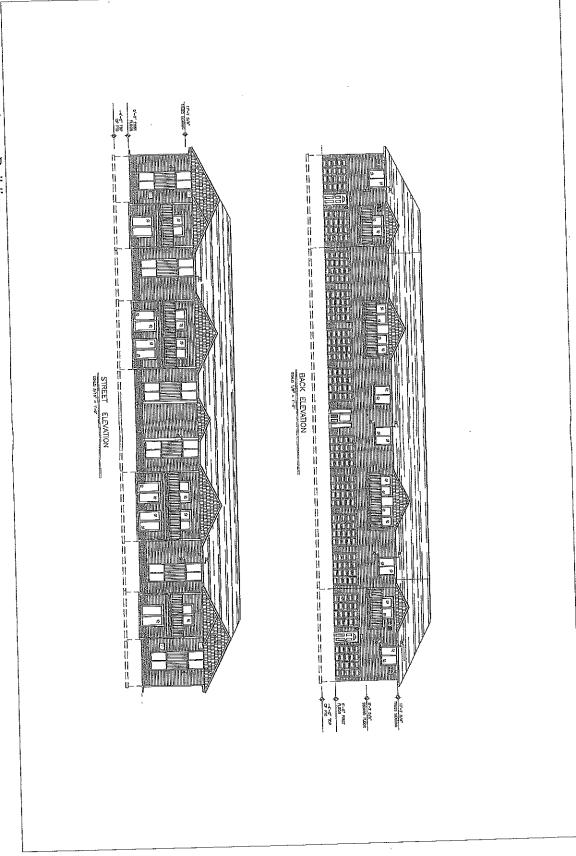
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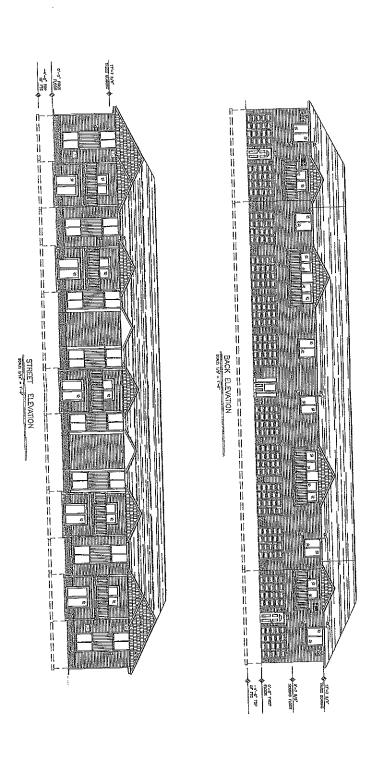
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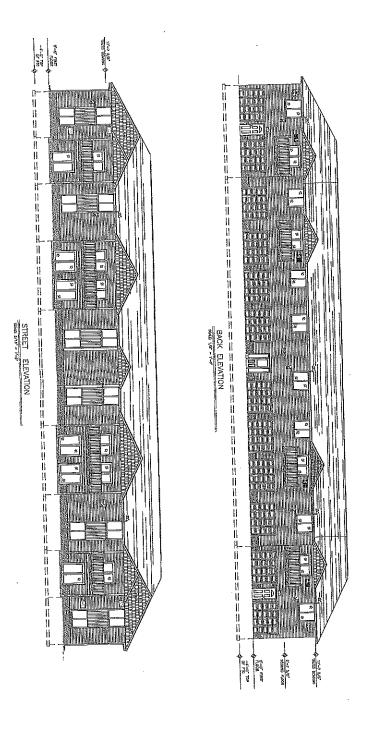
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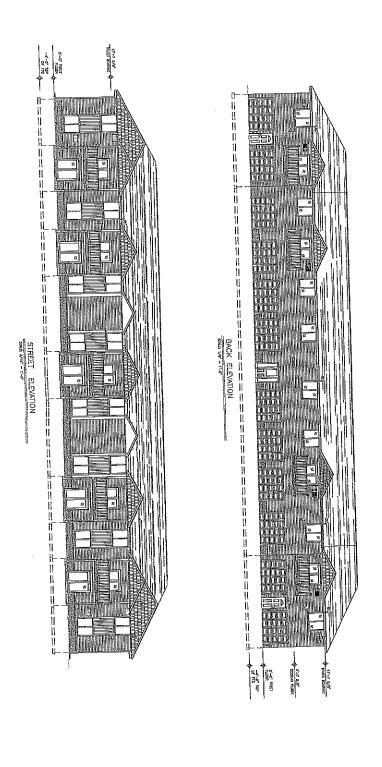












AHNAPEE TRAIL APARTMENTS

ENGINEERING PLANS

CITY OF STURGEON BAY, WI

PROJECT INFORMATION

OWNER(S):
DUQUAINE DEVELOPMENT

PROJECT NAME:
MULTIFAMILY APARTMENT SITE

PROJECT DESCRIPTION:
9 - 18 - UNIT APARTMENTS BUILDINGS WITH
ATTACHED AND DETACHED GARAGES AND
ALSO EXTERNOR PARKING, STORMWATER
MANAGEMENT FAGILITY.

PROJECT LOCATION:
SOUTHEAST CORNER OF CLAY BANKS RD. & TACOMA BEACH RD.

PARCEL NUMBER(S): 281-68-17000301A

EGAL DESCRIPTION

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CONTACT INFORMATION

DUQUAINE DEVELOPMENT ATTN.: KEITH DUQUAINE 1927 LAKESIDE PLACE GREEN BAY, WI 54302 PH.: 920-371-1973

ENGINEER:

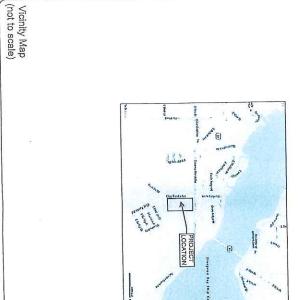
MAUJ & ASSOCIATES, LLP

ATTNL: DAVID J. MEISTER, P.E.

PH.: 920-434-6870

AOS SECURITY BLVD.

GREEN BAY, WI 54313





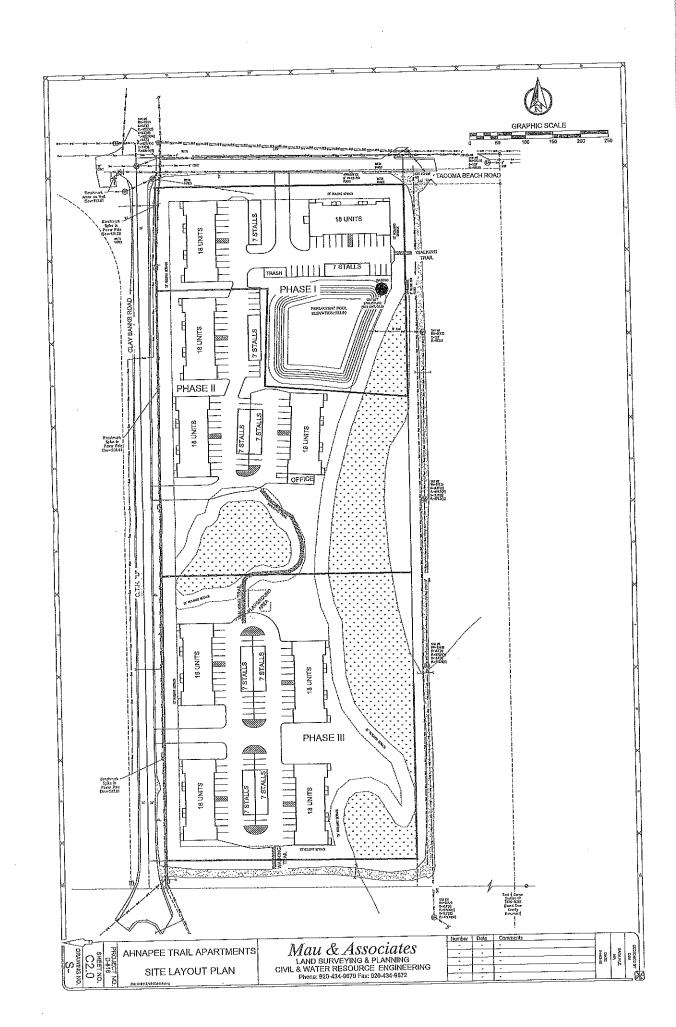
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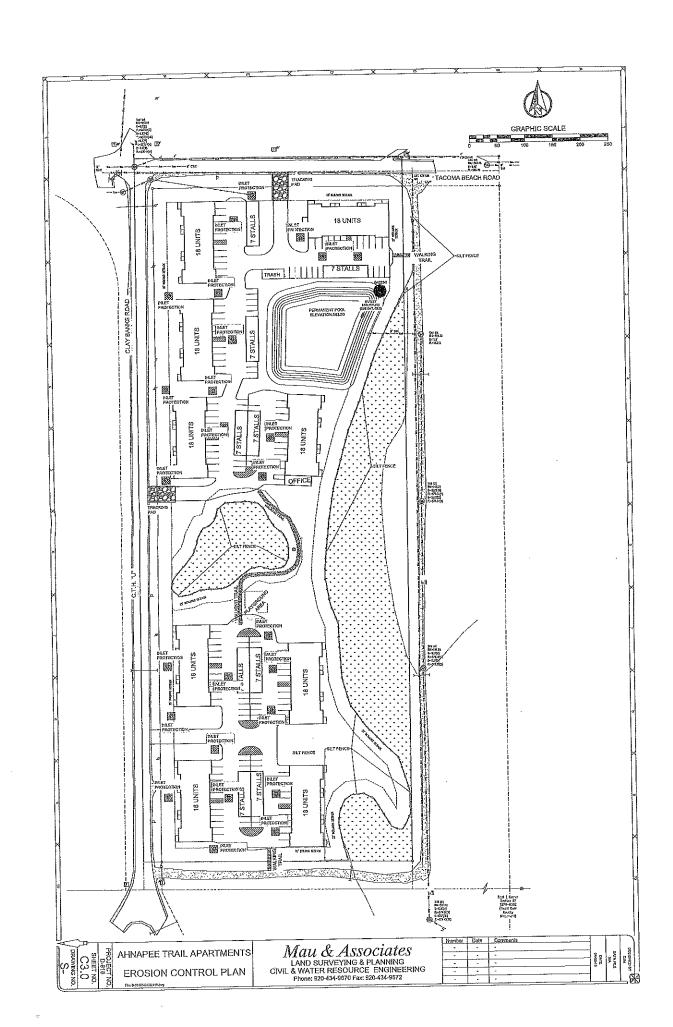
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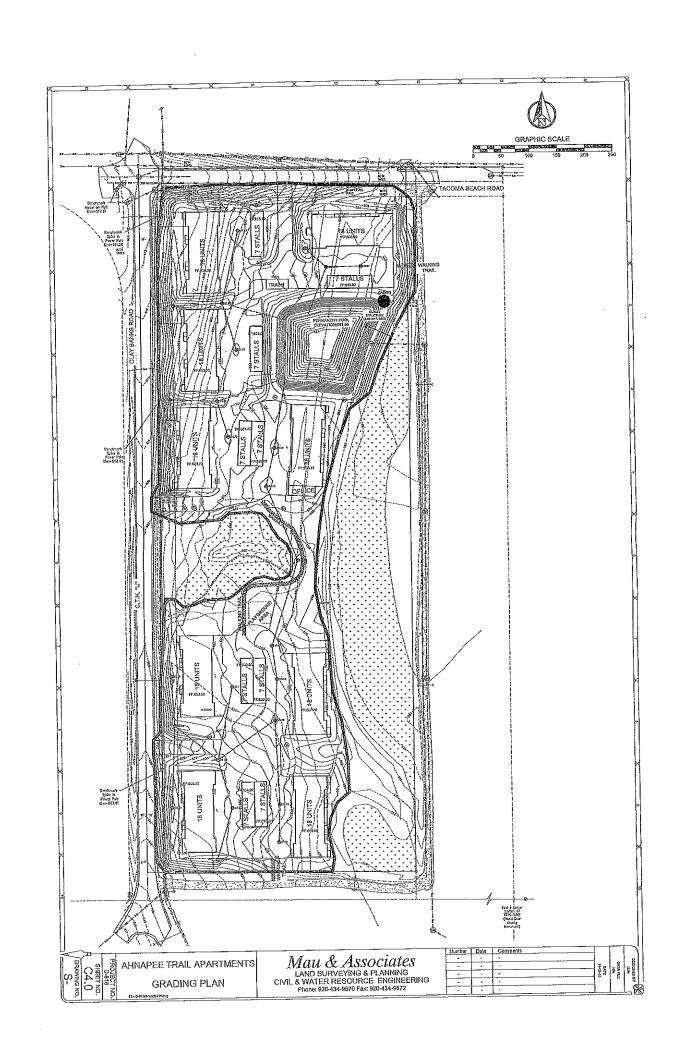
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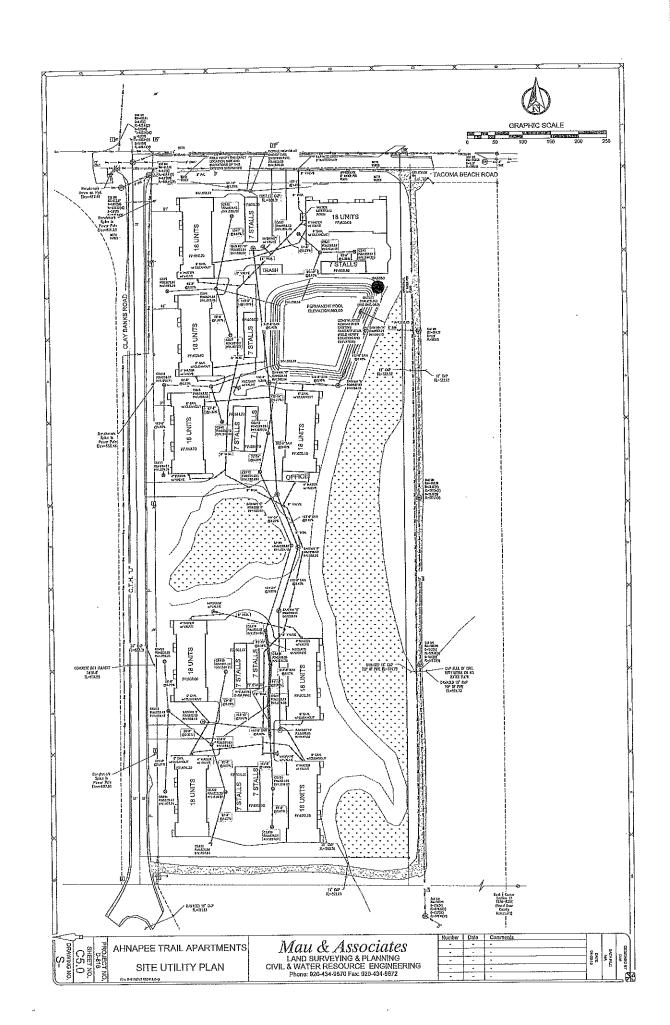
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PROJECT NO. D-818
SHEET NO. C1.0
DRAWING NO. S-









