



MINUTES OF AN OFFICIAL MEETING:

Regular Meeting: Plan Commission

Date and Time: Monday, January 11, 2021 at 6:30 pm

Location: City Hall Council Chambers, 2000 N. Calhoun Road, Brookfield WI53005

Members Present: Mayor Steven Ponto (Chairman), Alderman Gary Mahkorn, Alderman Rick Owen, Alderman Mark Nelson (via teleconference), Commissioner Mike Smith, Commissioner Lisa Chang (via teleconference), Commissioner Steve Petitt

Members Excused: N/A

Others Present: Director of Community Development Dan Ertl, Director of Public Works Tom Grisa, City Engineer Jeffrey M. Chase, Fire Chief Charlie Myers, Associate Planner Richard VanDerWal, Alderman Chris Blackburn, Alderman Jerry Mellone

2. Roll Call

Mayor Steven Ponto noted a quorum present and called the Plan Commission to order at 6:31 pm

Announcements

The Next Regularly Scheduled meeting will be held on Monday, February 8, 2021 at 6:30 pm

3. Meeting Minutes

a. Minutes of the December 7, 2020 meeting.

Motion by Alderman Mark Nelson, second by Citizen Member Lisa Chang to approve the minutes of the December 7, 2020 Plan Commission meeting with appropriate correction made to the listed Members of the motion on page five. Motion carried 7-0.

4. Unfinished Business

a. Report on Court decision on *Fassett v. City of Brookfield* – landsplit on Gebhardt Road – JM

CLOSED SESSION NOTICE MADE BY CHAIRMAN STEVEN PONTO:

Please take notice that the Plan Commission will meet, at approximately 6:30 p.m. or as soon thereafter as time permits, on Monday, January 11, 2021, pursuant to Wis. Stats. §19.85(1) (a) and (g), to vote on a motion to convene in closed session, and upon the motion duly made and carried, to consider Item 4.a. for the purpose of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body and conferring with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, specifically to consider whether to appeal the *Fassett v. City of Brookfield* decision in Case No. 20-CV-317.

You are further notified that at the end of the closed session, the Plan Commission will reconvene in open session pursuant to Wis. Stats. 19.85(2) for possible additional discussion and action regarding the matter discussed in closed session and to consider any other matters on the agenda.

Citizen Member Steve Petitt recused himself from partaking in the closed session because his architecture firm has worked with Ms. Fassett.

Citizen Member Mike Smith recused himself from partaking in the closed session because his construction firm has worked with Ms. Fassett.

Both recusing Members left the room and City Engineer Jeff Chase also left the room during closed session and returned upon resumption of open session.

Motion by Alderman Gary Mahkorn, second by Alderman Rick Owen to move the Plan Commission meeting into closed session. Motion carried 5-0.

Motion by Alderman Gary Mahkorn, second by Alderman Rick Owen to conclude the close session and move the Plan Commission meeting into open session. Motion carried 5-0.

- b. Plan Commission Recommendation: Ordinance to amend, repeal, and repeal and recreate various provisions in Title 17, Zoning Code, to be consistent with the regulations in Chapter 15.16, Sign Code.**

Report: This item was the subject of a public hearing December 15. No public comments were made.

Recommendation: Approve ordinance.

No topics discussed.

Motion by Alderman Gary Mahkorn, second by Citizen Member Mike Smith to approve staff recommendation for approval of an ordinance to amend, repeal, and repeal and recreate various provisions in Title 17, Zoning Code, to be consistent with the regulations in Chapter 15.16, Sign Code. Motion carried 7-0.

- c. Plan Commission Recommendation: Ordinance amending Chapter 17 Regarding Setbacks for Canopies Supporting Automobile Fuel Stations, Adding a Definition of "Institutional", Clarifying which Uses Require Plan and Method of Operation Approval, Adding a Standard for Conditional Uses and Amending the Village Area Business District Regarding Parking Locations and Conditional and Prohibited Uses.**

Report: This item was the subject of a public hearing December 15. No public comments were made. Several alderman asked technical questions.

Recommendation: Approve ordinance.

