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| Meeting: | Plan Commission |
| Place: | 1293 Washington Ave, Cedarburg |
| Date/Time: | March 21, 2018 / 7:00PM |
| Web Page: | www.town.cedarburg.wi.us |
| Posted: | March 16, 2018 |

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| Chairman | David Salvaggio | Town Administrator | Tim Rhode |
| Plan Commissioner | Rick Goeckner | Town Attorney | Brad Hoeft |
| Plan Commissioner | Ralph Luedtke | Director of Public Works | Adam Monticelli |
| Plan Commissioner | Dan Wundrock | Assistant Administrator/Clerk | Eric Ryer |
| Plan Commissioner | Wayne Pipkorn | Town Treasurer | Charles Pretty |
| Plan Commissioner | Mark Wittenberg | Deputy Town Clerk | Bonnie Erickson |
| Plan Commissioner | Anne Lewandowski | Recreation Coordinator | Paul Jungbauer |

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE**
- 2. MINUTES OF PREVIOUS MEETINGS**
 - a. Approval of February 21, 2018 Plan Commission Meeting Minutes*
- 3. PUBLIC HEARING**
 - a. None
- 4. OLD BUSINESS**
 - a. None
- 5. NEW BUSINESS**
 - a. Discussion and possible recommendation on the Town of Cedarburg Comprehensive Park Plan (2018-2022)***
 - b. Discussion and possible direction on an Ordinance updating Section 320-76 Berm requirements, of the Town Code*
- 6. ADJOURNMENT**

*At the Plan Commission’s discretion, the Commission may take comment from the public

Note: A quorum of Town Board of Supervisors may be present at this meeting for the purpose of gathering information and possible discussion on items listed on this agenda. However, unless otherwise noted in this agenda, no official action by the Town Board will be taken at this meeting.

**TOWN OF CEDARBURG
PLAN COMMISSION MEETING MINUTES
February 21, 2018**

Present: David Salvaggio, Dan Wundrock, Anne Lewandowski, Wayne Pipkorn, Ralph Luedtke, Rick Goeckner
Excused: Mark Wittenberg
Also Present: Tim Rhode, Town Administrator, Eric Ryer, Assistant Administrator/Clerk, Brad Hoeft, Town Attorney

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chairman Salvaggio 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 January 17, 2018 Plan Commission Meeting Minutes*

Commissioner Pipkorn moved and Commissioner Lewandowski seconded a motion to approve the minutes from January 17, 2018. The motion passed unanimously.

3. PUBLIC HEARING

a. Public hearing to take comment on an application by Witte's Vegetable Farm, LLC for a conditional use permit for the manufacturing and processing of various farm crops for the property located at 10006 Bridge Street [NW ¼ of Section 29, 5 acres, zoned A-2 Prime Agricultural District]

David Henderson of 10305 Sherman Road spoke in favor of the application.

Hank Beyer of 1600 Granville Road spoke in favor of the application, noting the applicants are asking to improve their operation, and felt the Town should not stand in the way. He said this would allow them the tools and chance to better compete.

John Mose of 9950 Lawndale Drive spoke in support of the application. He noted it would allow their family business the chance to grow. He felt their operation was a crown jewel of Cedarburg, and felt their expansion is congruent with the trends of farm to table restaurants in the state.

Carol Linder of 10507 Ridgefield Court spoke in support of the application.

Norman Unti of 10619 Bridge Street spoke in support of the application. He noted he has never had any problems with the Wittes over the years.

Peg Erbes of 10141 Sherman Road noted she shares 750 feet of frontage with the Wittes. She found no reason that would cause her pause about the Witte farm, but noted there are hundreds of agricultural properties remaining in the county, and she does not know those property owners. She said Scott Witte explained to her he is not looking to promote commercial activity on agricultural lands, but rather farming. She hoped that the majority of agricultural parcels in the Town would be used for growing crops, and not for processing. She felt it important to limit the scope and scale of enterprise on agricultural property. She felt the Plan Commission could define what is acceptable, and suggested: 1) benchmark the size and scope of the proposal to a percentage of the parcel, processing only what you grow, 2) impose square footage restrictions

on the processing facility to between 800 and 1,000 square feet, 3) require all foods to be processed be grown on the land or immediately adjacent.