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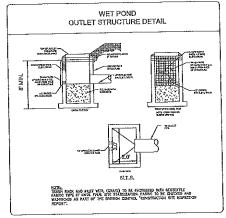
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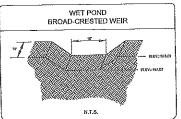
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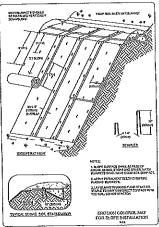
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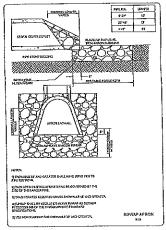
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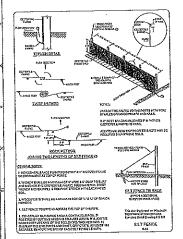
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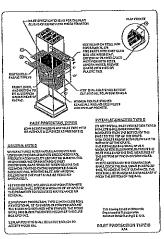


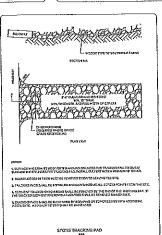






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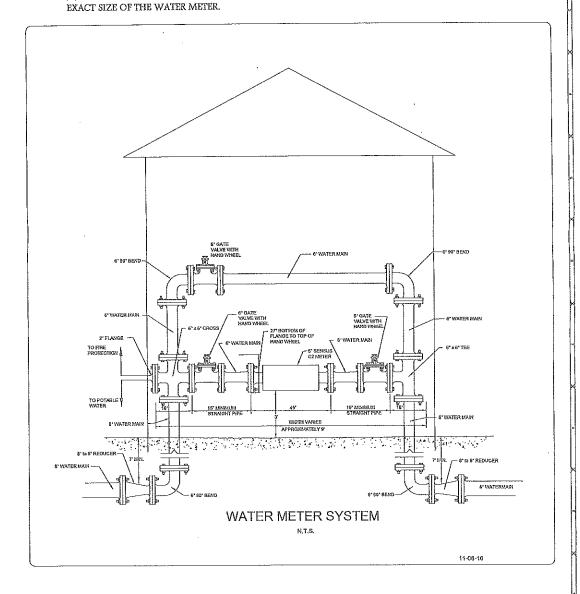
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Mau & Associates Land surveying & Planning Civil & Water resource engineering Phone: 920-434-9670 Fax: 920-434-9672

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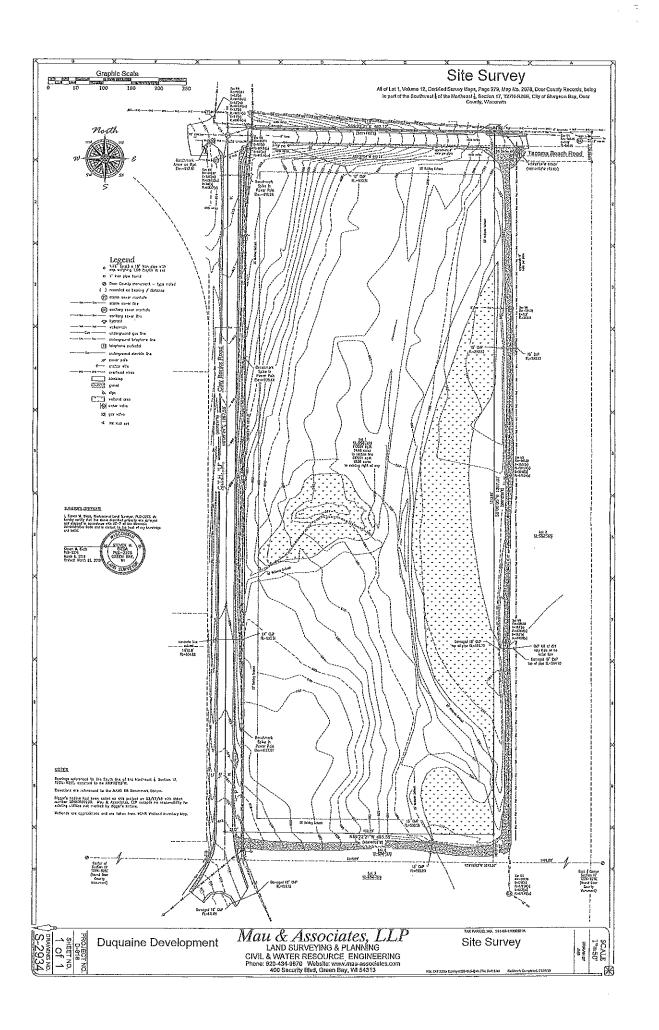
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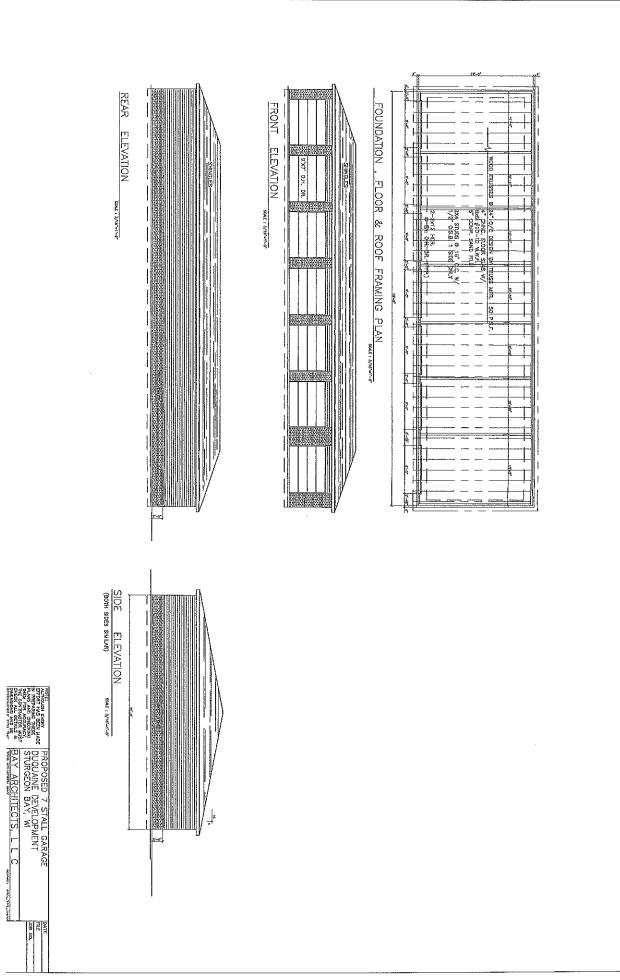


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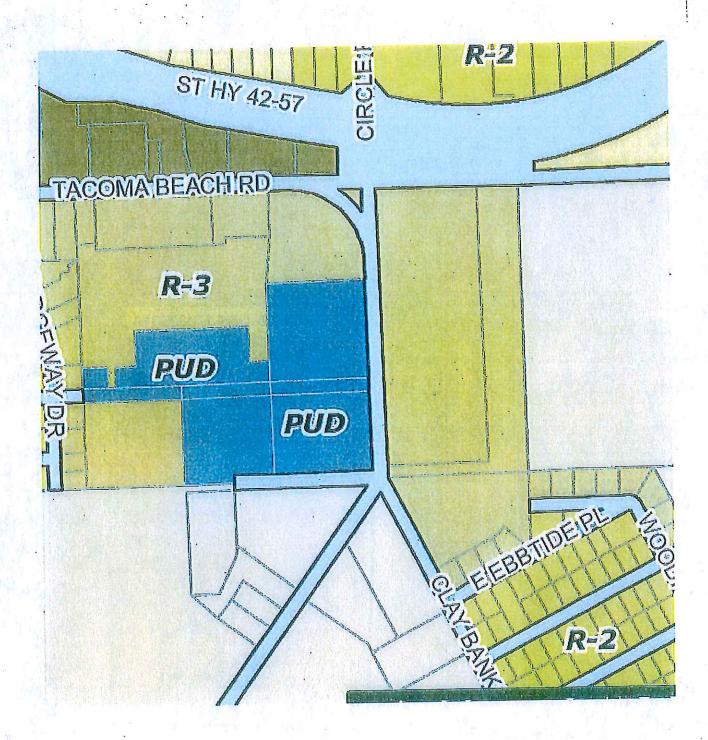
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Location Map Public Hearing -Duquaine Development, LLP PUD Request





Surrounding Zoning Map

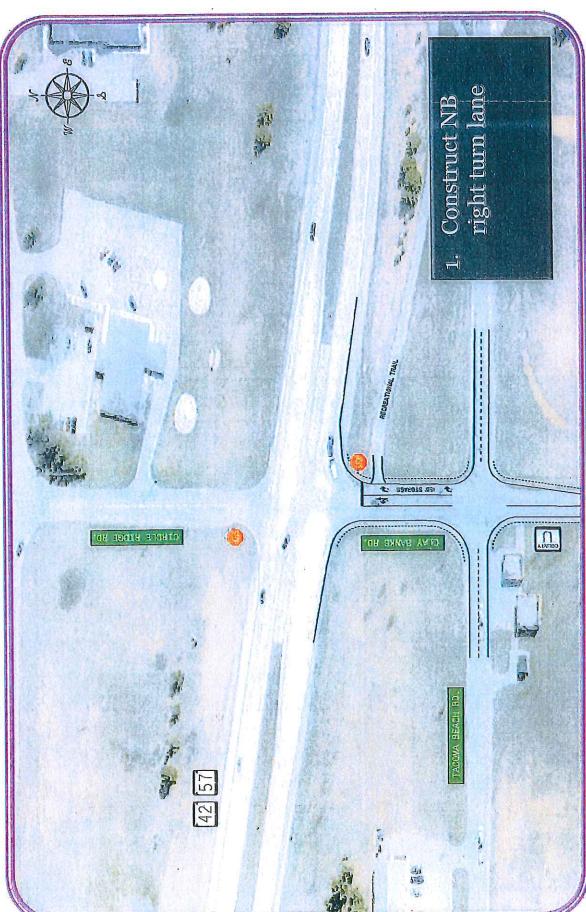


Location Map- Duquaine Devleopment



Location Map - Duquaine Development





operations and Study Study - 2010

Leon

Martin Olejniczak, AICP Community Development Director 421 Michigan Street Sturgeon Bay, WI 54235



Phone: 920-746-2910 Fax: 920-746-2905 E-mail: molejniczak@sturgeonbaywi.org

Website: www.sturgeonbaywi.org

MEMO

To:

City Plan Commission

From:

Marty Olejniczak, Community Development Director

Date:

March 16, 2018

Subject:

Wisconsin Act 67 and Its Impact on Conditional Uses

Wisconsin Act 67 was enacted on November 27, 2017. It amended the statutes pertaining for municipal zoning. Most notably, it changes the way conditional uses are regulated. These changes were in response to a denial of a conditional use application in Trempealeau County that was upheld by the Wisconsin Supreme Court.

Previously, cities had broad authority to review conditional uses and determine whether to issue a permit. The new law provides that "if an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the zoning ordinance or imposed by the zoning board (Plan Commission), the city shall grant the conditional use permit."

The law also requires that any conditions imposed must be related to the purpose of the ordinance and be based upon substantial evidence, which is defined in the law. Requirements and conditions must be reasonable and to the extent practical measurable.

Based upon the law's language, the City still has the authority to deny a conditional use application but it can no longer rely simply on public opposition or general standards to do so. It can still create specific conditions for a proposed use, but there it must relate to the purposes of the code and must be supported by substantial evidence.

Some information about this change in the statues is included in the packet that you should examine. In particular, the article in The Municipality is an excellent synopsis of the situation.

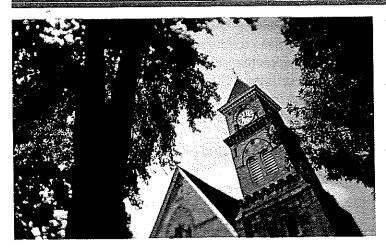
The Plan Commission should review Sturgeon Bay's provisions relating to conditional uses and determine if amendments are warranted. Such amendments could be revising or adding specific conditions that all conditional uses must meet, eliminating certain uses from the list of conditional uses, or other actions. If consensus is achieved, staff can submit potential amendments at a future meeting.

It is noted that Act 67 also added language restricting the ability of municipalities to require or enforce nonconforming lot mergers, added language clarifying variances, and added provisions that limit the ability to restrict the rebuilding of nonconforming structures. The City's zoning code is already in conformance with those parts of the new law.



Perspectives on Planning

January 2018



Department of Planning & Landscape Architecture University of Wisconsin-Madison/Extension 925 Bascom Mall Madison, Wisconsin 53706-1317

https://dpla.wisc.edu

Conditional Use Permits After 2017 Wisconsin Act 67

By Brian W. Ohm

2017 Wisconsin Act 67 adds new sections to the Wisconsin Statutes governing the issuance of conditional use permits to the general zoning enabling laws for cities, villages, towns, and counties. Until the addition of these sections, the general zoning enabling statutes did not include the term "conditional use permit" nor provide any guidance for the issuance of conditional use permits. Rather, the law governing conditional use permits was based on court decisions.

Act 67 Responds to the Wisconsin Supreme Court Decision in AllEnergy Corp. v. Trempealeau County

The Wisconsin Supreme Court's May 2017 decision in *AllEnergy Corp. v. Trempealeau County*, 2017 WI 52, provides important context for understanding the conditional use requirements inserted in Act 67.

The AllEnergy case involved the denial of a conditional use permit for a proposed frac sand mind in Trempealeau County. The County voted to adopt 37 conditions for the mine, which AllEnergy agreed to meet, but then the County voted to deny the conditional use permit in part relying on public testimony in opposition to the mine. A divided Wisconsin Supreme Court upheld the County's denial of the conditional use permit acknowledging the

discretionary authority of local governments in reviewing proposed conditional uses.

Act 67 in part reflects the sentiment articulated by the dissent in the *AllEnergy* decision According to the Dissent in *AllEnergy*: "When the Trempealeau County Board writes its zoning code, or considers amendments, . . . is the stage at which the County has the greatest discretion in determining what may, and may not, be allowed on various tracts of property." "Upon adding a conditional use to a zoning district, the municipality rejects, by that very act, the argument that the listed use is incompatible with the district." "An application for a conditional use permit is not an invitation to re-open that debate. A permit application is, instead, an opportunity to determine whether the specific instantiation of the conditional use can be accomplished within the standards identified by the zoning ordinance."

While local governments did not need to change their ordinances in response to the *AllEnergy* decision, Act 67 should prompt local governments to review their zoning ordinances, practices, and procedures to ensure they meet the new statutory requirements.