No topics discussed.

Motion by Citizen Member Mike Smith, second by Alderman Rick Owen to approve staff recommendation for approval of. Motion carried 7-0.

- d. Request withdrawn.**
- e. Request of Waukesha County, 515 West Moreland Boulevard, Waukesha, WI 53188, c/o Stephen Siodlarz, Senior Landscape Architect, for approval of a conditional use permit for depositing fill and material in the Floodway District and Floodfringe District in association with the development of the Pewaukee to Brookfield Connector Multi-use Trail. (SW 1/4 of Sec. 17) – RV **Requires Common**

Council Approval**

Report:

1. Refer to the following links to review the previous staff report and minutes related to the request:
 - [November 9, 2020 Plan Commission Packet](#)
 - [November 9, 2020 Plan Commission Minutes](#)
2. A neighborhood information meeting regarding the proposal was held on December 2, 2020 in the courtroom of the Safety Building. Fourteen (14) property owners recorded their attendance on the sign in sheet alongside the two district Aldermen and Alderman Blackburn. No comment sheets were submitted at the meeting, one (1) comment letter was submitted afterward, and one (1) emailed letter was received by the Department of Community Development.
3. A public hearing was conducted at the Plan Commission during its December 7, 2020 meeting. Five (5) public comments were received. The Commission Members asked questions about the limitation of authority in reviewing and approving the request, proposed timeline of construction, assurances, potential recourse & remedies for property owners, and erosion control. Video recording of the meeting can be found at the following link: [December 7, 2020 Plan Commission](#)
4. The applicant has submitted updated data and plans, per Engineering Division comments for revision, to conform to the provisions of Chapter 17.88. Over the 2.9 mile project, 72.1 cubic yards of cut are proposed in the floodway district and 68.6 cubic yards of fill are proposed for a net three 3.5 cubic yards of removal in the floodway. Seven hundred twenty (720) cubic yards of cut are proposed in the floodfringe district and seven hundred nineteen (719) cubic yards of fill are proposed for a net three (3) cubic yards of removal in the floodfringe. Submitted plans, attached to this report, indicate that the proposed cuts and fills in each district are balanced with compensatory cuts and fills in immediate proximity to one another. No net loss in floodplain storage area is proposed. The cross-section elevation view of the proposal shows that flow will not be obstructed by the project and will not cause any increase in the regional flood height. The regional flood height will not be raised by the activities in the floodway or floodfringe, whether through blocking conveyance of floodwaters or through floodplain storage area lost, and perpetual use and maintenance within the floodway and floodfringe districts meets all applicable local, state, and federal requisites.
5. Findings of fact, conclusions of law, and recommendation issued by the City Attorney for granting approval of the conditional use permit have been attached to this report for inclusion in the record and acting motion by the Plan Commission.

Recommendation: The project fulfills the goals of long-range regional planning efforts, including the *City of Brookfield 2050 Comprehensive Plan*, *Park and Open Space Plan for the City of Brookfield: 2035*, and *Greenway Trail System*. Proposed development and use are permitted in the floodway and floodfringe zoning districts and the provisions of Chapter 17.88 of the municipal code have been met. Staff recommends the Plan Commission approve the conditional use permit for depositing fill and material in the Floodway District and Floodfringe District in association with the development of a recreational trail based on the findings of fact of the City Attorney and subject to:

1. Engineering cross-sections, plans, and profiles dated January 4, 2021, including technical corrections, reviewed and approved by the City of Brookfield Engineering Division, including confirmation the project complies with the requirements of §17.88 of the municipal code with wet stamp on final approved plans by Professional Engineer having qualified floodplain experience.
2. Submittal of as-built plans for specific areas of the project that have been designated by the Engineering Division for post-construction inspection.

3. Zoning administrator to issue a certificate of compliance upon final inspection of the completed work with as-built plans conforming to final approved submitted plans.

Stephen Siodlarz, Senior Landscape Architect at Waukesha County, represented the request.

Citizen Member Mike Smith noted that the City is limited in the scope of review for the request and acknowledged that the applicant has revised all plans to meet code based on the City's Engineering Division comments.

