



## MINUTES OF AN OFFICIAL MEETING:

Regular Meeting: Plan Commission

Date and Time: Monday, May 8, 2023, at 6:30 pm

Location: City Hall Council Chambers, 2000 N. Calhoun Road, Brookfield WI 53005

Members Present: Mayor Steven Ponto (Chairman), Alderman Gary Mahkorn, Alderman Rick Owen, Citizen Commissioner Austin Moore, Citizen Commissioner Scott Thomas

Members Excused: Citizen Commissioner Mike Franz

Others Present: Director of Community Development Dan Ertl, Fire Chief Dave Mason, City Engineer Dan Erickson, Planning Administrator Richard VanDerWal, Associate Planner Emily Zandt, Alderman Bloom, Alderman Blackburn, Alderman Anderson, Alderman Szews

### 1. Roll Call

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

### 2. Announcements

- a. The Next Regularly Scheduled meeting will be held on Monday, June 12, 2023, at 6:30 pm.

### 3. Meeting Minutes

- a. **Minutes of the April 10, 2023, Plan Commission meeting.**

***Motion by Alderman Gary Mahkorn, second by Alderman Mike Hallquist to approve the minutes of the April 10, 2023, Plan Commission meeting. Motion carried 6-0.***

**Public Hearing:** Request of Lisbon Lot, LLC, owner of unaddressed property in the southwest corner of W. Lisbon Road and Pilgrim Road intersection, property tax key BR C1017999, c/o Sawall Development, is requesting approval of a conditional use permit and a new plan and method of operation for the property. The proposed conditional use is associated with the plans to construct an approximately 39,851 sq. ft., single-story building with site improvements and resultant use for a 62-suite (up to 70 residents) Assisted Living Facility/Community Based Residential Facility (CBRF) to be called Anita's Gardens. The request is concurrent with an application for a certified survey map to reestablish the boundaries of the property. New CBRFs consisting of 9 beds or more require a conditional use permit to be approved by the Common Council, subject to a public hearing.

No action will be taken following the public hearing this evening. It is anticipated that Conditional Use Permit, the Plan & Method of Operation, and the Preliminary Concept Map will be before the Plan

Commission for action on June 12<sup>th</sup>, 2023 (Common Council on June 20<sup>th</sup>). Final action by the Plan Commission on the CSM is anticipated for July 10<sup>th</sup>, 2023 (Common Council on July 18<sup>th</sup>).

Associate Planner Emily Zandt provided an overview of the project.

***The Chairman, Mayor Ponto, opened the Public Hearing, asking if any members of the public wish to speak on the matter.***

No members of the public spoke on this item.

***Motion by Alderman Gary Mahkorn, seconded by Alderman Mike Hallquist to close the public hearing. Motion carried 6-0.***

**Public Hearing:** Public Hearing: Request of The Sikh Religious Society of WI Inc, c/o Nathan Remitz, Patera Architecture + Engineering, is requesting approval of a conditional use permit concurrent with a certified survey map (CSM) application to combine the two lots at 3625 & 3675 N. Calhoun Road, property tax keys BR C1041987 & BR C1041988 respectively. The conditional use permit would allow the construction of a second religious-use building (20,352 sq. ft.), an accessory structure (1,500 sq. ft.), and associated site improvements. The new religious-use building, including living accommodations associated with the religious-use institution, and an outdoor play area will be located to the south of the existing building.

No action will be taken following the public hearing this evening. It is anticipated that Conditional Use Permit, the Plan & Method of Operation, and the Preliminary Concept Map will be before the Plan Commission for action on June 12<sup>th</sup>, 2023 (Common Council on June 20<sup>th</sup>). Final action by the Plan Commission on the CSM is anticipated for July 10<sup>th</sup>, 2023 (Common Council on July 18<sup>th</sup>).

Associate Planner Emily Zandt provided an overview of the project.

