

**TOWN OF CEDARBURG
PLAN COMMISSION MEETING MINUTES
March 15, 2017**

Present: David Valentine, Ralph Luedtke, Wayne Pipkorn, Mark Wittenberg, Rick Goeckner
Excused: Dan Wundrock, Edward Downey
Also Present: Tim Rhode, Town Administrator, Eric Ryer, Asst. Administrator/Clerk, Brad Hoeft, Town Attorney

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chairman Valentine called the regular meeting to order at 7:00 pm. The meeting began with the Pledge of Allegiance.

2. MINUTES OF PREVIOUS MEETING:

a. Approval of February 15, 2017 Plan Commission Meeting Minutes*

Commissioner Pipkorn moved and Commissioner Luedtke seconded a motion to approve the minutes from February 15, 2017. The motion passed unanimously.

3. PUBLIC HEARING

a. Public hearing to take comment on a conditional use permit application by Tim Kohlwey (Cedar Crest Ice Cream) to construct a 12,491 square foot addition for the property located at 7359 STH 60 [Owner: A AND J KOHLWEY II LTD PTSHP, NW ¼ of Section 22, 1.75 acres, zoned B-3 Business District and M-2 Planned Industrial and Mixed Use District]

Following the successful rezone concept discussion at the February Plan Commission meeting, Tim Kohlwey of Cedar Crest Ice Cream submitted a formal application to rezone the southern portion of their 1.75 acre property from M-2 to B-3, as well as a CUP amendment application for the addition/site plan changes. Currently, the parcel has split zoning; the north portion is zoned B-3 Business, while the south portion is zoned M-2 Planned Industrial & Mixed Use district. They are interested in constructing a freezer warehouse addition, and obtaining one consistent zoning for the entire parcel will allow for amending the conditional use permit as required by Town Code.

With no comment from the public, Commissioner Pipkorn moved to close the public hearing. Commissioner Luedtke seconded, and the motion passed unanimously.

b. Public hearing to take comment on a conditional use permit application by Eco-Site, Inc. (Agent Joe Coyle of Pyramid Network Services, LLC) to construct a 120 foot tall telecommunications monopole located at 4628 Cedar Creek Road [Owner: Scott & Patricia Akerlund, zoned A-1 Agricultural, 19.11 acres, SE ¼ Section 11]

The last time this item was to be considered was the October 19th, 2016, Plan Commission meeting. However, at that time, the applicant requested additional time to search for alternate locations. The applicant and Town have since agreed to two extensions on the 90-day review period, with the second extension expiring on May 3, 2017. On February 22nd, 2017, Joe Coyle of Pyramid Network Services, LLC (Agent for Eco-Site, Inc.) notified Town staff that despite efforts to consider other sites, they need to keep the process moving forward with the Town application and requested the Town place the item on the March Plan Commission agenda, with no changes to the application materials.

Gerry Zwegers of 1836 Stoneridge Lane spoke in opposition due to property value concerns. Christopher Fix of 4915 Meadowview Court asked why a property zoned agricultural could be used for a commercial use, and does not want to lose property value for the gain of one property owner.

Michael Long representing Eco-Site, noted he was present to answer questions. Marc Martino of 1819 Stoneridge Lane pointed out Eco-Site was still examining an alternative site in the area, and asked the Plan Commission to hold off on a decision until those negotiations are completed. Dana Carter of 1775 Maple Road sited there is a scenic route passing along Cedar Creek Road at the applicants address, cited research suggesting co-location is a better option, and had property value concerns. Stacey Cooke of 1835 Stoneridge Lane had concerns regarding the construction of the cell tower building, the swale serving the stormwater, removal of trees, and noted the frontage for the parcel is nonconforming for the A-1 district. Eileen Engl of 4340 Cedar Creek Road spoke with concerns regarding the visual appearance, loss of property values, and asked the Commission to deny the application. Stewart Hoffmann of 4961 Meadowview Court stated that had he and his wife known a cell tower was going up next to his subdivision, they would not have built where they did. He also noted there could be potential state legislation that would change the statutes. He asked the Commission to hold off on making a decision. Haley Peterson of 1844 Stoneridge Lane spoke in opposition, asking Commissioners if they would like the tower in their backyards. Lloyd Weber of 1841 Stoneridge Lane also noted if he knew a cell tower was going up next to his subdivision, they would not have built where they did, and asked the Commission to deny the application. With no further comment from the public, Commissioner Pipkorn moved to close the public hearing. Commissioner Luedtke seconded, and the motion passed unanimously.