Bill Wattson of 2297 Granville Road spoke in opposition of the application. He viewed the proposed amendments as placing the Town in a position that will cause difficulty with future applications looking for such latitude. He noted there are properties in Town zoned for commercial and retail that are higher in value and pay more in property taxes, and are held to certain requirements. The issue with allowing for the proposed activities on agricultural properties would provide for unfair competition. He noted he has an agricultural property, and understood that the proposed text amendments would allow him to locate a restaurant on his property while avoiding Town standards that must be met in commercial zoning. He cautioned about potential issues of enforcing such an ordinance and the potential for operators exceeding their permits, causing potential legal issues.

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

Commissioner Lewandowski then moved the Commission take item #5a ahead of item #4a. Commissioner Wundrock seconded, and the motion passed unanimously. The Commission then moved to item #5a.

4. OLD BUSINESS

a. **Discussion and possible recommendation on a text amendment to Section 320-60 of the Town Code to allow for manufacturing and processing of various farm crops in the agricultural districts [Petitioner: Witte's Vegetable Farm, LLC]***

Since the November Plan Commission meeting, the Wittes revised their application taking into account Plan Commission input. The revised application seeks to: 1) add to Section 320-60 of the Town Code the following as conditional uses: allow for manufacturing and processing of asparagus, basil, beans, beets, broccoli, brussel sprouts, (cabbage - existing), cantaloupe, carrots, cauliflower, corn, cucumbers, garlic, kale, lettuce, onions, (peas - existing), parsnips, parsley, peppers, (pickles - existing), potatoes, raspberries, rhubarb, spinach, strawberries, summer squash, tomatoes, watermelon, winter squash, and zucchini in the agricultural districts, and 2) add the proposed definition to the Town Code (taken from state statutes): food processing is the manufacturing or preparation of food for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, baking, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing, bottling or packaging, or through any other treatment or preservation process.

Scott Witte explained they have been in the community for 75 years, and are looking to add a processing kitchen as a way to preserve food. They want to process excess fruits and vegetables with low impact on their neighbors. They do not want to serve food onsite, rather people would purchase and take it home to consume. They have no intent of trucking products to the farm, they would process only what they grow. He noted past weather events put them in a place where a processing kitchen would have avoided loss. They do not want large processing operations in the Town, but certain operations could be allowed under current zoning.

Susan Atkinson noted she was hoping for an open discussion with the Commission on the proposed amendments. Chairman Salvaggio clarified that the text amendments and conditional use permit applications are separate from one another, and the Commission is currently addressing the text amendments.

Chairman Salvaggio noted that the proposed text amendments are not specific to the Witte property, but would apply to the entire Town on roughly 274 parcels. He noted this is not about the Witte farm, per se, but about all the properties with agricultural zoning. He noted as a Plan Commission, they have the duty to plan for the entire Town.

Chairman Salvaggio noted that certain activities the applicant is seeking are currently allowed under other Town zoning districts. He viewed the text amendment request as compromising the zoning code due to the effect it would have on all agricultural properties. He asked the Plan Commission if they wanted fairness and equity in the zoning code and to taxpayers. He noted the proposed amendment would represent a significant change to the code. He explained the zoning code distinguishes the Town from other communities, as is evident in the Town landscape and property values. He noted that the proposed text amendment brings activities found in the business districts and makes them available to agricultural zoning. He likened it to a slippery slope, as once you cross a threshold of allowing commercial use in agricultural zoning, future applications must be considered. He viewed the text amendment as a way around the code, as it would take a business activity and make it available to agricultural zoning.

Scott Witte agreed with Chairman Salvaggio's comments. He noted they are looking to amend Section 320-60, which addresses conditional uses under A-1 and A-2 zoning.

Commissioner Wundrock noted the proposed amendment would affect 274 properties, and that the Commission cannot separate out just the Witte property from all of these properties.

Commissioner Lewandowski noted this would equate to spot zoning. She noted the Wittes have the opportunity to locate their proposed business opportunities on a parcel with business zoning.

Susan Atkinson noted they are asking for text amendments to the code, but do not want it to be detrimental to the Town. She explained Section 320-60 allows for specific conditional uses that include some processing activities, and they are looking to add to that list. Scott Witte clarified that current code allows for processing and canning of peas, cabbage and pickles. They are looking to add additional vegetables.