***Nathan Remitz, Patera Architecture + Engineering, Evan Nickodem, Parish Engineering, and Parvinder Sangha, Sikh Religious Society of WI, provided an overview of the project.***

Alderman Mike Hallquist asked about the drainage on the southside of the lot. Alderman Rick Owen inquired about the status of the Engineering Department review. Citizen Member Scott Thomas asked about the future of the existing building. Nathan Remitz responded that the building will be maintained as an overflow space for larger events. Parvinder Sangha, Sikh Religious Society of WI, clarified that the space would be used for additional space to accommodate children's activities. There are currently no plans to tear down the existing building.

***The Chairman, Mayor Ponto, opened the Public Hearing, asking if any members of the public wish to speak on the matter.***

- Paul Leow – 3660 N Calhoun Road – Concerns about tree removal, potential for moving the building toward the back of the lot, concerns about the condition of the existing building, thought the plan was to remove the building.
- Cindy Kilkenny – 3840 Charter Point Court – Opposes the Project. Concerns about height of the proposed building in comparison to other religious use buildings in the City, impact of conditional uses on the residential neighborhood, treating all Conditional Use applicants the same.
- Carol Johnson did not wish to speak.

**Motion by Alderman Gary Mahkorn, seconded by Alderman Mike Hallquist to close the public hearing. Motion carried 6-0.**

#### 4. New Business

- a) **Request of Chad Wyman, property owner, for approval of a preliminary concept map and final Certified Survey Map to combine two properties located at 3335 Parkside Dr. Brookfield, WI 53005. (SW ¼ of Sec. 12) – EZ **\*\*Requires Common Council Action\*\*****

##### Report:

1. The site consists of two lots not located within a Targeted Investment Area (TIA), one of eleven areas identified in the *City of Brookfield 2050 Comprehensive Plan* (Comp Plan) that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The future land use designation as identified in the Comp Plan is “Housing Focused – Lower Density”. The site is zoned “R-2” Residence District and is located in the Lamplighter Park Subdivision. The existing and proposed use of the site is single-family residential which is a permitted use in the district.
2. The applicant is seeking a land reconfiguration to combine two parcels, both owned by Chad and Kylie Wyman: Lot 9 Block 3 (0.446 acres containing the existing single-family dwelling) and Outlot 2 (0.174 acres with no improvements) of the Lamplighter Park Subdivision. Chad and Kylie Wyman purchased part of Outlot 2 from the City of Brookfield in July 2022. The proposed land reconfiguration is to allow a future garage addition.
3. Proposed Preliminary Concept Map Characteristics:  
Lot 1  
Combined Lot Size: 27,197 sq. ft. (0.62 acres) (R-2 min. 25,000 sq. ft.)
4. Municipal Code §16.12.040.B. enforces the following standards for land reconfigurations by certified survey maps (emphasis added):
  - a. All land reconfigurations shall adhere to the official map and the standards and requirements set forth in this code;
  - b. The land reconfiguration does not result in the deterioration of any natural environment such as a wetland or floodplain per an expert opinion procured and paid for by the subdivider if a wetland or floodplain exists on the parcel or is adjacent; and
  - c. If the land reconfiguration lies within a subdivision the following also apply:
    - i. The land reconfiguration should be in relationship to the average size and width of existing lots in the subdivision. If the average size and width of the lots contained within the subdivision exceed current minimum dimensions required in the subdivision and zoning codes, this subsection supersedes those provisions; and
    - ii. The land reconfiguration does not create a material and detrimental departure from the prevailing lot configuration of the subdivision; and
    - iii. The land reconfiguration does not unfavorably impact the public utilities in the subdivision or create drainage problems.
5. The proposed land reconfiguration adheres to the official map and code. There is no wetland or floodplain on the property. The proposed land reconfiguration is located within a subdivision and is in relationship to the average size and width of existing lots, does not create a material and detrimental departure from the prevailing lot configuration, and does not impact the public utilities or create drainage problems.
6. The combining of the two properties into one lot, with appropriate technical corrections made to the preliminary concept map, would achieve compliance with the “R-2” Residence zoning district in the associated

final Certified Survey Map for the site. A title report with copies of all exceptions has been submitted to the City of Brookfield Engineering Division for review.

7. Staff has reviewed the preliminary concept map and certified survey map request and finds the following:
  - a. It conforms with Sections 236.34 and 236.45, Wisconsin Statutes, the official map, and the comprehensive plan.