Motion by Citizen Member Mike Smith, second by Citizen Member Steve Petitt to approve staff recommendation for approval of a conditional use permit for depositing fill and material in the Floodway District and Floodfringe District in association with the development of the Pewaukee to Brookfield Connector Multi-use Trail. Upon deliberation and consideration of the request of Waukesha County for a conditional use for permitting fill to be deposited in the Floodway District and Floodfringe District in association with the construction of the Pewaukee to Brookfield Connector recreational trail, presented at the Plan Commission meeting held on December 7, 2020, the Committee finds:

FINDINGS OF FACT:

1. *The site that is the subject of this conditional use request is located at the abandoned railroad corridor off of Brookfield Road between North Hills Drive and Riverview Drive, which is partially located in the floodway district and floodfringe district.*
2. *The proposed use for the site is for a multi-use, non-motorized recreational trail that will provide access from Pewaukee to Brookfield for pedestrians, bicyclists, and other recreational users and for fill and deposited material next to the trail.*
3. *Recreational trails are permitted uses in the floodway district and floodfringe district, pursuant to Sections 17.88.120 and 17.88.160.A of the Brookfield Municipal Code ("Code").*
4. *Fill and deposited materials are conditional uses in the floodway district and floodfringe district, pursuant to Sections 17.88.160.B and 17.88.130.D of the Code.*
5. *The uses comply with the recommendations in the City of Brookfield 2050 Comprehensive Plan.*
6. *The various regional planning efforts of the City of Brookfield, City of Pewaukee, City of Waukesha, Waukesha County, and the Southeastern Wisconsin Regional Planning Commission establish justification that the specific proposal and its location.*
7. *The uses are not prohibited by any other ordinance.*
8. *The uses meet the standards in Sections 17.88.130 17.88.140, and 17.88.170 of the Code.*
9. *Besides a conditional use permit, no permits or certificates are required to be issued by the City pursuant to Section 17.88.260 of the Code.*
10. *Waukesha County has secured all necessary permits from federal, state, and local agencies, including those required by the U.S. Army Corps of Engineers, to authorize consent for development in the floodplain.*
11. *Based on the engineering plans that the County submitted as part of its request, the request will comply with Section 17.88.070 of the Code as no net loss of flood storage capacity will occur from the uses, the development will not obstruct flow causing any increase in the regional flood height, and the development will not cause any increase in the regional flood*

height due to floodplain storage area lost.

12. Cooperative maintenance and operation of the trail by Waukesha County and the City of Brookfield will be performed under existing services.

13. Establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

CONCLUSIONS OF LAW:

- 1. Waukesha County's request complies with the criteria of the Code and is not contrary to the public health, safety, or general welfare.***
- 2. No substantial evidence exists to place any additional conditions on the use that are not set forth already in Chapter 17.88.***

RECOMMENDATION:

- 1. The Plan Commission recommends approval of Waukesha County's application for a conditional use for the recreational trail and the depositing of fill.***

Motion carried 7-0.

5. New Business

- a. Request of Frasier Inc., DBA Chick-fil-A for a Temporary Use permit to locate three (3) secondary drive-thru structure at 12625 W. Capitol Drive. ****Requires Common Council Approval******

Report:

1. Frasier Inc., DBA Chick-fil-A is looking to place three (3) temporary structures at 12625 W. Capitol Drive. The purpose of the temporary structure is to allow for better management of drive-thru operations at this location because the dining room remains closed (ATTACHMENT 1). The COVID-19 pandemic has restricted the availability of dine-in options at each location, but the volume of drive through traffic serviced by the location has significantly increased.
2. Previously this location was approved to use temporary pop up tents as a solution to handle the increase in traffic volume and weather. With Wisconsin's winter weather approaching, Frasier Inc., DBA Chick-fil-A is seeking a more durable and viable lasting solution for its employees' health and safety.
3. The structures to be placed at this property is made of quality materials that will be able to withstand the harsh weather elements that is typically expected (ATTACHMENT 2). Each structure will be bolted affixed to the ground on all four (4) sides to ensure that they remain in the location identified on the site plan (ATTACHMENT 3). Each unit will be supplied electricity to allow for electrical heat, lighting, and the processing of transactions (ATTACHMENT 4). This will require that an electrical permit be taken out with the City's Inspection Services Department. Specifications for the building, materials, lighting and heating have been supplied for review.
4. The location has adequate drive-thru staging during normal operating conditions. With the use of the dining room not available, the temporary structures will allow for a better flow of drive-thru traffic.
5. Frasier Inc., DBA Chick-fil-A is requesting the ability to allow for the structures to remain in place through May of 2022. The reason for the lengthy request is the uncertainty that the business community is facing on capacity restrictions that continue to fluctuate regularly. In an effort to save time, money and effort to