4. OLD BUSINESS

a. **Discussion and possible recommendation on a conditional use permit application by Eco-Site, Inc. (Agent Joe Coyle of Pyramid Network Services, LLC) to construct a 120 foot tall telecommunications monopole located at 4628 Cedar Creek Road [Owner: Scott & Patricia Akerlund, zoned A-1 Agricultural, 19.11 acres, SE ¼ Section 11]***

This item continues from item #3b. Michael Long (555 East Wells Street, Milwaukee) representing Eco-Site came forward. Mr. Long noted that if there are revisions needed to the grading plan, those can be made. He commented although there would be some tree removal, much of the tree cover would be left for screening along the east property line. He also explained that Eco-Site had approached the Village of Grafton to construct a tower adjacent to the Grafton water tower, but this would have required an adjustment to an easement on Mr. Tillmann's adjacent property, which he was not willing to make. There is currently no agreement between Mr. Tillmann and Eco-Site on other negotiations. Mr. Long noted the cost savings for T-Mobile over the next 15 years would be substantial if they relocate off of the Grafton water tower to the Akerlund property.

Chairman Valentine then noted state law is specific on the matter of cell towers. The Town has only a certain amount of time to review and approve the application or it is automatically approved. He also noted the Plan Commission is advisory only, and the Town Board makes the final decision. He felt that with the information provided by Mr. Long and the resident comment received, he recommended the issue be forwarded to the Town Board without a recommendation from the Plan Commission. Attorney Hoeft then explained there were two extensions to the review period that allows the Town until May 3rd to make a final determination on the application, and that there is no requirement on the part of the Plan Commission for a recommendation on the matter.

A member of the audience asked if the Plan Commission could make a recommendation regarding the aesthetics of the application. Chairman Valentine noted the Board would make the final decision on aesthetics. A member of the audience questioned why with a room full of residents in opposition to the application, would the Commission not make a negative recommendation. Chairman Valentine explained the Commission is only advisory on this matter, and the elected Town Board members will make the decision on the matter. Commissioner Goeckner noted the he would not vote for denial since the application appears to be complete per state statute. Attorney Hoeft stated the Commission does not need to make a recommendation at the meeting tonight, that by holding the public hearing they have satisfied state statute and Town ordinances.

A member of the audience asked why the tower is not located on public land. Attorney Hoeft answered that state statute prohibits the Town from requiring the tower be located on public land. A member of the audience asked if Eco-Site would need to show a hardship other than it is more cost effective to locate off the Grafton water tower. Chairman Valentine stated he did not believe that was addressed in the state law. A member of the audience asked if the Town Board would have a chance to review the record of this current meeting, and if the Plan Commission reviews the building materials and plans for the proposed project. Chairman Valentine answered that the Town Board would review the record of this current meeting and that the Building Inspector enforces the Town Building Code and would fully review the application. Attorney Hoeft confirmed the application would need to fully meet Town Building Code. Attorney Hoeft also noted Eco-Site is responsible for providing a sworn statement from an individual who is responsible for the placement of the mobile support structure attest that colocation within the application's search ring would not result with the same mobile service functionality, coverage, and capacity, is technically infeasible, or is economically burdensome to the mobile service provider.