**Staff Recommendation #1:** The Plan Commission recommends the Common Council approves the preliminary concept map to combine two properties owned by Chad and Kylie Wyman at 3335 Parkside Dr. for the purposes of a future garage addition, subject to

1. Any technical corrections to the preliminary concept map required by the Engineering Division.

**Staff Recommendation #2:** The Plan Commission recommends the Common Council approves the certified survey map, combining two properties owned by Chad and Kylie Wyman at 3335 Parkside Dr. for the purposes of a future garage addition, subject to

1. Any technical corrections to the certified survey map required by the Engineering Division.

#### Topics Discussed

- This application was anticipated as the property was sold by the City to the applicant in 2022.

***Motion by Alderman Gary Mahkorn, second by Alderman Mike Hallquist to approve the preliminary concept map to combine the two lots subject to technical corrections. Motion carried 6-0.***

***Motion by Alderman Gary Mahkorn, second by Alderman Rick Owen to approve the certified survey map per City staff recommendation attached. Motion carried 6-0***

- b) Request of Winter Fields, LTD, W194 N5726 Deer Park Court, Menomonee Falls, WI 53051 – Scott Simon, Owner, for approval of a new plan and method of operation, approval of a development agreement, and approval of temporary limited easement for landscaping, permitting razing of existing homes and multi-family building, new building construction of approximately 35,700 square feet consisting of three multifamily fourplex buildings and one duplex building, site modifications and landscaping in association with the development of a fourteen dwelling unit multi-family condominium project, Pleasant Corners, at the northeast corner of 186<sup>th</sup> Street and Pleasant Street. (NW 1/4 of Sec. 16) – RV \*\*Requires Common Council Action\*\*

#### Report:

1. The site is four lots located in the Village Area Targeted Investment Area (TIA), one of eleven areas identified in the *City of Brookfield 2050 Comprehensive Plan* (Comp 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 Village Area Neighborhood Plan – 2012 (Village Plan). The recommended land use of the Village Plan is “Multiple Family Residential.” The adopted land use of the Comp Plan is “Housing Focused – Medium Density.” The site is zoned M-1 Residence District, [§17.44](#) (M-1). The proposed development configuration and associated operation of four (4) multi-family residence buildings is permitted by the zoning.
2. Proposed Site Development Characteristics (post land reconfiguration combining lots):

Lot Area:	234,352.8 sq. ft. (5.38 ac)
Buildable Lot Area:	219,106.8 sq. ft. (- 15,246 sq. ft. wetlands)
Open Space:	Buildable Lot Area > 210,000 sq. ft. min. req. (15,000 per dwelling unit)

Building Setback:	50' South (50' min.) 50' West (50' min.)
Pavement Setback:	100' South (25' min.) 50' West (25' min.)
Building Offset:	55' North (20' min.) 51' East (20' min.)
Pavement Offset:	25' North 20' East
Building Height:	25' (35' max.)
Building Sizes:	9,860 sq. ft. fourplexes, 4,930 sq. ft. duplex
Dwelling Unit Size:	1,950 sq. ft. (1,400 sq. ft. min.)
Parking Spaces:	28 garage, 28 surface 56 total spaces (14 sheltered req., 35 total req.)
Floor Area Ratio:	15% (20% max)
Lot Coverage:	15.75% (25% max. 20% principal bldgs., 5% accessory bldgs.)

- Submitted site plan indicates all existing ingress/egress of the site is removed and replaced with new driveway connections. Two driveways along 186th Street are replaced with three access points, and one driveway along pleasant street is replaced with two access points, for a total of five driveways replacing three existing. A variance under 12.09.060 of the Municipal code, granting additional driveway access points, is warranted for code compliance regarding Fire Department access to the site (12.09.060.A.2.) and is requested as an Administrative Variance under 12.09.060.D. to be reviewed by the City Engineer. Site trash and recycling is managed via personal bins for each dwelling unit and stored within respective garage space. A traffic impact analysis was not required for the request as it does not exceed a change of 100 vehicles in the peak hour where such analysis is required by code (§17.100.070.H).
- A Certified Survey Map (CSM) combining the four lots into one lot was last approved by the Common Council on May 17, 2022. Such land reconfiguration shall be submitted to the Waukesha County Register of Deeds for recording prior to May 17, 2023 per 236.34(2)(b)1. of the State Statutes. **New plan and method of operation is conditioned upon a CSM that combines the existing four lots into one lot.**
- Proposed architecture and building materials are consistent with the *Site Development and Landscape Standards* (SDLS). Architecture of proposed buildings is similar to the Glen at Woodside Creek condominium complex near Lisbon Road. Each building features the same architecture and building material design solutions. Overall, the proposal achieves a cohesive design. Building materials used throughout are:
 