The New Statutory Requirements

Act 67 Act 67 limits local government discretion related to the issuance of conditional use permits.

¹Act 67 creates section 62.23 (7) (de) for cities, villages, and towns exercising zoning under village powers, section 60.61 (4e) for towns exercising zoning without village powers, and section 59.69 (5e) for counties.

The new conditional use law applies to applications for conditional use permits filed on and after November 28, 2017.

Local governments should review the requirements of their ordinance to consider adding to or revising the conditions listed in the ordinance to ensure that the local government will be able to review specific development proposals against the purpose of the ordinance and be able to support conditions imposed on a specific application with substantial evidence. Act 67 may prompt some local governments to reconsider what might be listed as a conditional use in certain zoning districts and explore creating new districts or other ways to regulate the use. Local governments might also want to a multistep process that informs applicants of the conditions the zoning board will imposed prior to the board's decision so the applicant can prove that they can comply with the conditions.



Frequently Asked Questions About Act 67²

■Does Act 67 Limit Local Discretion to Deny a Conditional Use Permits?

Act 67 attempts to limit the level of discretion implied in the lead opinion of Wisconsin Supreme Court in the *AllEnergy* case.

Clearly under Act 67, if an applicant agrees to meet all the requirements of the ordinance and all the conditions imposed, the local government has no discretion to deny the permit.

However, local governments still have discretion in terms of whether or not something is listed as a conditional use in the zoning ordinance. Local governments also have discretion as to whether or not to impose a condition (for example every permit might not need conditions related to hours of operation). Local governments also have the authority to deny a permit if the applicant cannot meet the requirements of the ordinance or the conditions imposed. The fact that Act 67 talks about denial of a permit and the right challenge a denial in court shows the legislature did not take away all authority to deny an application for a conditional use permit.

A local government still has the ability to approve or deny a permit, and to attach conditions. A local government either approves a CUP because it complies with the requirements of the ordinance and the conditions imposed or they deny it because it does not meet the requirements of the ordinance and the conditions imposed.

Local governments have more discretion when rezoning a property. Act 67 may prompt some local governments to limit what is a conditional use and require a rezoning to a different district for certain uses.

■Is a local government obligated to craft conditions that will help the applicant meet the ordinance requirements?

No, but the local government needs to articulate why the proposed use does not meet the ordinance requirements and allow the applicant to suggest conditions that address the deficiencies.

For example, say an ordinance has general standards for CUPS like "protect public health, safety, and welfare." The zoning board uses that standard to say "we should not allow this project because it will lead to traffic congestion leading to unsafe traffic conditions." Under Act 67, the local government can't deny it unless they back it up with substantial evidence. The local government decides to conduct a traffic study. The traffic study concludes that if truck traffic to the site is limited to certain hours, there will be no congestion. The applicant proposes a condition to limit truck traffic based on the findings of the study.

There needs to be an opportunity for some back and forth between the applicant and the local government -- for example, the local government says we're concerned about water quality. They will need to provide specific facts about the water quality impacts. They may use that information to impose a specific condition that will address the water quality issue or it might be that the local government identifies the threat posed by the conditional use and the applicant responds by saying "I've hired a hydrologist, here is their report about the water quality impacts. The hydrologist recommends we do x, y, and z to address those impact. We propose doing that". The applicant develops the alleviating conditions.

What Act 67 changes is that in the past a group of citizens who are opposed to a project would say "deny the CUP because it will have traffic impact" and the local government would deny the CUP. Act 67 changes that.

² Thanks to Becky Roberts with the Center for Land Use Education at UW-Stevens Point for compiling these questions.

legal authority to make the decision it did because the decision to not allow the mine was a legislative decision that could only be made by the county board — the legislative body. The lead opinion in the Supreme Court's decision determined that the ordinance (the standards in the ordinance, etc.) properly authorized the committee's actions so it was not an improper delegation of legislative authority. Since Act 67 is limited to the zoning board, it does raise the argument that if it is the governing body that issues the conditional use permit, the governing body, as a legislative body, has more discretion to act on conditional use permits because they are not bound by the requirements of Act 67.

■Can a local ordinance provide for an appeal of a conditional use permit decision to another local body?

A number of local governments provide for appeal of a plan commission decision on a conditional use permit to the zoning board of appeals or the governing body. It is not clear from the wording of Act 67 if it preempts local ordinances from having an intermediate step of appeal to a zoning board or the governing body before the denied applicant could appeal the decision to circuit court. An ordinance providing for an intermediate appeal in an ordinance should still be acceptable under an argument that if the applicant succeeds in the appeal it saves the time and expense of having to bring a lawsuit in a court of law.

Brian W. Ohm, an attorney, is a professor in the UW-Madison Department of Planning and Landscape Architecture and the state specialist in planning law for UW-Extension.





20.09 - Use regulations for R-1 district.

The R-1 district is intended to provide a pleasant, safe and quiet neighborhood environment free from traffic hazards, incompatible land uses, or public annoyance for single-family residential development in the city.

(1) Permitted uses are:

- (a) Single-family dwellings.
- (b) Churches and religious institutions. Consider size limit.
- (c) Elementary, junior, and senior high schools. Consider changing to Elementary and middle schools
- (d) Municipal buildings, except sewage treatment plants, garbage incinerators, warehouses, public garages, public shops or storage yards, penal or correctional institutions and asylums.
- (e) Public parks, playgrounds, recreational and community center buildings and grounds.
- (f) Telephone booths, exchanges and lines and transformer stations.
- (g) Accessory uses customarily incidental and subordinate to any of the above uses provided that no such use generates traffic or noise that would create a public or private nuisance.
- (h) Accessory buildings which are in addition to a principal building on the lot, provided that there are no more than two accessory buildings per principal building on a lot.
- (i) Tourist rooming houses, subject to the following:
 - The facilities shall be licensed by the state department of health services, the city, and the Door County Tourism Zone Commission.
 - a. New tourist rooming house permits issued by the city are valid for one year and expire on June 30. If a new tourist rooming house permit is issued after April 1, the city permit shall expire on June 30 the following year.
 - b. Renewal tourist rooming house permits are valid for two years and expire on June 30. Renewal permits may be applied for no sooner than six months prior to expiration, but are not valid until July 1.
 - c. The community development department will oversee the issuing or renewal of tourist rooming house permits. In the event city staff denies a permit, the applicant may appeal the denial decision to the city plan commission.
 - The owner/operator must reside within Door, Kewaunee, or Brown Counties during periods in which the tourist rooming house is rented. This requirement may be waived if there is a valid management contract with a management company located within Door County.
 - 3. Designated tourist rooming houses may have an unlit sign no larger than 2 square feet in size.

(2) Conditional uses are:

- (a) Home occupations, subject to the following: add conditions
 - 1. The home occupation shall be conducted only by residents of the dwelling unit and shall be conducted entirely within the dwelling unit.
 - 2. There shall be no outdoor storage or display of equipment, materials, or articles offered for sale.
 - There shall be no articles offered for sale on the premises except such as is directly produced by the home occupation.

- 4. There shall be no mechanical equipment used other than such as is permissible for purely domestic purposes.
- There shall be no signage associated with the home occupation, except for one wall sign not to exceed four square feet and not illuminated.
- 6. A home occupation which meets the criteria listed in subsections 1 through 5, and, in addition, contains no signage, has no retail sales, and has no stock in trade kept or sold, and in which the clients do not generally visit the premises, shall be permitted and shall not require a permit.
- Only vehicles of a type ordinarily used for conventional passenger transportation, i.e. passenger automobile or vans and pickup trucks not exceeding a payload capacity of one ton, shall be used in conjunction with a home occupation, except that not more than one commercial vehicle may be authorized by the city plan commission as part of the conditional use permit. The use of any public right-of-way for the parking or storage of any commercial vehicles or trailers associated with a home occupation is prohibited.
- (b) Reserved.
- (c) Public museums and libraries. eliminate
- (d) Art galleries. eliminate
- (e) Public utilities. Possibly eliminate or add qualifiers such as size or break into specific uses that are OK (e.g. water towers?, electric substations?
- (f) Bed and breakfast establishments, provided the facilities are licensed by the department of health and social services. Make permitted
- (g) Community living arrangements, except as regulated in § 62.23(7)(i), Wis. Stats., and provided, however that the 2,500-foot distance described in § 62.23(7)(i)2r.a., Wis. Stats., shall not apply. Possibly add conditions

20.10 - Use regulations for R-2 district.

The R-2 district is intended to provide a pleasant, safe, and quiet neighborhood environment free from traffic hazards, incompatible land uses, or public annoyance for primarily single-family residential development, but at slightly higher density than the R-1 district.

- (1) Permitted uses are:
 - (a) All uses listed as permitted uses in the R-1 district.
 - (b) Two-family dwellings on lots that are specifically designated for such dwellings at the time of platting. The designation of lots for two-family dwellings under this paragraph shall meet the following:
 - The lot must be identified as intended for a two-family dwelling on the plat or certified survey map that created the lot.
 - 2. Such designation shall only be allowed if approved by the plan commission prior to the recording of the plat or certified survey map.
 - The number of lots designated for two-family dwellings under this paragraph within any individual subdivision plat or certified survey map shall not exceed the greater of two lots or 25 percent of the total number of lots within the plat of certified survey map.
 - 4. These provisions apply to lots specifically designated for development of two-family dwellings. Other lots that meet the dimensional requirements for two-family dwellings may be developed as such, provided a conditional use permit is approved by the plan commission under section 20.10(2)(b).

- (2) Conditional uses are:
 - (a) All uses listed as conditional uses in the R-1 district.
 - (b) Two-family dwellings. Probably leave since (1)(b) already permits newly platted TF dwellings.

20.11 - Use regulations for R-3 district.

The R-3 district is intended to provide a pleasant, suitable location primarily for two-family residences, or for a mixture of single-family, two-family, and three-unit or four-unit multiple-family residences.

- (1) Permitted uses are:
 - (a) Any use listed as a permitted use in the R-1 district.
 - (b) Two-family dwellings.
- (2) Conditional uses are:
 - (a) All uses listed as conditional uses in the R-1 district.
 - (b) Multiple-family dwellings, provided there shall be no more than four dwelling units per building. Either make permitted or allow pre-designated MF dwellings as permitted uses similar to two-family dwellings in R-2.
 - (c) Colleges and vocational schools. Eliminate

20.12 - Use regulations for R-4 district.

The R-4 district is intended to provide for higher density residential uses and compatible nonresidential uses.

- (1) Permitted uses are:
 - (a) Any use listed as a permitted use in the R-1 district except single-family dwellings.
 - (b) Multiple-family dwellings up to eight 24 units per lot, provided such dwellings comply with the following design requirements: Move these requirements to the guidelines for the Aesthetic Design & Site Plan Review Board
 - Any wall visible from a public street that exceeds 50 feet in length shall have a minimum of 20 percent of the length of the wall projecting or recessing at a minimum depth of 3 percent of the length of the wall and a change in the materials, texture, or a permanent architectural feature shall be provided.
 - All parking areas with more than 12 parking spaces shall have concrete rolled or barrier curbs defining the limits of the paved areas.
 - 3. Detached garages shall be architecturally compatible with the residential building. They shall be designed and oriented to minimize the visual affect of the scale or massing of the garages. Visual interest shall be created on all sides of the garage that are visible from a public street through the use of landscaping, berming, architectural features, building materials, and/or orientation.
 - 4. Attached garages for multifamily developments shall be designed and oriented so that they do not dominate the front facade of the building to which they are attached. Attached garages shall not occupy more than 45 percent of the front facade of the building. Not more than six garage doors may appear on any multifamily building facade containing front doors, and the plane along such garage doors shall be broken by an offset of at least two feet if more than two garage doors are in a row.

- All roofed surfaces shall have gutters and downspouts connected to an approved storm system.
- Sidewalks not less than five feet in width shall be provided to all building entrances connecting the building to the required parking areas.
- If a sidewalk exists along the public street(s) abutting the lot, then sidewalk(s) shall be provided connecting all the buildings to the public street.
- 8. If a driveway leading to the parking area is longer than 100 feet, trees shall be planted along at least one side of such driveway at a rate of at least one tree per 40 feet. All tree types shall be approved by the city forester.
- 9. Trash storage containers shall be enclosed with a six-foot high wall on three sides with a closable door. Trash enclosures shall be screened with landscaping, shall be located not less than six feet from any dwelling, and shall have a concrete pad and apron adequate to support collection vehicles.
- Multiple-family dwelling developments greater than five acres in size shall include a continuous access drive that connects to a public street at both ends.
- All mechanical equipment, including roof mounted, shall be integrated into the design of the building to the extent possible or shall be enclosed or screened.
- Any exterior lighting shall use cutoff type luminaries so as to reflect light away from adjacent parcels and public streets and away from the night sky.
- (c) Charitable institutions, and clubs or lodges.
- (d) Boardinghouses and lodging houses.
- (e) Rest homes.
- (2) Conditional uses are:
 - (a) Any use listed as a conditional use in the R-1 district.
 - (b) Hospitals. Include specific standards
 - (c) Medical and dental clinics. Include specific standards
 - (d) Professional offices. Include specific standards
 - (e) Parking lots. Move to permitted
 - (f) Colleges and vocational schools. Add middle and high schools
 - (g) Two-family dwellings. Move to permitted
 - (h) Single-family dwellings. Move to permitted
 - (i) Multiple-family dwellings greater than eight units per lot or which do not meet the design requirements under subsection (1)(b). Eliminate
 - Barber/beauty shops, provided such use shall be located on a parcel that abuts a collector or arterial street as shown in the Sturgeon Bay Comprehensive Plan. Include specific standards
 - (k) Commercial housing facilities.

20.13 - Use regulations for R-M district.

The R-M district is intended to provide areas for manufactured home/mobile home courts as a development option.

(1) Permitted uses are:

- (a) Manufactured homes or mobile homes in planned manufactured home/mobile home courts as provided in section 9.07 of this Municipal Code.
- (b) Municipal buildings, except sewage treatment plants, garbage incinerators, warehouses, public garages, public shops or storage yards, penal or correctional institutions and asylums.
- (c) Public parks, playgrounds, recreational and community center buildings and grounds.
- (d) Telephone booths, exchanges and lines and transformer stations.
- (e) Accessory uses customarily incidental and subordinate to any of the above uses provided that no such use generates traffic or noise that would create a public or private nuisance.
- (f) Accessory buildings which are in addition to a principal building on the lot, provided that there are no more than two accessory buildings per principal building on a lot.

(2) Conditional uses are:

- (a) Home occupations, subject to the criteria listed in section 20.09(2)(a).
- (b) Reserved.
- (c) Public utilities. Possibly eliminate or add qualifiers such as size or break into specific uses that are OK (e.g. water towers?, electric substations?
- (d) Community living arrangements, except as regulated in § 62.23(7)(i), Wis. Stats., and provided, however that the 2,500-foot distance described in § 62.23(7)(i)2r.a., Wis. Stats., shall not apply.