Chairman Valentine noted seeing there was no motion, the Plan Commission will pass the matter along to the Town Board. He noted the Board has access to the tape, the minutes, and information available. The next Board meeting would be April 5th. Although there will be no public hearing held on this matter at the Board meeting, the Board could take comments from residents at the meeting. A member of the audience asked if the Town has been doing anything to challenge the state law. Chairman Valentine stated the Town has been enforcing the Code, but is not interested in challenging the state. One major responsibility of the Town Board is maintaining a tax rate; challenging the state could be costly. Attorney Hoeft then clarified that Chairman Valentine's statement was not in any way affirmation of approval of this application. Chairman Valentine confirmed this. The Commission then moved to item #5a.

5. NEW BUSINESS

- a. **Discussion and possible recommendation on an application by Tim Kohlwey (Cedar Crest Ice Cream) to rezone that portion of their property currently M-2 to B-3 located at 7359 STH 60 [Owner: A AND J KOHLWEY II LTD PTSHP, NW ¼ Section 22, 1.75 acres, zoned B-3 Business & M-2 Planned Industrial and Mixed Use]***

This item continues from item #3a. Following brief discussion, Commissioner Pipkorn moved the Plan Commission recommend the Town Board approve the application to rezone that portion of their property currently M-2 to B-3 located at 7359 STH 60. Commissioner Luedtke seconded, and the motion passed unanimously.

- b. **Discussion and possible recommendation on a conditional use permit application by Tim Kohlwey (Cedar Crest Ice Cream) to construct a 12,491 square foot addition for the property located at 7359 STH 60 [Owner: A AND J KOHLWEY II LTD PTSHP, NW ¼ of Section 22, 1.75 acres, zoned B-3 Business District and M-2 Planned Industrial and Mixed Use District]***

This item continues from items #3a and #5a. Chairman Valentine asked Mr. Kohlwey if he had any issues with the proposed conditions regarding the permit. Mr. Kohlwey was ok with the conditions. Mr. Kohlwey wanted to make sure the proposed metal siding was appropriate. The Commission agreed the metal siding was appropriate seeing the remainder of the building was metal siding. Following discussion, Commissioner Goeckner moved the Plan Commission recommend the Town Board approve the proposed conditional use permit application by Tim Kohlwey (Cedar Crest Ice Cream) to construct a 12,491 square foot addition for the property located at 7359 STH 60, with the stipulation the applicant be allowed to use metal siding. Commissioner Wittenberg seconded, and the motion passed unanimously.

c. Discussion and possible recommendation on a concept text amendment to the Town of Cedarburg Zoning Code that would allow for daycare operations in the B-3 Business District [Applicant: Laura Mortag]*

Town resident Laura Mortag has submitted a concept application that proposes a text amendment to the Town Zoning Code that would add “daycare” as a conditional use to the B-3 Business District. Currently, this is not allowed in the B-3 district. Laura Mortag is proposing this amendment to the Zoning Code because she would like to open a daycare for up to 45 students in the former BMO Harris Bank on the west end of the 5 Corners Lifestyle Center.

Chairman Valentine noted such a text amendment would apply to all B-3 properties. Commissioner Goeckner had no issue with this concept, nor did Commissioner Pipkorn. Chairman Valentine noted that business districts typically have good access to roads, which is convenient for parents dropping off and picking up children. Following brief discussion, Commissioner Goeckner moved in favor of this concept idea. Commissioner Pipkorn seconded, and the motion passed unanimously.

6. ADJOURNMENT

Commissioner Goeckner then made a statement whereby he explained that when he took the oath of office for the Plan Commission position and other local government positions, he agreed to uphold the Constitution of the State of Wisconsin. Therefore, in regards to the cell tower application, he was not ready to make a recommendation of denial when state statutes say otherwise.

Commissioner Wittenberg then moved to adjourn the meeting. Commissioner Luedtke seconded, the motion carried unanimously and the meeting was adjourned at 8:02 p.m.

Respectfully Submitted,

Eric Ryer
Assistant Administrator/Clerk