**Building Materials**

  - LP Smartside/cement board siding in cedar shake texture painted “Renwick Beige” (light beige) Sherwin Williams 2805
  - LP Smartside/cement board trim in “Renwick Rose Beige” (copper beige) Sherwin Williams 2804
  - Eden Stone composite stone veneer in “Chilton Royal Chateau” (earth tone mix of greys, beiges, reds, and browns)
  - Clear vision glass windows with mullions, muntins, and trim in white (exceeds minimum 20% vision glass on public facing façades).
- The applicant submitted a landscape plan for review and compliance with City standards.
- The applicant is in receipt of a missive dated April 21, 2023 by Fire Chief David Mason identifying Fire Code compliance requirements, including fire suppression of buildings.
- Preliminary grading, drainage, *site utility*, and SWMP report and application have been submitted to the Engineering Division.

9. A standard form City of Brookfield commercial development agreement will secure necessary public improvements, access, grading, drainage, landscaping, and stormwater management in the project. An existing hydrant on private property shall be relocated and replaced to reside within the right-of-way of 186th Street.
10. A temporary limited easement for street yard landscaping is necessary to secure installation and maintenance of such landscaping in the project per City code.

**Staff Recommendation:** The Plan Commission recommends the Common Council approves the revised plan and method of operation permitting razing of existing homes and multi-family building, new building construction of approximately 35,700 square feet consisting of three multifamily fourplex buildings and one duplex building, site modifications and landscaping in association with the development of a fourteen dwelling unit multi-family condominium project, Pleasant Corners, at the northeast corner of 186<sup>th</sup> Street and Pleasant Street, subject to items 1-13 below, because it determines, as the Plan Commission has determined, that the proposed structure and use:

- a. Will not have a substantial adverse effect on traffic safety because the traffic demand will generate less than the 100 vehicles per peak hour where the City requires a traffic analysis under §17.100.070.H.
  - b. Will be consistent with the Municipal Code because it meets the requirements therein.
  - c. Will be adequately served with present or planned municipal services based upon demand for such services in comparison to existing conditions for the subject property – parcel is adequately served by existing City sewer and City water main and includes plans to appropriately abandon discontinued service connections and install new service connections for the proposed site improvements in a manner that will not negatively affect the use of such utilities.
  - d. Will be substantially in conformance with the Site Development and Landscape Standards, April 19, 2022, where applicable, because the proposed building architecture, landscaping, and site improvements fulfill the stated standards therein.
1. Statement of Operations/Application Letter dated April 14, 2023 by Winter Fields, LTD, c/o Scott Simon, Owner, and Peyton Group.
  2. Site plan dated April 14, 2023 by Pinnacle Engineering Group, including technical corrections presented by the City Engineering Division, *and subject to approval of Administrative Variance for additional driveway access to be reviewed by the City Engineer (§12.09.060.D.).*
  3. Building plans, elevations, and material samples dated January 8, 2023 TDI Associates, Inc., including technical corrections.
  4. Compliance with site access, fire suppression, and alarm requirements specified in a missive dated April 21, 2023, by Fire Chief David Mason.
  5. Site utility, grading, drainage, and erosion control plans are subject to final approval of the City of Brookfield Engineering Division prior to the issuance of building permits.
  6. Payment of applicable fees to the Community Development Department prior to issuance of a building permit.
    - \$ TBD Engineering Review Fee
    - \$ TBD Development Agreement
  7. Lighting in compliance with sections 15.16.080 and 17.120.070 of the City of Brookfield municipal code.