20.14 - Use regulations for C-1 district.

The C-1 district is intended to provide commercial areas outside of the central business district: Permitted uses shall be general commercial uses as well as those commercial uses which are oriented to the highway user or which require greater space.

(1) Permitted uses are:

- (a) Any use listed as a permitted use in the R-1 district, except single-family dwellings.
- (b) Post offices.
- (c) Parking lots.
- (d) Banks.
- (e) Professional offices.
- (f) Medical, dental, and veterinarian clinics.
- (g) Hotels and motels and conference facilities.
- (h) Theaters, bowling alleys and other indoor places of amusement.
- (i) Restaurants and taverns.
- (i) Funeral homes.
- (k) Customer service establishments.
- (I) Bus depots.
- (m) General retail establishments.
- (n) Libraries, museums, and art galleries.
- (o) Tourist information centers.

- (p) Child day care facilities, provided the facility is licensed by the department of health and social services.
- (q) Gasoline service stations.
- (r) Automobile repair establishments.
- (s) Automobile, recreational vehicle, or farm implement sales lots.
- (t) Commercial storage facilities.
- (u) Lumber and building supply yards.
- (v) Charitable institutions, rest homes, and clubs or lodges.
- (w) Bed and breakfast establishments, provided the facility is licensed by the Wisconsin Department of Health and Social Services.
- (x) Boardinghouses and lodging houses.
- (2) Conditional uses are:
 - (a) Communication towers. Need to evaluate this use in light of state preemptions
 - (b) Colleges and vocational schools.
 - (c) Public utilities.
 - (d) Multiple-family dwellings.
 - (e) Community living arrangements, except as regulated in § 62.23(7)(i), Wis. Stats., and provided, however, that the 2,500-foot distance described in § 62.23(7)(i)2r.a., Wis. Stats., shall not apply.
 - (f) Hospitals.
 - (g) Water related uses such as marinas, launch ramps, charter boating or fishing and ferry terminals. Move to permitted – perhaps add standards
 - (h) Commercial establishments with drive-through facilities. Move to permitted with standards
 - (i) Public garages, shops or storage yards.
 - Outdoor recreation facilities such as golf courses, shooting ranges, and outdoor theaters.
 - (k) Animal shelters and pounds. Permitted with standards
 - Commercial housing facilities.
 - (m) Residential use, when incorporated into a multiuse building and using not more than 50 percent of the available floor area. Consider permitted but add that residential portion must be above or behind the commercial portion

20.15 - Use regulations for C-2 district.

The C-2 district is intended for the central business district on both the east and west sides of the city. It is intended to provide development and redevelopment opportunities consistent with the historic development pattern of the areas. Targeted uses shall be those commercial uses which do not detract from this area because of noise, smoke, odors, or disruption of traffic patterns.

- (1) Permitted uses are:
 - (a) Any use listed as a permitted use in the C-1 district, except gasoline service stations; automobile repair establishments; automobile, recreational vehicle or farm implement sales lots; commercial storage facilities; and lumber and building supply yards.

- (b) Residential use, provided such use covers not more than 50 percent of the combined floor area of all principal buildings within the lot.
- (2) Conditional uses are:
 - (a) Communication towers. Need to evaluate this use in light of state preemptions
 - (b) Colleges and vocational schools.
 - (c) Public utilities. Consider within buildings only
 - (d) Multiple-family dwellings.
 - (e) Community living arrangements, except as regulated in § 62.23(7)(i), Wis. Stats., and provided, however, that the 2,500-foot distance described in § 62.23(7)(i)2r.a., Wis. Stats., shall not apply.
 - (f) Hospitals. Eliminate
 - (g) Water-related uses such as marinas, launch ramps, charter boating or fishing and ferry terminals. Move to permitted
 - (h) Gasoline service stations. Move to permitted with standards such as setback from dwellings
 - (i) Automobile repair establishments. Move to permitted with standards
 - (j) Automobile or recreational vehicle sales lots. Move to permitted with standards
 - (k) Commercial establishments with drive-through facilities. Move to permitted with standards
 - (I) Bed and breakfast establishments, provided the facility is licensed by the Wisconsin Department of Health and Social Services. Move to permitted with standards
 - (m) Commercial housing facilities.

20.16 - Use regulations for C-3 district.

The C-3 district is intended to provide limited areas within the commercial area of the city for light manufacturing and warehousing activities. It is particularly intended for areas with existing large vacant or underutilized buildings that can be adaptively reused for such activities. It is not intended that this district be designated for areas where the character of the neighborhood would be threatened because of light manufacturing activities.

- Permitted uses are all uses listed as a permitted use in the C-1 district.
- (2) Conditional uses are:
 - (a) Any use listed as a conditional use in the C-1 district.
 - (b) Light manufacturing/high technology manufacturing, general warehousing, or wholesale distribution activities, subject to the following: Move to permitted
 - 1. Such uses shall be entirely contained inside the building used for such activity.
 - There shall be no outside storage of any raw material, finished product, or waste material other than in a dumpster receptacle that is routinely used and regularly serviced in the normal course of business.
 - 3. There shall be no prolonged noise above 85 decibels at any point further than 100 feet from any part of the building.
 - There shall be no release of smoke, fumes, or odors that may create a public or private nuisance, nor shall there be other activity conducted on the premises that may constitute a public or private nuisance.

- The use shall be specifically limited to the particular manufacturing and/or storage activity indicated in the petition to the board of appeals and may not be changed to a different activity.
- 6. In the event that a particular activity approved by the zoning board of appeals is discontinued for any reason, voluntary or involuntary, with no immediate intent to resume, the conditional use permit shall also be deemed automatically terminated with no further notice or hearing.
- 7. In the event that there is an existing building with an existing fire protection system installed at the time of the approval of the conditional use permit, that fire protection system must remain intact and must be maintained in an operating condition at all times, unless a special exemption is approved by the fire chief.
- New building projects that involve new exterior building walls, fences, signs, or other exterior improvements requiring a building or sign permit shall be subject to the development standards and procedures prescribed in section 20.32 of this chapter.
- The zoning board of appeals may also require other conditions regulating the handling, storage, and disposal of chemicals and hazardous materials.

20.17 - Use regulations for C-4 district.

The C-4 district is intended to provide limited areas within the commercial area of the city for office and business park development. The uses permitted are those uses which are compatible with office park development.

- (1) Permitted uses are:
 - (a) Corporate and professional offices.
 - (b) Medical and dental clinics.
 - (c) Banks.
 - (d) Tourist information centers.
 - (e) Charitable institutions, and clubs or lodges.
 - (f) Municipal buildings, except sewage treatment plants, garbage incinerators, warehouses, public garages, public shops or storage yards, penal or correctional institutions and asylums.
 - (g) Public parks and playgrounds.
 - (h) Telephone booths, exchanges and lines.
 - (i) Parking lots.
 - (j) Accessory uses customarily incidental and subordinate to a permitted use on the lot.
- (2) Conditional uses are:
 - (a) Communication towers. Need to evaluate this use in light of state preemptions
 - (b) Colleges and vocational schools.
 - (c) Public utilities.
 - (d) Hospitals.
 - (e) Post offices.
 - (f) Child day care facilities, provided the facility is licensed by the department of health and social services.

(g) Establishments with drive-through facilities. Move to permitted with standards

20.175 - Use regulations for C-5 district.

The C-5 district is intended for areas of the city where residential properties are converting to commercial uses or vice versa, especially areas where it is desired to maintain the existing buildings or architectural character of the neighborhood. It is also intended for areas of the city where a continued mixture of residential and commercial uses are desirable. The uses permitted are those uses which are generally compatible in areas with a combination of both residential and commercial properties.

(1) Permitted uses are:

- (a) Single-family dwellings established within an existing building, including repairs/reconstruction of such dwellings and additions up to 50 percent of the original floor area.
- (b) Two-family dwellings established within an existing building, including repairs/reconstruction of such dwellings and additions up to 50 percent of the original floor area.
- (c) Any use listed as a permitted use in the C-2 district, except bus depots and those uses listed separately as conditional uses under subsection (2). Such uses shall only occupy an existing building or occupy a new building with a building footprint not exceeding 3,000 square feet.

(2) Conditional uses are:

- (a) New single-family dwellings. Eliminate?
- (b) New two-family dwellings. Eliminate?
- (c) Additions to existing dwellings that exceed 50 percent of the original floor area. Eliminate or make permitted subject to Design Review Board approval
- (d) Multiple-family dwellings.
- (e) Uses listed under subsection (1)(c) that are located within a new building with a building footprint that is 3,000 square feet or larger. Eliminate, but possibly increase size limit for permitted?
- (f) Restaurants and taverns. Add standards such as number of seats
- (g) Hotels and motels. Add standards such as max number of rooms
- (h) Parking lots.
- (i) Rest homes.
- (j) Community living arrangements, except as regulated in § 62.23(7)(i), Wis. Stats., and provided, however that the 2,500-foot distance described in § 62.23(7)(i)2r.a., Wis. Stats., shall not apply.
- (k) Public utilities. Possibly eliminate or add qualifiers such as size or break into specific uses that are OK (e.g. water towers?, electric substations?
- (I) Massage parlors. Eliminate but add to list of non-permitted uses in sub (1)
- (m) Liquor stores. Eliminate but add to list of non-permitted uses in sub (1)
- (n) Payday lending institutions. Eliminate but add to list of non-permitted uses in sub (1)
- (o) Pawn shops. Eliminate but add to list of non-permitted uses in sub (1)

The I-1 district is intended to provide space for industrial and manufacturing uses at appropriate locations in the city. Such property shall be occupied and used only for those uses that would not generate noise, smoke, odor, vibration, air, water or other environmental pollution that would create a public or private nuisance.

(1) Permitted uses are:

- (a) Facilities for manufacturing and production, processing, fabrication, packaging and assembly of goods, provided that all manufacturing production activity occurs inside buildings, except for the occasional assembly, testing or shipping of components or products too large to fit in buildings.
- (b) General warehousing or wholesale distribution activities.
- (c) Offices directly related to a principal permitted use of the property.
- (d) Corporate/regional headquarters or administration offices of at least 10,000 square feet.
- (e) Outdoor storage areas for the storage of materials, supplies, finished or semi-finished products, equipment, or refuse containers provided that such storage areas shall not exceed 200 percent of the building footprints of the principal structures on the site.
- (f) Construction of watercraft under 50 feet in length.
- (g) Laboratories, research and testing facilities.
- (h) Laundries, not including self-service.
- (i) Printing or publishing.
- (i) Public utilities.
- (k) Child day care facilities, provided the facility is licensed by the department of health and social services.
- Incidental retail sales outlets for products produced on the premises.
- (m) Parking lots.
- (n) Accessory uses customarily incidental and subordinate to another permitted use.
- (o) Trade and construction contractors establishments, provided outdoor storage areas shall not exceed 200 percent of the building footprints of the principal buildings on the site.
- (p) Mail order distribution centers.
- (q) Radio and television stations.
- (r) Trade and vocational schools.
- (s) Business incubators operated by the Door County Economic Development Corporation or other nonprofit organization approved by the City of Sturgeon Bay.
- (t) Not for profit vocational rehabilitation programs.

(2) Conditional uses are:

- (a) Charter fishing boat service. Eliminate
- (b) Commercial fishing facilities.
- (c) Industrial uses not specifically permitted nor specifically prohibited.
- (d) Communication towers. Need to evaluate this use in light of state preemptions
- (e) Commercial housing facilities.
- (f) Retail establishments, subject to the following requirements: Make Permitted

- 1. The retail establishment shall be located within a building that contains at least 4,000 square feet of floor area.
- The retail establishment shall be located within 600 feet of the right-of-way of State Highway 42/57.
- 3. The retail use shall be limited to appliance dealers, carpet and floor covering dealers, electrical showrooms and shops, furniture stores, lawn and garden equipment and supply stores, lighting showrooms and shops, lumber and building materials sales centers, paint stores, plumbing showrooms and shops, stationary and office equipment/supply stores, retail sales associated with not for profit vocational rehabilitation programs, boat sales/showrooms, and similar types of retail that support the building and manufacturing industries.
- (g) Banks and other financial institutions.
- (h) Travel agencies.
- (i) Health clubs.
- (i) Quick-printing/copy shops.
- (k) Indoor boat storage and repair facilities.
- (3) Prohibited uses are:
 - (a) Rendering of fats or oils.
 - (b) Automobile wrecking and junkyards.
 - (c) Petroleum refineries and storage yards.
 - (d) Manufacturing of acids, explosives, fertilizers or glue.
 - (e) Stockyards or slaughterhouses.
 - (f) Garbage or other refuse disposal.
 - (g) Smelting of iron, tin, or other ores.
 - (h) Residential and commercial uses, except as specifically listed under subsections (1) or (2).
 - Uses similar in nature or impact to the prohibited uses specifically listed.

20.19 - Use regulations for I-1A district.

The I-1A district is intended to provide space for the same industrial and manufacturing uses permitted in the I-1 district, but subject to the additional development standards contained in section 20.32 of this chapter. This district provides property owners additional protection by requiring specific landscape and building design criteria for new development. It is intended primarily for the Sturgeon Bay Industrial Park.

(1) Permitted, conditional, and prohibited uses shall be the same as those listed for the I-1 district, but shall be subject to the development standards contained in section 20.32. Appeals to the limitation on outdoor storage shall be to the development review team.

20.20 - Use regulations for I-2 district.

This district reserves land for all uses permitted in the I-1 district plus certain businesses that require the use of unlimited outdoor storage and production yards and involve the use of heavy outdoor equipment and machinery.

(1) Permitted uses are:

- (a) All uses listed as permitted uses in the I-1 district.
- (b) Asphalt, sand and gravel operations.
- (c) Concrete batch plants.
- (d) Ship building.
- (e) Unlimited outdoor storage and production yards.
- (f) Truck terminals and freight transfer facilities.
- (g) Sawmills/planing mills.
- (h) Feed/grain mills.
- (i) Salvage and recycling facilities.
- Trade and construction contractors establishments and material and equipment sales.
- (k) Accessory uses customarily incidental to another permitted use.
- (2) Conditional uses shall be all uses listed as conditional uses in the I-1 district.
- (3) Prohibited uses shall be all uses listed as prohibited uses in the I-1 district.

20.21 - Use regulations for I-2A district.

The I-2A district is intended to provide space for the same industrial and manufacturing uses permitted in the I-2 district, but subject to the additional development standards contained in section 20.32 of this chapter. This district provides property owners additional protection by requiring specific landscape and building design criteria for new development. It is intended primarily for the Sturgeon Bay Industrial Park.

(1) Permitted, conditional, and prohibited uses shall be the same as those listed for the I-2 district, but shall be subject to the development standards contained in section 20.32.