change protocols for dine-in options regularly, this will allow for business operations to continue regardless of any restrictions in place at any given time.

6. At the November 9, 2020 Plan Commission, concerns were expressed about the length of period that a temporary structure can be in place. Section 3103.1 of the International Building Code places a 180 (6 months) day limit on temporary structures. Section 108.1 maintains the 180 day limit described in 3103.1, but states “The building official is authorized to grant extensions for demonstrated cause” (Attachment 2). SPS 314 Fire Prevention has additional language:

- (5) TEMPORARY USE. These are department rules in addition to the requirements in NFPA 1 section 1.4: A fire code official may allow a building or a portion of a building to be used temporarily in a manner that differs from the approved use for the building or space, or may approve a temporary building to be used by the public, subject to all of the following provisions:
- (a) The official shall determine the time frame within which the temporary use is permitted, based on the extent hazards are created by the temporary use. This time frame may not exceed 180 days, except the official may grant extensions for demonstrated cause.
 - (b) Buildings or spaces considered for temporary use shall conform to the requirements of this chapter as necessary to ensure the public safety, health, and general welfare, except as provided in par. (c).
 - (c) The official may require additional safety requirements for a temporary use as a trade-off for any safety provisions that may be lacking. (d) The official may terminate the approval for a temporary use at any time and order immediate discontinuance of the use or complete evacuation of the building or space

Recommendation: Staff recommends the Common Council to approve the Temporary Use Permit for the placement of three (3) secondary drive-thru structures at 12625 W. Capitol Drive for 180 days and authorize the Zoning & Building Administrator to grant extensions administratively. The Temporary Use Permit would be subject to:

1. An electrical Permit issued and inspected by the City Inspection Services Department.
2. A plan is submitted to the Inspection Services Department regarding removal of the electric provided to the structure when it is to be removed.
3. Review and approval by the Fire Department on the electrical heater within the structure on any life safety issues, and on emergency access plan regarding location of structure and clearing of vehicles in queue.
4. Inspections Department and Fire Department complete inspection and approval of structures, electrical, and heater unit(s) prior to occupancy.
5. *A signed encroachment agreement with the Engineering Department should any temporary structure be placed within the Water Main Easement and no electric service provided.*

Jim Frasier, Owner and Operator of the Chick-fil-A restaurant, represented the request.

Citizen Member Steve Petitt stated that he supports the efforts of the Plan Commission and City to provide flexibility to business owners to operate to the best of their ability during the current conditions of the pandemic.

Motion by Citizen Member Steve Petitt, second by Alderman Gary Mahkorn to approve staff recommendation for approval of. Motion carried 7-0.

- b. Request of Loweth, LLC, 1 North Moorland Road, Brookfield, WI 53005, c/o James Weschler, Restaurant Development – Facilities & Equipment, for approval of a minor revision to plan and method of**

operation for installation of a drive-thru shelter at 1 North Moorland Road. – RV **Requires Common Council Approval**

Report:

6. The site consists of one lot located in the Calhoun Road South Targeted Investment Area (TIA), one of eleven areas identified in the *City of Brookfield 2050 Comprehensive Plan* that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted neighborhood plan is the *Calhoun Road South Neighborhood Plan – 2001* (Neighborhood Plan). The adopted land use of the Neighborhood Plan for the site is “Retail”. The adopted land use of the *City of Brookfield 2050 Comprehensive Plan* is “Mixed Use – Higher Density”. The site is zoned “O&LR/C #2 – Office and Limited Residential/Commercial District Number 2” (O&LR/C #2).
7. Proposed drive-thru shelter is consistent with the City’s Site Development Standards for Non-Residential Uses and the Brookfield/Executive Drive Redevelopment Area Design Guidelines. Materials and colors are compatible with the existing primary building. Steel columns, beams, and plates are used to generate the overall structure and vinyl curtains with clear windows wrap the frame on the north, east, and south sides. Color of metal frame and panels is Sherwin Williams “7048 Urbane Bronze” (dark bronze) and vinyl curtains are black and clear. Staff recommends the Plan Commission provide clarity on acceptability of the application of vinyl curtains as the design standards do not prohibit the use of vinyl but qualify that materials “promote value and permanence” requiring that “Durability and long term maintenance shall be considered in material selections” (pg. 51 Brookfield/Executive Drive Redevelopment Area Design Guidelines), typical warranty for an outdoor vinyl curtain is five (5) years with general expected use of seven (7) to ten (10) years before replacement in Wisconsin climate (max life expectancy 15 years). Materials shall meet fire rating requirements with review and approval by the Fire Department.

Recommendation: The applicant’s proposal complies with the City’s Site Development Standards for Non-Residential Uses and the Brookfield/Executive Drive Redevelopment Area Design Guidelines. Staff recommends the Plan Commission approve the minor revision to plan and method of operation for installation of a drive-thru shelter at 1 North Moorland Road subject to:

4. Application cover letter dated December 23, 2020 by James Weschler, Chick-fil-A, Inc.
5. Plans, elevations, specifications, and materials dated December 17, 2020 by Chick-fil-A, Inc., including technical corrections.
6. An electrical permit issued and inspected by the City Inspection Services Department for underground power distribution to the shelter.
7. Review and approval of electrical heater, fire rating of materials, emergency access plan regarding clearing of vehicles in queue, and other life safety matters pursuant to the municipal code and state statutes by the Fire Department.
8. Inspections Department and Fire Department complete inspection and approval of structure, electrical, and heater unit prior to occupancy.
9. Lighting in compliance with sections 15.16.080 and 17.120.070 of the City of Brookfield municipal code.
10. Once a building permit is issued by Inspection Services, the owner shall receive an occupancy permit within eighteen (18) months or the owner of the property may be subject to the penalty provisions of the Zoning Code, Section 17.100.130 or the owner shall remove construction equipment and debris from the site, fine grade and seed the site, and stabilize surface water

drainage leaving the site to City Engineering Department specifications within four (4) months or the owner of the property may be subject to the penalty provisions of the Zoning Code – Section 17.100.130. (Ordinance #2134-08).

11. Minor revision to plan and method of operation approval expires on January 19, 2023 unless a building permit is obtained prior thereto.

Chris Loweth, Owner and Operator of the Chick-fil-A restaurant, represented the request.

Alderman Rick Owen asked the applicant if the proposed vinyl curtains are secured to the steel structure of the shelter and if the windows were a flexible or solid material with the concern that any loose vinyl will wave in the wind and appear unkempt.

Mr. Loweth stated that the windows are a clear, flexible vinyl and that the curtains are affixed to sides of the structure with the capability to roll up and fasten the curtains in warmer weather. He added that each example picture submitted shows the same type of shelter installed at different Chick-fil-A locations. Any appearance of difference is a result of the camera used or conditions of the picture and not a result of difference in the structures.

Motion by Citizen Member Mike Smith, second by Alderman Rick Owen to approve staff recommendation for approval of a minor revision to plan and method of operation for installation of a drive-thru shelter at 1 North Moorland Road. Motion carried 7-0.

6. Adjournment

Motion by Citizen Member Mike Smith, second by Citizen Member Steve Petitt to adjourn the meeting at 7:32pm. Motion carried unanimously.

Respectfully Submitted:

Daniel F. Ertl

Director of Community Development