8. All signage subject to separate review by Zoning and Building Administrator.
9. Landscape plan dated April 14, 2023 by Pinnacle Engineering Group, subject to City of Brookfield consultant review and technical corrections secured with a letter-of-credit (City forms available from the Department of Community Development) equal to \$53,741.25 (\$2,550 per 1,000 sq. ft. street yard) for installation, \$9,273.00 for four (4) years of maintenance (\$440 per 1,000 sq. ft. of street yard) and a four (4) year temporary landscape easement for street yard maintenance (using forms available from the Department of Community Development) all deposited with the Department of Community Development prior to issuance of a building permit (21,075) sq. ft. of street yard).
  - a. A recertification "as-built" survey must be performed by a licensed landscape architect indicating that all elements of the approved Streetyard Landscape Plan has been completed within tolerance as approved by staff per the approved plan. The recertification documents must be wet stamped and signed by said professional.
10. Recording of a Certified Survey Map that combines the existing four lots into one lot, being reviewed and approved pursuant to the Municipal Code.
11. Execution of a Development Agreement and associated easements using the City's forms subject to final approval by the City Attorney prior to execution.
12. 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).
13. Revised plan and method of operation approval expires on May 16, 2025 unless a building permit is obtained prior thereto.

Topics Discussed

- Street parking
- Fire department access
- Orientation of the buildings

***Motion by Alderman Mike Hallquist, second by Alderman Gary Mahkorn to approve staff recommendation, approving a new plan and method of operation, development agreement, and temporary limited easement for landscaping for the development of a 14-unit multi-family condominium development at the northeast corner of 186<sup>th</sup> Street and Pleasant Street. Motion carried 6-0.***

- c) **Request of Vertical Investments, LLC, 2735 N. Calhoun Road, Brookfield, WI 53005 – Alex Simic Principal, for approval of a revision to plan and method of operation and temporary limited easement for street yard landscaping for Better Cowork, LLC to be located in the existing building at 18615 W Bluemound Road. (SW ¼ of Sec. 28) – EZ \*\*Requires Common Council Action\*\***

**Report:**

1. The site consists of one lot located in the Bluemound Road/I-94 Area Targeted Investment Area (TIA), one of eleven areas identified in the City of Brookfield 2050 Comprehensive Plan (Comp Plan) that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted land use of the City of

Brookfield 2050 Comprehensive Plan (Comp Plan) is “Shopping/Services Focused - Higher Density”. The site is zoned B-3 Regional Business District. At their May 2, 2023 meeting, the Common Council voted to approve an amendment to the B-3 Regional Business District to allow “General ~~or clerical~~ offices” as a permitted use. Better Cowork, LLC will use the building at 18615 W Bluemound Road for coworking offices, as detailed in the application materials, which will be permitted under “general ~~or clerical~~ offices”.

2. Proposed Site Development Characteristics:

Lot Area:	137,083 sq. ft. (3.16ac)
Building Setback:	unchanged
Pavement Setback:	unchanged
Building Offset:	unchanged
Pavement Offset:	unchanged
Building Height:	unchanged
Building Size:	55,000 sq. ft.
Parking Spaces:	279 stalls (including property to the east)
Floor Area Ratio:	unchanged
Impervious Surface Area:	unchanged
Lot Coverage:	unchanged
Landscape Area Ratio:	unchanged