20.22 - Use regulations for A district.

The agricultural district is established to help conserve good farming areas and prevent uncontrolled, uneconomical spread of residential or commercial development, in accordance with the Sturgeon Bay comprehensive plan, since it results in excessive costs to the community for provision of essential public improvements and services (sewer and water lines, etc.).

(1) Permitted uses are:

- (a) Farming, provided that buildings housing farm animals, barnyards, and feed lots are located at least 100 feet from a residential district and at least 100 feet from any waterway and located such that manure will not drain into any waterway.
- (b) Single-family dwellings.
- (c) Churches and religious institutions.
- (d) Schools.
- (e) Telephone booths, exchanges, and lines and transformer stations.
- (f) Municipal buildings.
- (g) Public parks and playgrounds.
- (h) Roadside stands for the sale of in-season farm products produced on the premises.

- (i) Accessory uses and buildings customarily incidental and subordinate to a principal use on the lot.
- (j) County fairgrounds and related facilities.
- (k) Tourist rooming houses. Subject to the requirements set forth in section 20.09(1)(i).
- (2) Conditional uses are:
 - (a) Airports, including terminal facilities and necessary concessions.
 - (b) Two-family dwellings.
 - (c) Outdoor amusement and recreation facilities such as golf courses, driving ranges and outdoor theaters. Consider add specific standards and perhaps restricting some uses (e.g. shooting ranges, camprounds).
 - (d) Communication towers. Need to evaluate this use in light of state preemptions
 - (e) Public utilities.
 - (f) Solid waste facilities.
 - (g) Travel trailer parks. There are standards within Chapter 9 of municipal code
 - (h) Home occupations, subject to the criteria listed in section 20.09(2)(a). Add conditions
 - (i) Bed and breakfast establishments, provided the facility is licensed by the Wisconsin Department of Health and Social Services. Move to permitted
 - (j) Sand and gravel operations. Eliminate?
 - (k) Kennels.
 - (I) Indoor ice arenas. Eliminate?

20.23 - Use regulations for CON district.

The conservancy district is intended to provide parkland and open space, to preserve the natural state of scenic areas, to provide natural areas and buffer strips and to discourage intensive development of marginal lands so as to prevent potential hazards to public and private property.

- (1) Permitted uses are:
 - (a) Bicycle or hiking trails.
 - (b) Parks or picnic areas.
 - (c) Accessory uses customarily incidental and subordinate to a principal use.
 - (d) Public buildings and educational facilities.
- (2) Conditional uses are:
 - (a) Water pumping or water storage facilities.
 - (b) Golf courses. Eliminate
 - (c) Offices and educational facilities for nonprofit conservation-related organizations.

20.25 - Conditional uses.

(1) The city plan commission may, after a review and public hearing, authorize the issuance of a conditional use permit for conditional uses specified for each district, provided such uses are in accordance with the purpose and intent of this chapter. Whenever a conditional use permit is requested and the required public hearing is scheduled and noticed by city as a class 2 notice, the city shall give notice, by regular mail, of the proposed conditional use to all property owners whose property lies within 300 feet measured in a straight line from the exterior boundary of the property subject to the proposed conditional use permit. Said notice shall be mailed at least ten days prior to the hearing, however failure of a neighboring property owner to receive such mailed notice shall not invalidate a public hearing. If action is delayed more than 120 days from the date of public hearing, a new public hearing shall take place. The common council plan commission may grant up to a 60-day extension if warranted by extenuating circumstances. In addition to the notification requirements listed above, applicant shall post signage visible to every facing street at least ten days prior to the hearing. The signage shall identify the property as being the subject of a public hearing and identify the appropriate city office that may be contacted for information.

- (2) Applications for a conditional use permit shall be filled out at the zoning department on a form provided by the inspector and reviewed by staff. Application shall contain:
 - (a) a full legal description and, property map, and shall be accompanied by
 - (b) a plan showing the location, size and shape of the lot(s) involved and of any proposed structures, and the existing and proposed use of each structure and lot.
 - (c) a written description of the proposed conditional use describing the type of activities, buildings, and strucutres involved in the use.
 - (d) Written statements showing how the proposed conditional use meets the general standards for conditional uses (sub. 4) and any specific requirements for a particular use.

After review by staff, application shall be placed on the appropriate city plan commission agenda for review, and request shall be posted by city on public access television.

- (3) The city plan commission shall review, as appropriate, the proposed site and operation, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and whether the proposed project will adversely affect property values in the neighboring area.
- (4) A conditional use permit may only be issued by the plan commission upon making a finding that:
 - (a) The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
 - (b) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the surrounding area.
 - (c) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
 - (d) Adequate utilities, access roads, drainage, and/or other necessary facilities exist or will be provided to serve the conditional use.
 - (e) Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets.
 - (f) The conditional use shall in all other respects conform to the applicable regulations of the district in which it is located and the plan commission shall find that there is a public necessity for the conditional use.
 - (5) Conditions related to landscaping, architectural design, type of construction, construction commencement and completion dates, permit duration, sureties, lighting, fencing, operational control, hours of operation, traffic circulation, deed restrictions, access restrictions, increased yards, and parking requirements may be required by the city plan commission upon its finding that such conditions are necessary to fulfill the purposes and intent of this chapter. Any conditions imposed

must be reasonable, and the extent practicable, measurable. Such conditions shall be based on substantial evidence.

- (6) Conditional uses shall comply with all other provisions of this chapter such as lot width and area, yards, height, parking and loading.
- (7) Any conditional use granted by the city plan commission shall terminate unless initiated within 365 days of date of decision by the city plan commission. A conditional use shall be operational within 730 days of its approval by the plan commission. Failure to initiate the development and/or begin operations with the required time period shall automatically constitute a revocation of the conditional use. An applicant may request that the plan commission approve an extension for justifiable reasons.
- (8) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued and the requirements of this ordinance are followed. Unless a specific duration is included in a conditional use permit, a conditional use permit shall automatically expire if the conditional use changes to a permitted use not requiring a conditional use permit or if the conditional use is discontinued or ceases to exist for a continuous period of at least 365 days for any reason.
- (9) If an application for a conditional use permit is denied, a new application for the same conditional use will not be considered by the plan commission for a period of 12 months from the date of denial, except on grounds of new evidence as determined by the Zoning Administrator.



Legislature Curtails Municipal Conditional Use Permit Authority

Daniel M. Olson, Assistant Legal Counsel, League of Wisconsin Municipalities

The Wisconsin legislature enacted major changes to local zoning authority laws in 2017 that were urged and promoted by developers but described by its legislative supporters as a "homeowners" bill of rights. Nonetheless, the laws passed and the governor signed them. Significantly, the most important change to municipal land use powers included in the legislation, 2017 Wisconsin Act 67, impacts the conditional use permit ("CUP") authority of all local governments, including cities and villages.

Conditional Use Background

Zoning is a regulatory system designed to proactively improve the quality of land use patterns in communities and supplant the inefficient, expensive, and reactive nuisance litigation morass of the 19th century. These goals are typically accomplished by grouping compatible land use activities into zoning districts, which diminishes the negative impacts from incompatible uses.

Within the districts, certain land uses are deemed unlikely to adversely affect other uses in the district and are permitted without review. Other land use activities are only allowed as conditional uses in zoning districts even though they may be beneficial because they carry a high risk of negative external impacts on adjoining properties, neighborhoods or the whole community. These less compatible and less desirable land uses are commonly allowed only after individualized review by a zoning authority and subject to conditions designed to decrease the potential adverse impacts.

The traditional CUP system of the last 75-plus years provided cities and villages

with critical flexibility to accommodate risky land uses but protect the property values and investments of adjoining property owners, neighborhoods, and the whole community. The legislative changes to city and village CUP authority attacks that balance of interests by making the CUP decision process rigid and less able to protect other property owners and communities from the negative impacts of land uses traditionally categorized as conditional uses. A CUP system is now a much less desirable land use planning and regulation tool that cities and villages might reasonably abandon altogether.

CUP Authority Changes -

The Municipality published an article exploring the scope of CUP authority in 2008. See Zoning 495. Much of that article is still relevant and important to a full understanding of CUP authority in Wisconsin. However, the 2017 CUP law changes, a reaction to the Wisconsin Supreme Court's 2017 decision in AllEnergy v. Trempealeau County, 2017 WI 52, 375 Wis. 2d 329, 895 N.W.2d 368, substantially altered CUP authority in several critical areas.

First, the law amends the zoning enabling statute to specify that any CUP "condition imposed must be related to the purpose of the ordinance and be based on substantial evidence." Wis. Stat. §62.23(7)(de)2.a. It also mandates that CUP requirements and conditions "must be reasonable and, to the extent practicable, measurable" Wis. Stat. §62.23(7)(de)2.b. These new obligations are problematic.

Prior to the change, general non-specific CUP requirements in zoning ordinances were reasonable and, thus legally permissible. Now, they must be based on substantial evidence and, where practicable, they must be measurable to be reasonable.

One challenge will be creating reasonable CUP requirements that are meaningful. Drafting an ordinance with reasonable requirements to govern the likely as well as all possible contingencies relating to a conditional use will be a very difficult task. A meaningful requirement that is legally reasonable in one circumstance may likely be unreasonable in another. That is due to the nature of conditional uses; their impacts vary based on location, which is why they were not classified as permitted uses in the first instance.

And, what should zoning officials make of the "substantial evidence" and "measurable" requirements? Must adoption or amendment of CUP ordinances be accompanied by a record that satisfies the substantial evidence threshold? Assuming we can figure out what "to the extent practicable" also means, how measurable does a CUP requirement have to be to comply with the new law? There are no answers to these questions in the statute and, the courts, through costly litigation, will likely be the only authority that might satisfy a disgruntled developer.

Second, what qualifies as substantial evidence – the information an administrative body is allowed to rely on in reaching its decision – is now defined by statute instead of case law. "Substantial evidence means facts and information,

other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion." Wis. Stat. §62.23(7)(de)1.b.

While similar to what the substantial evidence test was, see AllEnergy, 2017 WI 52 at ¶ 76, it is clear that the change was enacted to try and limit the type of information a zoning authority can rely on in deciding whether to grant a CUP. It must not only be facts and information instead of personal preferences or speculation, but those facts and information must "directly pertain" to the requirements and conditions in the zoning ordinance or established by the zoning board.

It will be impossible to confine public hearing testimony from citizens to

only facts and information that directly pertains to CUP requirements and conditions. Most people do not have the kind of legal training or experience to provide wholly objective testimony at an informal zoning hearing. When this happens, are members of the zoning board legally permitted to redirect the testimony of the citizen without being challenged by the applicant as impermissibly biased? That is just one impact of the substantial evidence requirement.

The language prohibiting reliance on speculation for substantial evidence is another problem area. CUPs are inherently uses with higher risks of negative impacts on other uses. But, the negative impact varies from location to location. Therefore, is evidence about decreased property values or other negative impacts associated with a similar use at a different location speculation or

non-speculation about probable impacts at the proposed location?

Third, the city and village zoning enabling statute was amended to specify that "if an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit." Wis. Stat. §62.23(7)(de)2.a. (emphasis added). This language embraces a minority zoning legal theory the Wisconsin Supreme Court rejected in AllEnergy that "where a [CUP] applicant has shown that all conditions and standards, both by ordinance and as devised by the zoning committee, have been or will be met, the applicant is entitled to the issuance of a permit." AllEnergy, 2017 WI 52 at ¶119.

Adding this legal principle to Wisconsin zoning law shifts the legal burden from

▶ p.23



a CUP applicant to the municipal governmental body responsible for making the CUP decision. The municipality must establish a permit requirement or condition by ordinance or develop conditions that are based on substantial evidence provided at the hearing. The burden shifting limits the effectiveness of the entire CUP review process and moves CUPs much closer to permitted use status than might be desirable in most circumstances.

As already noted, the pre-hearing ordinance requirements are likely to be watered down and less meaningful in order to survive a reasonableness challenge since they will apply to all proposed CUPs that have highly variable impacts based on location. This will make CUP applications much harder to deny.

Public officials do not welcome zoning litigation. It is inefficient and costly. So, even assuming that they will have a solid understanding of substantial evidence, zoning board members will be very cautious with their authority to impose CUP conditions based on substantial evidence introduced at the zoning hearing. Again, the burden shifting will make CUP applications much more difficult to deny.

Could a CUP applicant preempt the entire CUP process by simply promising full compliance when he files the CUP application? Probably not because a public hearing is mandated and the zoning board is vested with some authority to impose conditions that are based on substantial evidence after the public hearing and before granting a permit. However, as long as the CUP applicant agrees to abide by all the requirements and conditions, zoning board discretion is nullified and it must grant the CUP.

Responding to the Changes

The legislative changes did not reduce the adverse impact risks associated with conditional uses for adjoining properties, neighborhoods, or communities. The risks are still present and, absent a municipal response, are now even greater given the reduced ability to address those negative externalities. So, cities and villages should consider their options given the new legislative restrictions on their CUP authority.

⊳ p.24



Cities and villages can start with the knowledge that they are not legally required to have conditional uses in their zoning codes. Moreover, in most cases, the legislative decision by a city council or village board to include or not include a particular land use in a zoning district is essentially immune from legal challenge. The legislature may have severely curtailed city and village authority to deny a CUP request but it did not have any impact on city council or village board legislative discretion to classify land uses as conditional or permitted or determine how many, if any, conditional uses a city or village should have in a particular zoning district. So, one legally permissible response to the new laws might be elimination of all existing conditional uses in zoning districts or limiting them to a very select group of low-risk uses.

With the new laws, the legislature eliminated much of the prior legal authority cities and villages used to accommodate conditional uses while protecting property interests of adjoining landowners, the stability of neighborhoods, and the well-being of the whole community. Unless a city or village is willing to accept a conditional use in a zoning district - with much less ability to guide when and where it exists - then

eliminating them altogether or greatly reducing their availability is a reasonable and legally permissible response.

In addition, cities and villages will need to closely examine their existing conditional use permit requirements set by ordinance. As noted above, they must be reasonable, related to the purpose of the ordinance and, to the extent practicable, measurable. Thus, general requirements for CUPs commonly found in existing zoning ordinances are now suspect and subject to legal challenge. Instead, revised requirements should be information-based. In addition, a city or village will need to show that revised requirements are measurable, unless impracticable. And, if impracticable, they will need to be able demonstrate why.

Conclusion

Conditional use zoning permits have been commonly used by cities and villages to allow riskier land use activities in zoning districts subject to review and conditions. 2017 Wisconsin Act 67 substantially altered the CUP review and condition authority cities and villages have used for the last 75 years. The status quo for conditional uses in Wisconsin has changed dramatically. Cities and villages must now decide how they will respond to these changes. Revisions to CUP requirements in zoning ordinances

will be necessary. A thorough review of conditional use designation and inclusion in zoning districts is also warranted.