- 3. The submitted site plan indicates no changes to existing ingress/egress access to the site via a 30’ access easement on the property to the east (Goodwill property). The minimum parking requirements for general office building listed under Section 17.120.010 Spaces Required is 4.0 spaces per 1,000 net sq. ft. Special Exception Ordinance 1536 treats the subject property and the property directly to the east (Goodwill Property) as “a single lot for FAR (floor area ratio) purposes.” The Special Exception Ordinance also references a shared Reciprocal Easement & Operating Agreement (recorded 2/6/1996) that provides a shared parking agreement between the two parcels. With this existing agreement in place, the required number of parking stalls under Section 17.120.010 is met. There is no intention to end the parking agreement. A traffic impact analysis was not required for the request. The change in the number of employees, patrons, and/or visitors identified in the applicant’s peak traffic hour of proposed operation will generate less than the 100 vehicles per peak hour where the City requires a traffic analysis under §17.100.050.J.2.
- 4. Two new picnic tables will be added to the north side of the building, between the building and the parking lot, for use by members.
- 5. The proposed architecture and building materials are consistent with the City’s *Site Development Standards for Non-Residential Uses*. The applicant is proposing to add additional windows on the south façade of the building, which will be consistent with the existing windows on the north, east, and west facades. The windows will be consistent with existing building colors and materials for a cohesive site design.
- 6. Applicant has been informed that: **All vision glass is to remain vision glass and cannot be obstructed or modified with window film or other opaque techniques or substances except that operable window blinds, or shades are permitted.** All plans specifying the location and installation of vision glass shall memorialize this language into the associated plan set prior to Planning signing off to Inspection Services.
- 7. The applicant submitted a landscape plan for review and compliance with City standards. With the revised plan and method of operation, the applicant is required to bring the site landscaping into compliance with current landscape standards, including for the street yard. A temporary limited easement for street yard landscaping using the City’s standard form is necessary to secure installation and maintenance of such landscaping.



8. The applicant is in receipt of a memorandum by Fire Chief David Mason identifying preliminary fire alarm, suppression, and code compliance requirements.
9. No modifications to the grading, drainage, or SWMP are proposed.

**Recommendation:** Staff recommends that the Plan Commission recommends the Common Council approves the revised plan and method of operation permitting exterior building modifications and interior renovations for general office use (coworking) at the property located at 18615 W Bluemound Road, subject to items 1-9 below, because it determines, as the Plan Commission has determined, that the proposed structure and use:

- a. Will not have a substantial adverse effect on traffic safety because the proposed use will result in dispersed traffic coming and going from the site and the traffic demand will generate less than the 100 vehicles per peak hour where the City requires a traffic analysis under §17.100.050.J.2.
  - b. Will be consistent with the Municipal Code because it meets the requirements therein.
  - c. Will be adequately served with present or planned municipal services based upon demand for such services in comparison to existing conditions for the subject property – parcel is adequately served by existing Town of Brookfield sewer and City of Brookfield watermain and the proposed site improvement will not affect the use of such utilities.
  - d. Will be substantially in conformance with the Site Development and Landscape Standards, April 19, 2022, where applicable, because the proposed building architecture and site improvements fulfill the stated standards therein.
1. Statement of Operations/Application Letter submitted March 3, 2023 by Alex Simic, Owner of Vertical Investments LLC and Better Cowork LLC.
  2. Site plan dated March 3, 2023 by Thrive Architects, including technical corrections presented by the City Engineering Division.
  3. Building elevations and renderings dated March 3, 2023 by Thrive Architects, including technical corrections.
  4. Compliance with site access, fire suppression, and alarm requirements specified in a memo dated March 17, 2023 by Fire Chief David Mason.
  5. All new lighting must be in compliance with sections 15.16.080 and 17.120.070 of the City of Brookfield municipal code.
  6. All signage is subject to separate review by Zoning and Building Administrator.
  8. Site landscape plan, consistent with submitted plan dated May 1, 2023, by Insite Landscape Design, subject to Community Development and Inspections Department review and approval.
  9. 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).
  10. Revised plan and method of operation approval expires on May 16, 2025 unless a building permit is obtained prior thereto.

Topics Discussed

Plan Commission

May 8, 2023

9

- Potential need to evaluate Sign Code for this type of use.

***Motion by Alderman Mike Hallquist, second by Citizen Member Austin Moore to approve staff recommendation to approve the Revised Plan and Method of Operation and the temporary limited easement for landscaping for Better Cowork, LLC to be located at 18615 W Bluemound Road. Motion carried 6-0.***

- d) Request of Amy and Tim Brady for release from road reservation on CSM 8030, BRC 1140978002 (no address) Davidson Road – JA \*\*Requires Common Council Action\*\***

**City Legal Staff report:** The Brady’s own Parcel BRC 1140.978.002 on Davidson Road which is Outlot 1 of CSM 8043 approved by the City in 1995 (recorded 6/17/96). As part of the CSM approval the City accepted from the subdivider and former owner a “road reservation” of 60’ for a public street through the Outlot. The Bradys would like to build a residence on the parcel, but because of slope and other factors the house placement would most likely be on the reservation or any future road that would be built where the reservation is located would be too close to the house.

The City never added the proposed road to the Official Map, and the resolution 7002 (Dec. 2002), which made changes to the Endicott Neighborhood Plan to show the road reservation<sup>1</sup> was not adopted with a public hearing as required by statute. Wis. Stats. §66.1001(1)(a) & (4)(d) (1999- 00) (Master Plan/Comprehensive Plan adoption and amendments require a public hearing). If we wanted to include this proposed road in the Official Map, a public hearing would be required. Assuming this “reservation” was voluntarily given to the City, we would still need to exercise eminent domain on the adjoining parcels and pay for a road to be installed. We would also need to obtain TLEs and potential PLEs or right of way if we want to construct the road and be able to maintain or repair it. Director of Public Works, Tom Grisa has opined that there has never been an engineering need for the proposed road.<sup>2</sup>

As noted, the road reservation has been in place since 1996 but the parcel and most of those to the north have never been further divided and no road constructed to serve any new lots. The City has taken no steps to acquire the reservation in order to construct a public street. There is no legal impediment to the City in releasing the reservation, nor any legal authority to maintain the reservation. Therefore, it is the City Attorney’s office’s determination that the Plan Commission should recommend that the Common Council approve a resolution authorizing the road reservation release requested.

**REQUEST/Recommendation:** The Plan Commission recommend to the Common Council that it release the road reservation and authorize the proper City officials to endorse any required documents, such as the affidavit of correction and release in addition to the resolution, subject to any staff finalization, and technical and scrivener’s corrections or revisions.

***Motion by Alderman Gary Mahkorn, second by Citizen Member Scott Thomas to approve staff recommendation to approve the release from road reservation on CSM 8030, BRC 1140978002 Davidson Road. Motion carried 6-0.***

- e) Repeal and amend provisions of Titles 16 and 17 regarding wetland dedication and impact fee requirements, JA \*\*Requires Common Council Action\*\***

**City Legal Staff report:** As you may recall the City repealed the bikeway impact fee and the parks and recreational trail impact fee because they were, respectively, not in compliance with the statutory standards and had acquired all the areas identified in the needs analysis. The information supplied to you supporting the request for that action also indicated that there were issues with the wetland impact fee as well. (Memo 2/24/22 to Plan Commission and Legislative and Licensing, which included 11/10/21 memo).

After additional review it is my legal conclusion that the Common Council must repeal the wetland impact fee because it was never supported by the proper standards required by statute. Currently, fee collection is suspended based on my November 2021 directive to staff. The dedication requirement must also be repealed because the dedication requirement does not meet the requirements set by the U.S. Supreme Court for exacting land from property owners.

### Explanation

#### A. *Service standard*

An impact fee must be supported by a needs analysis. Quantifying the needs "...shall be based on explicitly identified service areas and service standards". Wis. Stat. Sec. 66.55(4)(a)2., 1993 Wis. Act 305, now Wis. Stat. Sec. 66.0617(4)(a)2., *emphasis provided*. "Service standard" is defined as

(h) "Service standard" means a certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the municipality.

Sec. 66.0617(1), Stats. This definition is the same as when the statute was created.<sup>1</sup>

For example, the City's *Public Facilities Needs Assessment for Parks and Recreational Trails, Wetland Preservation and Bikeways*, November 1995 states a park service standard is "5 acres of community park per 1,000 residents" based on the National Recreation & Park Association's Recreation, Park & Open Space Standards & Guidelines (1983)." (See p. 8). Although the Assessment has a section titled "service standard" for wetlands, it contains no standard for determining how much land is required to meet the needs of new development.