Zoning 523

About the author:

Daniel Olson is the Assistant Legal Counsel for the League. He provides legal assistance to municipal attorneys and officials through telephone inquiries, written opinions and briefs, workshop presentations, and published articles. He also assists in writing League handbooks and planning the Municipal Attorney's Institute. Daniel joined the League staff in 2001. Contact Daniel at danolson@lwm-info.org



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November Case Law Update November 30, 2017

A summary of Wisconsin court opinions decided during the month of November related to planning

For previous Case Law Updates, please go to: www.wisconsinplanners.org/learn/law-and-legislation

There are no planning-related decisions to report for the month of November from the United States Supreme Court, the Wisconsin Supreme Court, or the Wisconsin Court of Appeals. However, there was legislation enacted in Wisconsin during the month of November that changes the law related to recent U.S. Supreme Court and Wisconsin Supreme Court decisions reported in previous APA-WI case law updates over the past few months. This case law update summarizes the legislative changes to insure that members have the most current updates on the law in these areas.

New Legislation Affecting Substandard Lots: Responding to Murr v. Wisconsin

In November, the Wisconsin Legislature passed legislation in response to the United States Supreme Court decision last June in *Murr v. Wisconsin*. The *Murr* decision, summarized in the June 2017 APA-WI Case Law Update, involved a provision in the St. Croix County Zoning Ordinance that merged two substandard lots (referred to as "nonconforming lots" in many local ordinances) under common ownership for purposes of the application of the zoning ordinance and prohibited the owner from selling one of the substandard lots. The County's ordinance followed rules promulgated by the Wisconsin Department of Natural Resources for protecting the Lower St. Croix River after its designation by Congress as a National Wild and Scenic River. The U.S. Supreme Court decision articulated a new test for determining the relevant parcel for regulatory takings analysis and concluded St. Croix County's lot merger provision did not constitute a regulatory taking requiring the payment of just compensation. The new legislation, signed into law by Governor Walker as 2017 Wisconsin Act 67, places new limitations on the authority of local governments and state agencies to enact or enforce lot merger provisions similar to the one found in the St. Croix County Zoning Ordinance. In addition, Act 67 includes provisions affecting substandard lots in general.

The new substandard lot/lot merger limitations are found in Sections 23 through 26 of Act 67. Those sections create several additions to the existing section of the Wisconsin Statutes entitled "Limitation on Development Regulation Authority and Downzoning" found at section 66.10015 of the Wisconsin Statutes. Act 67 adds the following definition of a "substandard lot": "A legally created lot or parcel that met any applicable lot size requirements when it was created, but does not meet current lot size requirements." Wis. Stat. § 66.10015(1)(e).

Act 67 then prohibits cities, villages, towns, and counties from enacting or enforcing ordinances or taking any other action that prohibits a property owner from conveying an ownership interest in a substandard lot or from using a substandard lot as a building site if the substandard lot does not have any structures placed partly upon an adjacent lot and the substandard lot is developed to comply with all other ordinances of the political subdivision. Wis. Stat. § 66.10015(2(e).

Finally, Act 67 prohibits cities, villages, towns, counties, and state agencies from enacting or enforcing any ordinance or administrative rule or taking any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged. Wis. Stat. § 66.10015(4).

While local governments did not need to make changes their ordinances in response to the Murr decision, Act 67, effective November 28th, should prompt local governments and state agencies to review their ordinances and rules as follows:

- ■Cities, villages, towns, counties, and state agencies need to review their ordinances and rules to insure they do not require the merger of lots (both substandard lots and lots that conform to current ordinances and rules) without the consent of the owners of the lots that are to be merged.
- ■Cities, villages, towns and counties need to review their ordinances and practices related to substandard lots to ensure that they do not prohibit a property owner from selling or otherwise conveying an ownership interest in a substandard lot to another person or entity.
- ■In addition, cities, villages, towns and counties need to review their ordinances and practices to ensure they allow the use of a substandard lot as a building site if the substandard lot has never had a structure straddling the substandard lot and an adjacent lot. Any development on the substandard lot must conform to all other applicable ordinances. The application of other ordinances may limit what can be built on a substandard lot.



New Legislation Affecting Conditional Use Permits: Responding to AllEnergy Corp. v. Trempealeau County

2017 Wisconsin Act 67 also includes changes to Wisconsin law governing conditional use permits following the recent decision of the Wisconsin Supreme Court in AllEnergy Corp. v. Trempealeau County reported in the May 2017 APA-WI Case Law Update. The AllEnergy case involved the denial of a conditional use permit for a proposed frac sand mind in Trempealeau County. The County voted to adopt 37 conditions for the mine, which AllEnergy agreed to meet, but then the County voted to deny the conditional use permit in part relying on public testimony in opposition to the mine. A divided Wisconsin Supreme Court upheld the County's denial of the conditional use permit acknowledging the discretionary authority of local governments in reviewing proposed conditional uses.

Act 67 follows the line of reasoning articulated by the dissent in the *AllEnergy* decision and limits local government discretion related to the issuance of conditional use permits. According to the Dissent in *AllEnergy*: "When the Trempealeau County Board writes its zoning code, or considers amendments, . . . is the stage at which the County has the greatest discretion in determining what may, and may not, be allowed on various tracts of property." "Upon adding a conditional use to a zoning district, the municipality rejects, by that very act, the argument that the listed use is incompatible with the district." "An application for a conditional use permit is not an invitation to re-open that debate. A permit application is, instead, an opportunity to determine whether the specific instantiation of the conditional use can be accomplished within the standards identified by the zoning ordinance."

Act 67 adds new sections governing the Issuance of conditional use permits to the various general zoning enabling laws for cities, villages, towns, and counties. Until the addition of these sections, the law governing conditional use permits was based on court decisions. The various local general zoning enabling laws did not include any references to the term "conditional use."

The new law adds the following definition of "conditional use" to the Statutes: "Conditional use' means a use allowed under a conditional use permit, special exception, or other zoning permission issued by a [city, village, town, county] but does not include a variance."

Act 67 also includes the following definition of "substantial evidence," a term used in several places in the Act: "Substantial evidence' means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion." This language softens the language of earlier versions of the bill that stated substantial evidence did not include "public comment that is based solely on personal opinion, uncorroborated hearsay, or speculation." Public comment that provides reasonable facts and information related to the conditions of the permit is accepted under Act 67 as evidence.

Act 67 then provides that "if an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the [city, village, town, county] ordinance or imposed by the [city, village, town, county] zoning board, the [city, village, town, county] shall grant the conditional use permit." This new language follows the argument made by the plaintiffs and the dissenting opinion in the *AllEnergy* case. The use of the term "zoning board," however, is at odds with current Wisconsin law that allows the governing body, the plan commission, or the zoning board of adjustment/appeals to grant conditional uses. This "zoning board" terminology may lead to some confusion.

Act 67 also provides that the conditions imposed "must be related to the purpose of the ordinance and be based on substantial evidence" and "must be reasonable and to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal." In the past, sometimes there was confusion about whether local governments had the authority to place a time limit on the duration of a conditional use permit. This new

statutory language clarifies that local government have that authority. Since local comprehensive plans can help articulate the purpose of ordinances that implement the plan, the requirement in Act 67 that the conditions relate to the purpose of the ordinance emphasize the importance of having a condition in the zoning ordinance that the proposed conditional use furthers and does not conflict with the local comprehensive plan.

Next, Act 67 provides that the applicant must present substantial evidence "that the application and all requirements and conditions established by the [city, village, town, county] relating to the conditional use are or shall be satisfied." The city, village, town or county's "decision to approve or deny the permit must be supported by substantial evidence."

Under the new law, a local government must hold a public hearing on a conditional use permit application, following publication of a class 2 notice. If a local government denies an application for a conditional use, the applicant may appeal the decision to circuit court. The conditional use permit can be revoked if the applicant does not follow the conditions imposed in the permit.

The new conditional use law applies to applications for conditional use permits filed on and after November 28, 2017.

While local governments did not need to change their ordinances in response to the *AllEnergy* decision, Act 67 should prompt local governments to review their zoning ordinance to ensure they meet the new statutory requirements. Local governments should review the requirements of their ordinance to consider adding to or revising the conditions listed in the ordinance to ensure that the local government will be able to review specific development proposals against the purpose of the ordinance and be able to support conditions imposed on a specific application with substantial evidence. Act 67 may prompt some local governments to reconsider what might be listed as a conditional use in certain zoning districts and explore creating new districts or other ways to regulate the use.

U.S. Court of Appeals for the 7th Circuit Opinions

[No planning-related cases to report.]

State of Wisconsin



2017 Assembly Bill 479

Date of enactment: November 27, 2017 Date of publication*: November 28, 2017

2017 WISCONSIN ACT 67

AN ACT to renumber and amend 59.694 (7) (c) and 62.23 (7) (e) 7.; to amend 59.69 (10e) (title), 59.69 (10e) (a) 1., 59.69 (10e) (b), 60.61 (5e) (title), 60.61 (5e) (a) 1., 60.61 (5e) (b), 62.23 (7) (hb) (title), 62.23 (7) (hb) 1. a. and 62.23 (7) (hb) 2.; and to create 59.69 (5e), 59.694 (7) (c) 1., 59.694 (7) (c) 3., 60.61 (4e), 60.62 (4e), 62.23 (7) (de), 62.23 (7) (e) 7. a., 62.23 (7) (e) 7. d., 66.10015 (1) (e), 66.10015 (2) (e), 66.10015 (4), 227.10 (2p) and 710.17 of the statutes; relating to: limiting the authority of local governments to regulate development on substandard lots and require the merging of lots; requiring a political subdivision to issue a conditional use permit under certain circumstances; standards for granting certain zoning variances; local ordinances related to repair, rebuilding, and maintenance of certain nonconforming structures; and the right to display the flag of the United States.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 2. 59.69 (5e) of the statutes is created to read:

59.69 (5e) CONDITIONAL USE PERMITS. (a) In this subsection:

- "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a county, but does not include a variance.
- 2. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.
- (b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the county ordinance or those imposed by the county zoning board, the county shall grant the conditional use permit. Any condition imposed must be

related to the purpose of the ordinance and be based on substantial evidence.

- 2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The county's decision to approve or deny the permit must be supported by substantial evidence.
- (c) Upon receipt of a conditional use permit application, and following publication in the county of a class 2 notice under ch. 985, the county shall hold a public hearing on the application.
- (d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the county may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the county zoning board.

Counties

^{*} Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(e) If a county denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in s. 59.694 (10).

SECTION 3. 59.69 (10e) (title) of the statutes is

amended to read:

59.69 (10e) (title) Repair, <u>rebuilding</u>, and maintenance of certain nonconforming structures.

SECTION 4. 59.69 (10e) (a) 1. of the statutes is

amended to read;

59.69 (10e) (a) 1. "Development regulations" means the part of a zoning ordinance enacted under this section that applies to elements including setback, height, lot coverage, and side yard.

SECTION 5. 59.69 (10e) (b) of the statutes is amended

to read:

59.69 (10e) (b) An ordinance enacted under this section may not prohibit, or limit based on cost, or require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure or any part of a nonconforming structure.

SECTION 8. 59.694 (7) (c) of the statutes is renum-

bered 59.694 (7) (c) 2, and amended to read:

59.694 (7) (c) 2. To authorize upon appeal in specific cases variances from the terms of the ordinance that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and

substantial justice done.

- 4. A county board may enact an ordinance specifying an expiration date for a variance granted under this paragraph if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of adjustment does not specify an expiration date for the variance, a variance granted under this paragraph does not expire unless, at the time it is granted, the board of adjustment specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April/5, 2012.
- 5. A variance granted under this paragraph runs with the land.

SECTION 9. 59.694 (7) (c) 1. of the statutes is created to read:

59,694 (7) (c) 1. In this paragraph:

- a. "Area variance" means a modification to a dimensional, physical, or locational requirement such as the setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of adjustment under this subsection.
- b. "Use variance" means an authorization by the board of adjustment under this subsection for the use of

land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

SECTION 10. 59.694 (7) (c) 3. of the stantes is created

to read:

59.694 (7) (c) 3. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this paragraph, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with the zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner,

SECTION 11. 60.61 (4e) of the statutes is created to

read:

60.61 (4e) CONDITIONAL USE PERMITS. (a) In this subsection:

1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town, but does not include a variance.

 "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in sup-

port of a conclusion.

- (b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the town ordinance or those imposed by the town zoning board, the town shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.
- 2. The requirements and conditions described under subd. 1. must be reasonable and to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The town's decision to approve or deny the permit must be supported by substantial evidence.
- (c) Upon receipt of a conditional use permit application, and following publication in the town of a class 2 notice under ch. 985, the town shall hold a public hearing on the application.

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(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the town may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the town zoning board.

(e) If a town denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures described in s. 59.694

(10).

60.61 (5e) (title) of the statutes is SECTION 12. amended to read:

60.61 (5e) (title) REPAIR, REBUILDING, AND MAINTE-NANCE OF CERTAIN NONCONFORMING STRUCTURES.

SECTION 13. 60.61 (5e) (a) 1. of the statutes is amended to read:

60.61 (5e) (a) 1. "Development regulations" means the part of a zoning ordinance enacted under this section that applies to elements including setback, height, lot coverage, and side yard.

SECTION 14. 60.61 (5e) (b) of the statutes is amended

to read:

60.61 (5e) (b) An ordinance enacted under this section may not prohibit, or limit based on cost, or require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure or any part of a nonconforming structure.

SECTION 15. 60.62 (4e) of the statutes is created to

read:

60.62 (4e) (a) In this subsection:

- 1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town, but does not include a variance.
- 2. "Substantial evidence" means facts and information, other than merely/personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the town ordinance or those imposed by the town zoning board, the town shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The town's decision to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the town of a class 2 notice under ch. 985, the town shall hold a public hearing

on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the town may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the town zoning board.

(e) If a town denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures described in s. 61.35.

X SECTION 16. 62.23 (7) (de) of the statutes is created

62.23 (7) (de) Conditional use permits. 1. In this

paragraph:

- a. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.
- b. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.
- a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence,
- The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.
- 3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.
- 4. Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit's duration, transfer, or

renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.

5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.

SECTION 17. 62.23 (7) (e) 7. of the statutes is renumbered 62.23 (7) (e) 7. b. and amended to read:

62.23 (7) (e) 7. b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

- e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.
- f. A variance granted under this subdivision runs with the land.
- c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

SECTION 18. 62.23 (7) (e) 7. a. of the statutes is created to read:

62.23 (7) (e) 7. a. In this subdivision, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

SECTION 19. 62.23 (7) (e) 7. d. of the statutes is created to read:

62.23 (7) (e) 7. d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

SECTION 20. 62.23 (7) (hb) (title) of the statutes is amended to read:

62,23 (7) (hb) (title) Repair, rebuilding, and maintenance of certain nonconforming structures.

SECTION 21. 62.23 (7) (hb) 1. a. of the statutes is amended to read:

62.23 (7) (hb) 1. a. "Development regulations" means the part of a zoning ordinance enacted under this subsection that applies to elements including setback, height, lot coverage, and side yard.

SECTION 22. 62.23 (7) (hb) 2. of the statutes is amended to read:

62.23 (7) (hb) 2. An ordinance enacted under this subsection may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

SECTION 23. 66.10015 (1) (e) of the statutes is created to read:

66.10015 (1) (e) "Substandard lot" means a legally created lot or parcel that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.

SECTION 24. 66.10015 (2) (e) of the statutes is created to read:

66.10015 (2) (e) Notwithstanding any other law or rule, or any action or proceeding under the common law, no political subdivision may enact or enforce an ordinance or take any other action that prohibits a property owner from doing any of the following:

- Conveying an ownership interest in a substandard lot.
- Using a substandard lot as a building site if all of the following apply:
- a. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
- b. The substandard lot or parcel is developed to comply with all other ordinances of the political subdivision.

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SECTION 25. 66.10015 (4) of the statutes is created to read:

66.10015 (4) Notwithstanding the authority granted under ss. 59.69, 60.61, 60.62, 61.35, and 62.23, no political subdivision may enact or enforce an ordinance or take any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

SECTION 26. 227.10 (2p) of the statutes is created to read:

227.10 (2p) No agency may promulgate a rule or take any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

SECTION 27. 710.17 of the statutes is created to read: 710.17 Right to display the flag of the United

States. (1) DEFINITIONS. In this section:

- (a) "Housing cooperative" means a cooperative incorporated under ch. 185 or organized under ch. 193 that owns residential property that is used or intended to be used, in whole or in part, by the members of the housing cooperative as their homes or residences.
- (b) "Member of a homeowners' association" means a person that owns residential property within a subdivision, development, or other similar area that is subject to any policy or restriction adopted by a homeowners' association.
- (c) "Member of a housing cooperative" means a member, as defined in s. 185.01 (5) or 193.005 (15), of a housing cooperative if the member uses or intends to use part of the property of the housing cooperative as the member's home or residence.
- (2) RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES. (a) Except as provided in sub. (3), a homeowners' association may not adopt or enforce a covenant, condition, or restriction, or enter into an agreement, that

restricts or prevents a member of the homeowners' association from displaying the flag of the United States on property in which the member has an ownership interest and that is subject to any policy or restriction adopted by the homeowners' association.

- (b) Except as provided in sub. (3), a housing cooperative may not adopt or enforce a covenant, condition, or restriction, or enter into an agreement, that restricts or prevents a member of the housing cooperative from displaying the flag of the United States on property of the housing cooperative to which the member has a right to exclusive possession or use.
- (3) EXCEPTIONS. A homeowners' association or housing cooperative may adopt and enforce a covenant, condition, or restriction, or enter into an agreement, that does any of the following:
- (a) Requires that any display of the flag of the United States must conform with a rule or custom for proper display and use of the flag set forth in 4 USC 5 to 10.
- (b) Provides a reasonable restriction on the time, place, or manner of displaying the flag of the United States that is necessary to protect a substantial interest of the homeowners' association or housing cooperative.

SECTION 28. Initial applicability.

- (1) RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES. The treatment of section 710.17 of the statutes first applies to a covenant, condition, or restriction that is adopted, renewed, or modified, or to an agreement that is entered into, renewed, or modified, on the effective date of this subsection.
- (2) CONDITIONAL USE PERMITS. The treatment of sections 59.69 (5e), 60.61 (4e), 60.62 (4e), and 62.23 (7) (de) of the statutes first applies to an application for a conditional use permit that is filed on the effective date of this subsection.

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For more questions or comments about these cases, please contact:
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May Case Law Update May 31, 2017

A summary of Wisconsin court opinions decided during the month of May related to planning

For previous Case Law Updates, please go to: www.wisconsinplanners.org/learn/law-and-legislation

United States Supreme Court Opinions

[The April Case Law Update summarized the May 1st Bank of America v. City of Miami decision allowing cities to sue banks under the Federal Fair Housing Act for predatory lending practices. Please refer to last month's Update in case you missed it.]

Wisconsin Supreme Court Opinions

Local Discretion Upheld in Granting Conditional Use Permits

The case, AllEnergy Corp. v. Trempealeau County Environment & Land Use Committee, 2017 WI 52, involved a proposed 265-acre silica sand mine in the Town of Arcadia in Trempealeau County. Land use in the Town falls under the County's zoning ordinance. The proposed mine would be located in an agricultural zoning district. Non-metallic mining is a conditional use within the district. AllEnergy applied for a conditional use permit shortly before the County imposed a temporary moratorium on new non-metallic mining activities. Following a public hearing on the permit, the County Environment & Land Use Committee voted seven-to-one to adopt 37 conditions for the mine but then immediately voted five-to-three to deny the permit based largely on the concerns raised at the public hearing about the potential negative impacts of the proposed mine on public health, public safety, and the aesthetics of the area.

All Energy appealed the Committee's decision to the circuit court. The circuit court upheld the Committee's decisions. AllEnergy then appealed the circuit court decision to the Wisconsin Court of Appeals. In an unpublished decision, the Wisconsin Court of Appeals affirmed a circuit court order upholding Trempealeau County's action. AllEnergy then petitioned the Wisconsin Supreme Court to review the decision. The Wisconsin Supreme Court accepted the case for review.

A divided Wisconsin Supreme Court voted 4-3 to affirm the decision of the Court of Appeals upholding the County's denial of the conditional use permit. Justice Shirley Abrahamson wrote the "lead opinion" affirming the County's action. (A "lead opinion" is an opinion that states the decision of a majority of justices but represents the reasoning of less than a majority of the participating justices). Justice Ann Walsh Bradley joined Justice Abrahamson in her opinion.

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Justice Annette Ziegler wrote a concurring opinion agreeing with the outcome but not agreeing with the reasoning of Justice Abrahamson. Chief Justice Patience Roggensack joined with Justice Ziegler in her concurring opinion. Justice Daniel Kelly wrote a dissenting opinion and was joined by Justices Michael Gableman and Rebecca Bradley. The absence of a majority opinion, however, makes the reasoning articulated in the three opinions very insightful, as discussed below.

AllEnergy appeal presented the Supreme Court with three issues:

- I. Did the Trempealeau County Environment & Land Use Committee, an appointed body without the power to legislate, exceed its jurisdiction by denying a conditional use permit based on broad legislative concerns over the public health, safety, and welfare?
- II. Did substantial evidence in the administrative record support the denial of a conditional use permit for non-metallic mining?
- III. Should the court adopt a new doctrine that a conditional use permit applicant is entitled to the permit where (A) all ordinance conditions and standards are met and (B) additional conditions can be adopted that address potentially-adverse impacts from the use?

The lead opinion and the dissenting opinion present two different ways of looking at conditional uses. The lead opinion presents the first issue, regarding the jurisdiction of the Committee, as a delegation of authority issue. The lead opinion states that the Court needs to consider whether the applicable ordinance granted the County's Environment & Land Use Committee with the authority to take the action it took. The lead opinion cites the language in the county ordinance listing numerous factors to guide the Committee's action including directing the Committee to determine that the proposed use "will not be contrary to the public interest and will not be detrimental or injurious to the public health, public safety, or character of the surrounding area." The lead opinion cites prior Wisconsin case law declaring that generalized standards in zoning ordinances for conditional uses are acceptable. The lead opinion cites other Wisconsin case law upholding the authority of local ordinances to delegate discretionary authority to various boards, commissions, and committees. The lead opinion then quotes from the record the reasons the five Committee members articulated for denying the permit based on the factors listed in the ordinance and concludes that the Committee kept within its jurisdiction.

According to the lead opinion, "[i]n Wisconsin, and in many states, a conditional use is one that has been legislatively determined to be compatible in a particular area, not a use that is always compatible at a specific site within that area. In these states, the decision whether to grant a conditional use permit is discretionary. The relevant entity determines whether a particular site will accommodate a proposed particular use. In other states, decision makers have less discretion on requests for a conditional use permit."

The dissenting opinion takes the view that local governments have less discretion and concludes that the Committee exceeded its jurisdiction. According to the dissent, the jurisdiction of the Committee is limited to determining the appropriate conditions to control for the potentially hazardous aspects of the proposed mine. The dissent states that the "Committee exceeded its jurisdiction when it took upon itself the task of determining whether a sand mine, as a general proposition, is an appropriate use of the AllEnergy property."

The dissent cites several land use law treatises and several Wisconsin cases that discuss the distinctions between permitted uses and conditional uses in zoning. While conditional uses are not uses allowed as a matter of right, as in the case of permitted uses, conditional uses provide site-specific discretionary review of proposed uses that are generally deemed compatible or desirable in a particular zoning district. A conditional use designation did not give the Committee "free rein to deny an application."

According to the dissent, "[w]hen the Trempealeau County Board writes its zoning code, or considers amendments, the testimony it needs, and is appropriate to consider, is whether a type of use is compatible with a designated zoning district. This is the stage at which the County has the greatest discretion in determining what may, and may not, be allowed on various tracts of property."

Examining the language of the County's zoning ordinance the dissent concludes that the Trempealeau County Board had legislatively determined that sand mining is not inherently inconsistent with the agricultural zoning district for the property. "An application for a conditional use permit is not an invitation to re-open that debate. A permit application is, instead, an opportunity to determine whether the specific instantiation of the conditional use can be accomplished within the standards identified by the zoning ordinance."

The dissenting opinion illustrates its point with the following scenario: "if an ice-cream shop is a conditional use, a land-use committee may not deny a permit because the committee's members object to the owner selling ice-cream on his property. Such objections are in order when the municipality adopts (or amends) its zoning ordinance and considers which conditional uses (if any) to include in each of its zoning districts. Upon adding a conditional use to a zoning district, the municipality rejects, by that very act, the argument that the listed use is incompatible with the district."

As to the second issue, regarding the sufficiency of the evidence, the lead opinion notes that local decisions are entitled to a presumption of correctness and validity. The Court only considers whether the Committee made a reasonable decision based on the evidence before it. According to the lead opinion, public expression of support or opposition can establish the substantial evidence needed to support decisions on conditional use permits. The lead opinion cites the public testimony presented to the Committee related to environmental impacts, health concerns, and aesthetics. AllEnergy contended that it presented expert testimony responding to these concerns but the lead opinion stated that it was not the role of the Court to re-weigh the evidence.

The dissent acknowledges that the testimony and concerns expressed at the public hearing were valid, but the dissent opines that these concerns should have been raised at the time the County developed its zoning ordinance. "Once the County adopts its zoning code, however, testimony about a proposed use has a narrower function." According to the dissenting opinion, the testimony should be used by the Committee to help "determine what specific standards AllEnergy would be required to satisfy before obtaining a sand mining permit." Here the dissent concluded the testimony was used to address a question already answered by the County Board — whether it would be advisable to operate a sand mine in the district.

On the final issue, AllEnergy argues that the Court should adopt a new doctrine followed in other states whereby if an applicant satisfies all the conditions in the ordinance (and those conditions cannot be based on subjective generalized standards), then the applicant has a right to the conditional use permit. The lead opinion, however, found that AllEnergy failed to provide a compelling reason for the Court to depart from long-standing precedent that allows local governments to determine whether a proposed conditional use is compatible for a specific site.

The dissent is more receptive to the new doctrine advocated by AllEnergy. The dissent would require more specific standards than found in the County's ordinance. According to the dissent, vague "public interest" standards force "permit applicants to play the 'guess what's in my head' game with the Committee." The dissent would have remanded the case to have the Committee to engage with the specifics of AllEnergy's proposal and determine whether appropriate conditions would protect against the hazards of the proposed mine.

While the concurring opinion agrees with the validity of the County's action, the concurring opinion is not able to join the lead opinion, because the lead opinion examines issues that are not necessary to the case. The concurring opinion believes that the lead opinion and the dissent make the case "much more complicated and potentially more far-reaching in effect than it should be." The concurring opinion agrees that the County's decision is entitled to a presumption of correctness and validity. According to the concurring opinion, the Committee kept within its jurisdiction and the legitimate environmental and health concerns, among others, supported the Committee's decision to deny the permit. For the concurring justices, these type of decisions involve "local concerns" best handled at the local level.

The approach advocated by AllEnergy and accepted by the dissenting opinion would force many communities to reexamine the specificity of the standards for conditional uses and would likely result in many communities limiting what they consider a conditional use. If communities wanted to allow large scale sand mining, they might be prompted to develop standards for an industrial zoning classification in which frac sand mines would be a permitted use. Under the facts of this case, that would push the debate about the appropriateness of frac sand mines to the rezoning process rather than the conditional use permit process.

None of the three Supreme Court opinions in the case discuss the role of the local comprehensive plan in helping to provide guidance for whether a proposed conditional use

might be contrary to the "public interest." Many local government zoning ordinances use compatibility with the local comprehensive plan as a standard for reviewing applications for conditional use permits. While this is still an acceptable standard that local governments can use, 2015 Wis. Act 391 clarified that state law does not mandate that local governments must use it as a standard.

Wisconsin Court of Appeals Opinions

Certiorari is Appropriate Standard for Reviewing TIF Challenge

Voters With Facts v. City of Eau Claire involved a lawsuit brought by a group of concerned citizens and others challenging the use of tax increment financing (TIF) for the "Confluence Project," a new performing arts center and residential development on a riverfront site in downtown Eau Claire. In particular, the citizens challenged the "blight" and "but for" determinations made by the various bodies involved with approving two tax increment districts (TIDs) for the project. These are two prerequisites to the use of tax increment financing under Wisconsin state statutes.

The challengers to the City's actions sought a declaratory judgement by the court that the City failed to follow the statutory requirements in approving the TIDs and a common law certiorari action that the City's actions were arbitrary, capricious, and outside the scope of the City's legal authority. The City moved to dismiss the action and the circuit court granted the dismissal. The challengers then appealed the circuit court decision to the Wisconsin Court of Appeals. The Court of Appeals upheld the circuit court's dismissal of the declaratory judgment action but reversed the circuit court's decision dismissing the common law certiorari action.

According to the Court of Appeals, under the TIF statutes, the "blight" determination and "but for" requirement are procedural requirements, not substantive rules. In other words, state statutes only require that a city or village assert that an area is blighted. They do not require that the city or village prove that the area is in fact blighted. As a result, the "blight" determination and "but for" are matters of legislative discretion and therefore not subject to judicial review as a matter of declaratory judgment (a court declaring that the city/village did not follow the statutes).