The Needs Assessment refers to a "1990 Wetland Preservation Plan" (starting at p. 25). A copy of which was included in the Assessment as Appendix B. The Assessment further states, as noted above, that the "service standard" is established in a "technical documentation" which is described as "Technical memorandum, March 14, 1991 Southeastern Wisconsin Regional Plan Commission, SEWRPC File CA-702-103, p.1 and 2." (see Assessment, footnote 19, p. 26). (design year 2010). However, the technical memorandum simply provides the rate of dedication or fee in lieu of dedication based on a revised ultimate build out – it does not state a service standard, that is a quantity related to some other measurement as required by the statutory definition.

An ordinance passed in noncompliance with the empowering statute is invalid. *Laskaris v. City of Wisconsin Dells, Inc.*, 131 Wis. 2d 525, 531, 389 N.W.2d 67, 70 (Ct. App. 1986), citing *State ex rel. Ryan v. Pietrzykowski*, 42 Wis.2d 457, 463, 167 N.W.2d 242, 245 (1969). Without a service standard the ordinance does not comply with its authorizing statute and is thus invalid. Park, Planning and Legal staff met in June 2021 and determined that it is not cost effective to create a defensible service standard or to redo the facilities analysis for wetlands and therefore no action would be taken at this time to pursue a replacement fee requirement.

#### B. *Nexus and proportionality*

Anytime the government requires a property owner to give up or dedicate land as a condition for governmental approval, there must be a rational basis for the requirement and the amount required must be proportional to the needs or impact created by the development. In *Nollan v. California Coastal Commission*, 483 U.S. 825, 837 (1987), the U.S. Supreme Court directed that an "essential nexus" (rational basis) must exist between the legitimate interest stated by the governmental unit as the reason for the condition and the permit condition being imposed. In *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994), the Court refined the *Nollan* "essential nexus" requirement, holding there must also exist a "rough proportionality" between the permit condition and the projected impact created by the development. Further, *Dolan* requires that the City make some "individualized determination" that the permit condition is "related both in nature and extent to the impact of the proposed development." *Id.*

The City's dedication requirement at §16.16.010 of the Brookfield Municipal Code does not, nor in its previous version (before updates in 2021 and 2022), provide for an individual determination as to the essential nexus or the proportionality of the wetland dedication and therefore does not comply with U.S. Supreme Court decisions. Even if it did, without a service standard or the establishment of some way to measure the impact of a development on wetlands, the City would not be able to comply with the *Nollan/Dolan* standard.

### Summary

Based on the above reasons, the wetland impact fee and wetland dedication requirements do not comply with the law and should be repealed. It is my understanding that Director of Parks, Recreation and Forestry Kelliher would like to continue acquiring wetlands for the City. He may continue to do so with arm's length real estate transactions and through voluntary donations. If the Common Council decides to establish a new wetland impact fee, based upon the standards set forth in the statutes, the City Attorney's Office will assist Director Kelliher in preparing a new impact fee ordinance.

### Miscellaneous information:

- ◆ Changes to §16.16.010 regarding subdivision requirements require a public hearing preceded by a Class 2 notice (repealing the impact fee requirements does not).
- ◆ Changes to all 3 Titles will be combined in one ordinance, after the public hearing, when held after affirmative recommendations from the committees.

### Request/Recommendation:

- ◆ A Legislative and Licensing Committee recommendation to Common Council to repeal §15.28.010 and amend and renumber §15.28.020 as proposed below.
- ◆ A Plan Commission recommendation to Common Council to amend §16.16.010 and repeal §17.100.100 as proposed below.
- ◆ That the Mayor authorize consideration by the Common Council on the same night as the public hearing, per Reso. 10302-22, when it is scheduled.

### Topics Discussed

- State statutes on timing of using impact fee funds on hand by a certain date
- A new study would be needed to establish a new wetland impact fee

***Motion by Alderman Gary Mahkorn, second by Alderman Mike Hallquist to approve staff recommendation to recommend the Common Council approve amendment to §16.16.010 and repealing of §17.100.100 regarding wetland impact fee and dedication requirements, with the Mayor authorizing consideration by the Common Council on the same night as the public hearing. Motion carried 6-0.***

## 5. Adjournment

***Motion by Alderman Mike Hallquist, second by Alderman Rick Owen to adjourn the meeting at 7:45 pm. Motion carried unanimously.***

Respectfully Submitted:

Daniel F. Ertl

Director of Community Development