Nevertheless, the Court of Appeals determined that a court may review the City's actions by way of common law certiorari review. Common law certiorari review is "on the record review" in which a court reviews the record compiled by the municipality and does not take any additional evidence on the merits of the decision. Based on this record, a court's review is limited to four inquiries: (1) whether the municipality kept within its jurisdiction; (2) whether the municipality proceeded on a correct theory of law; (3) whether the municipality's decision was arbitrary, oppressive, or unreasonable and represented the municipality's will and not its judgment; and (4) whether the evidence was such that the municipality might reasonably make the determination in question.

An issue for the challengers was whether the project costs for the TIDs included the costs for the demolition of several buildings that were listed on the National Register of Historic Places - a project cost that is forbidden under Wisconsin's TIF statutes.

The Court of Appeals remanded the case to the circuit court for further proceedings under certionari review of the challengers' allegations that the City lacked substantial evidence to make the "blight" and

Sturgeon Bay Zoning Code

20.25 - Conditional uses.

- (1) The city plan commission may, after a review and public hearing, authorize the issuance of a conditional use permit for conditional uses specified for each district, provided such uses are in accordance with the purpose and intent of this chapter. Whenever a conditional use permit is requested and the required public hearing is scheduled and noticed by city as a class 2 notice, the city shall give notice, by regular mail, of the proposed conditional use to all property owners whose property lies within 300 feet measured in a straight line from the exterior boundary of the property subject to the proposed conditional use permit. Said notice shall be mailed at least ten days prior to the hearing, however failure of a neighboring property owner to receive such mailed notice shall not invalidate a public hearing. If action is delayed more than 120 days from the date of public hearing, a new public hearing shall take place. The common council may grant up to a 60-day extension if warranted by extenuating circumstances. In addition to the notification requirements listed above, applicant shall post signage visible to every facing street at least ten days prior to the hearing. The signage shall identify the property as being the subject of a public hearing and identify the appropriate city office that may be contacted for information.
- (2) Applications for a conditional use permit shall be filled out at the zoning department on a form provided by the inspector and reviewed by staff. Application shall contain a full legal description, property map, and shall be accompanied by a plan showing the location, size and shape of the lot(s) involved and of any proposed structures, and the existing and proposed use of each structure and lot. After review by staff, application shall be placed on the appropriate city plan commission agenda for review, and request shall be posted by city on public access television.
- (3) The city plan commission shall review, as appropriate, the proposed site and operation, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and whether the proposed project will adversely affect property values in the neighboring area.
- (4) A conditional use permit may only be issued by the plan commission upon making a finding that:
 - (a) The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
 - (b) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the surrounding area.
 - (c) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
 - (d) Adequate utilities, access roads, drainage, and/or other necessary facilities will be provided.
 - (e) Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets.
 - (f) The conditional use shall in all other respects conform to the applicable regulations of the district in which it is located and the plan commission shall find that there is a public necessity for the conditional use.
 - (5) Conditions related to landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, operational control, hours of operation, traffic circulation, deed restrictions, access restrictions, increased yards, and parking requirements may be required by the city plan commission upon its finding that such conditions are necessary to fulfill the purposes and intent of this chapter.
 - (6) Conditional uses shall comply with all other provisions of this chapter such as lot width and area, yards, height, parking and loading.
 - (7) Any conditional use granted by the city plan commission shall terminate unless initiated within 365 days of date of decision by the city plan commission.

Sturgeon Bay Zoning Code

List of Conditional Uses by District

R-1 district

- (a) Home occupations, subject to the following:
 - The home occupation shall be conducted only by residents of the dwelling unit and shall be conducted entirely within the dwelling unit.
 - 2. There shall be no outdoor storage or display of equipment, materials, or articles offered for sale.
 - There shall be no articles offered for sale on the premises except such as is directly produced by the home occupation.
 - There shall be no mechanical equipment used other than such as is permissible for purely domestic purposes.
 - There shall be no signage associated with the home occupation, except for one wall sign not to exceed four square feet and not illuminated.
 - 6. A home occupation which meets the criteria listed in subsections 1 through 5, and, in addition, contains no signage, has no retail sales, and has no stock in trade kept or sold, and in which the clients do not generally visit the premises, shall be permitted and shall not require a permit.
 - 7. Only vehicles of a type ordinarily used for conventional passenger transportation, i.e. passenger automobile or vans and pickup trucks not exceeding a payload capacity of one ton, shall be used in conjunction with a home occupation, except that not more than one commercial vehicle may be authorized by the city plan commission as part of the conditional use permit. The use of any public right-of-way for the parking or storage of any commercial vehicles or trailers associated with a home occupation is prohibited.
- (b) Reserved.
- (c) Public museums and libraries.
- (d) Art galleries.
- (e) Public utilities.
- (f) Bed and breakfast establishments, provided the facilities are licensed by the department of health and social services.
- (g) Community living arrangements, except as regulated in § 62.23(7)(i), Wis. Stats., and provided, however that the 2,500-foot distance described in § 62.23(7)(i)2r.a., Wis. Stats., shall not apply.

R-2 district

- (a) All uses listed as conditional uses in the R-1 district.
- (b) Two-family dwellings.

R-3 district

- (a) All uses listed as conditional uses in the R-1 district.
- (b) Multiple-family dwellings, provided there shall be no more than four dwelling units per building.
- (c) Colleges and vocational schools.

R-4 district

- (a) Any use listed as a conditional use in the R-1 district.
- (b) Hospitals.
- (c) Medical and dental clinics.
- (d) Professional offices.
- (e) Parking lots.
- (f) Colleges and vocational schools.
- (g) Two-family dwellings.
- (h) Single-family dwellings.
- (i) Multiple-family dwellings greater than eight units per lot or which do not meet the design requirements under subsection (1)(b).
- (j) Barber/beauty shops, provided such use shall be located on a parcel that abuts a collector or arterial street as shown in the Sturgeon Bay Comprehensive Plan.
- (k) Commercial housing facilities.

R-M district

- (a) Home occupations, subject to the criteria listed in section 20.09(2)(a).
- (b) Reserved.
- (c) Public utilities.
- (d) Community living arrangements, except as regulated in § 62.23(7)(i), Wis. Stats., and provided, however that the 2,500-foot distance described in § 62.23(7)(i)2r.a., Wis. Stats., shall not apply.

C-1 district

- (a) Communication towers.
- (b) Colleges and vocational schools.
- (c) Public utilities.
- (d) Multiple-family dwellings.
- (e) Community living arrangements, except as regulated in § 62.23(7)(i), Wis. Stats., and provided, however, that the 2,500-foot distance described in § 62.23(7)(i)2r.a., Wis. Stats., shall not apply.
- (f) Hospitals.
- (g) Water related uses such as marinas, launch ramps, charter boating or fishing and ferry terminals.
- (h) Commercial establishments with drive-through facilities.
- (i) Public garages, shops or storage yards.
- (j) Outdoor recreation facilities such as golf courses, shooting ranges, and outdoor theaters.
- (k) Animal shelters and pounds.
- (I) Commercial housing facilities.
- (m) Residential use, when incorporated into a multiuse building and using not more than 50 percent of the available floor area.

C-2 district

- (a) Communication towers.
- (b) Colleges and vocational schools.
- (c) Public utilities.
- (d) Multiple-family dwellings.
- (e) Community living arrangements, except as regulated in § 62.23(7)(i), Wis. Stats., and provided, however, that the 2,500-foot distance described in § 62.23(7)(i)2r.a., Wis. Stats., shall not apply.
- (f) Hospitals.
- (g) Water-related uses such as marinas, launch ramps, charter boating or fishing and ferry terminals.
- (h) Gasoline service stations.
- (i) Automobile repair establishments.
- (j) Automobile or recreational vehicle sales lots.
- (k) Commercial establishments with drive-through facilities.
- (I) Bed and breakfast establishments, provided the facility is licensed by the Wisconsin Department of Health and Social Services.
- (m) Commercial housing facilities.

C-3 district

- (a) Any use listed as a conditional use in the C-1 district.
- (b) Light manufacturing/high technology manufacturing, general warehousing, or wholesale distribution activities, subject to the following:
 - Such uses shall be entirely contained inside the building used for such activity.
 - There shall be no outside storage of any raw material, finished product, or waste material other than in a dumpster receptacle that is routinely used and regularly serviced in the normal course of business.
 - There shall be no prolonged noise above 85 decibels at any point further than 100 feet from any part of the building.
 - 4. There shall be no release of smoke, fumes, or odors that may create a public or private nuisance, nor shall there be other activity conducted on the premises that may constitute a public or private nuisance.
 - The use shall be specifically limited to the particular manufacturing and/or storage activity indicated in the petition to the board of appeals and may not be changed to a different activity.
 - 6. In the event that a particular activity approved by the zoning board of appeals is discontinued for any reason, voluntary or involuntary, with no immediate intent to resume, the conditional use permit shall also be deemed automatically terminated with no further notice or hearing.
 - 7. In the event that there is an existing building with an existing fire protection system installed at the time of the approval of the conditional use permit, that fire protection system must remain intact and must be maintained in an operating condition at all times, unless a special exemption is approved by the fire chief.
 - 8. New building projects that involve new exterior building walls, fences, signs, or other exterior improvements requiring a building or sign permit shall be subject to the development standards and procedures prescribed in section 20.32 of this chapter.
 - The zoning board of appeals may also require other conditions regulating the handling, storage, and disposal of chemicals and hazardous materials.

C-4 district

- (a) Communication towers.
- (b) Colleges and vocational schools.
- (c) Public utilities.
- (d) Hospitals.
- (e) Post offices.
- (f) Child day care facilities, provided the facility is licensed by the department of health and social services.
- (g) Establishments with drive-through facilities.

C-5 district

- (a) New single-family dwellings.
- (b) New two-family dwellings.
- (c) Additions to existing dwellings that exceed 50 percent of the original floor area.
- (d) Multiple-family dwellings.
- (e) Uses listed under subsection (1)(c) that are located within a new building with a building footprint that is 3,000 square feet or larger.
- (f) Restaurants and taverns.
- (g) Hotels and motels.
- (h) Parking lots.
- (i) Rest homes.
- (j) Community living arrangements, except as regulated in § 62.23(7)(i), Wis. Stats., and provided, however that the 2,500-foot distance described in § 62.23(7)(i)2r.a., Wis. Stats., shall not apply.
- (k) Public utilities.
- (i) Massage parlors.
- (m) Liquor stores.
- (n) Payday lending institutions.
- (o) Pawn shops.

I-1 district

- (a) Charter fishing boat service.
- (b) Commercial fishing facilities.
- (c) Industrial uses not specifically permitted nor specifically prohibited.
- (d) Communication towers.
- (e) Commercial housing facilities.
- (f) Retail establishments, subject to the following requirements:
 - The retail establishment shall be located within a building that contains at least 4,000 square feet
 of floor area.

- 2. The retail establishment shall be located within 600 feet of the right-of-way of State Highway 42/57.
- 3. The retail use shall be limited to appliance dealers, carpet and floor covering dealers, electrical showrooms and shops, furniture stores, lawn and garden equipment and supply stores, lighting showrooms and shops, lumber and building materials sales centers, paint stores, plumbing showrooms and shops, stationary and office equipment/supply stores, retail sales associated with not for profit vocational rehabilitation programs, boat sales/showrooms, and similar types of retail that support the building and manufacturing industries.
- (g) Banks and other financial institutions.
- (h) Travel agencies.
- (i) Health clubs.
- (i) Quick-printing/copy shops.
- (k) Indoor boat storage and repair facilities.

1A district

Conditional uses shall be the same as those listed for the I-1 district, but shall be subject to the development standards contained in section 20.32. Appeals to the limitation on outdoor storage shall be to the development review team.

I-2 district

Conditional uses shall be all uses listed as conditional uses in the I-1 district.

I-2A district

Conditional uses shall be the same as those listed for the I-2 district, but shall be subject to the development standards contained in section 20.32.

A district

- (a) Airports, including terminal facilities and necessary concessions.
- (b) Two-family dwellings.
- (c) Outdoor amusement and recreation facilities such as golf courses, driving ranges and outdoor theaters.
- (d) Communication towers.
- (e) Public utilities.
- (f) Solid waste facilities.
- (g) Travel trailer parks.
- (h) Home occupations, subject to the criteria listed in section 20.09(2)(a).
- (i) Bed and breakfast establishments, provided the facility is licensed by the Wisconsin Department of Health and Social Services.
- (j) Sand and gravel operations.
- (k) Kennels.
- (I) Indoor ice arenas.

CON district

- (a) Water pumping or water storage facilities.
- (b) Golf courses.
- (c) Offices and educational facilities for nonprofit conservation-related organizations.



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MEMO

To: Plan Commission

From: Christopher Sullivan-Robinson

Date: June 15, 2018

Subject: Consideration of Accessory Building Setback Requirements

In November, staff was advised by the Plan Commission to review options for changing the accessory building height code. The Zoning Administrator and the Community Development Director researched other community zoning codes in relation to and presented it to the Plan Commission at the December meeting. The Commission approved the recommendations made by staff, which would essentially increase the overall height to 16 feet for accessory buildings and adjust the roof pitch requirements. During the discussion, it was communicated that if an accessory building is as large as or larger than the square footage requirement of a dwelling then it might be appropriate to revise the setback requirements in accordance.

Same as the accessory building height process, staff reviewed other municipalities zoning requirements. Staff researched several communities and found that there were no examples of setbacks based on building size for an accessory building. In fact, most communities had a zoning code similar to City's (i.e. a maximum size, a minimum setback).

Most of the communities listed have less restrictive accessory building area requirements and the setbacks are similar to the City's with the exception of Sister Bay. If the City wishes to see option please review the handout in the packet.

The potential ordinance change would increase the minimum side and rear yards to 10 feet for accessory buildings larger than 800 square feet. These numbers were chosen because 800 square feet is the minimum floor area for a dwelling in the R-2/R-3 districts and 10 feet is the minimum side yard for a house. But the Commission could instead use higher or lower numbers for the cut-off and setback distances or could create a sliding scale.

Last time we met, the Plan Commission believed we should have a setback based on lot width which has been added. Keep in mind that the numbers can be adjusted up or down. An additional option was also presented which would base the setback on a percent of the building square footage.

The Plan Commission has the following options:

- It can recommend adoption of the proposal
- It can request changes to the proposal
- It can decide to make no changes and drop the issue altogether

Option 1- Status Quo (5-foot side setback and 6-foot rear setback)

Option 2- Increase for Larger Buildings

Accessory Building Setbacks		
Square Footage	Side	Rear
≤800**	5	6
>800**	10*	10*

^{*}the distance could be adjusted up or down

Option 3- Setback Based on Lot Width

	Accessory Building Setb	acks	
Lot Width	Side Yard Setback	Rear Yard Setback	
<70	5	6	
≥70 and ≤100	10	10	
>100	10	25	

^{*}The numbers in this chart can be adjusted.

Option 4- Setback Based on Percentage of Square Footage of Building (i.e. 1%)

^{**}this floor area could be adjusted up or down