Attorney Hoeft explained that Sec. 320-60 establishes conditional uses for industrial and agricultural uses. He noted the specific subsection of Section 320-60 they are looking to amend does not make clear whether the uses are industrial or agricultural. He explained it seemed the applicant is under the understanding if the text amendment they are proposing is approved it would allow for their requested uses in the agricultural districts, however, Attorney Hoeft believed that to be incorrect. He suggested clarifying the text amendment to specify the zoning districts for the activities they are seeking. He explained canning and processing could be viewed as industrial in nature, which would result in manufacturing activity in the agricultural district.

David Polzin of 5218 Cedar Creek Road asked why the Witte property could not be rezoned to business. He questioned why are there properties outside of the Five Corners Business district that are allowed business zoning. Chairman Salvaggio noted such business zoning is existing and is reflected in the comprehensive plan. Asst. Administrator/Clerk Ryer noted there are some areas outside of the Five Corners Business district that have business zoning available as an option.

Chairman Salvaggio noted the Town does not spot zone properties. Attorney Hoeft explained spot zoning is a concept that has a legal basis for denial. Any property owner can apply for a zoning change and has the right to do so, but notes that staff is suggesting this application is not consistent with the comprehensive plan and could be viewed as spot zoning.

A member of the public noted the Wittes are looking to utilize crops instead of wasting them, and asked how their use could not be grandfathered.

Attorney Hoeft clarified that grandfathering refers to a legal nonconforming use. What is being proposed here is a new use for the property.

Susan Atkinson asked if at the current meeting the wording of the application could be altered. Attorney Hoeft noted there has been no ordinance drafted to go along with the application at this point. The Commission is being asked to direct staff to draft an ordinance based upon their recommendation on the application being considered. The issue currently being discussed is not to take action on a conditional use permit application, but rather the issue of the text amendments.

Commissioner Lewandowski asked if both parts of the text amendment application need to be considered together. Attorney Hoeft said they could be considered together. He also noted amendments should be considered that do not violate the zoning code.

A member of the public asked if there are other communities in the state that have found a way to address this issue.

Scott Witte noted they included the suggested definition of processing since there is not currently such a definition in the Town Code. Chairman Salvaggio noted a primary issue here is how to address the application at hand while following the zoning code, that the whole Town must be considered when addressing a text amendment application. The proposed text amendment opens the door for other applications.

Commissioner Goeckner noted he has been working in local government for over 30 years and is unaware of a community that would allow for the text amendments being sought.

Commissioner Wundrock then made a motion the Plan Commission recommend approval of a text amendment to Section 320-60 of the Town Code to allow for manufacturing and processing of various farm crops in the agricultural districts. Commissioner Pipkorn stated he will not be participating in the vote. Commissioner Lewandowski seconded the motion. Attorney Hoeft sought clarification on the motion, as to if it meant they are seeking staff to draft an ordinance, or a recommendation on the text amendment being sought directly to the Town Board. Commissioner Wundrock clarified his recommendation is based on the application as written. Attorney Hoeft noted this would then move directly to the Town Board, and not come back to the Commission for a recommendation on a formal draft ordinance, losing jurisdiction over the matter to the Town Board.

The motion then failed on a 5-0 vote, with Commissioner Pipkorn abstaining.

b. Discussion and possible recommendation on a text amendment to Section 320-137 of the Town Code adding a definition of food processing [Petitioner: Witte's Vegetable Farm, LLC]*

This item continues from item #4a. Susan Atkinson noted their definition was more of a suggestion, and they were hoping to have a discussion on the topic with the Plan Commission. Commissioner Wundrock noted the Commission is making a recommendation based on the text included in the application by the Wittes. Staff noted the text application language must be noticed in the newspaper specific to what the applicant is seeking.

Commissioner Lewandowski noted the connection of this text amendment to item #4a. Commissioner Wundrock then made a motion the Plan Commission recommend approval of a text amendment to Section 320-137 of the Town Code to adding a definition of food processing. Commissioner Lewandowski seconded, and the motion failed on a 5-0 vote, with Commissioner Pipkorn abstaining.

The Commission then moved to item #6.

5. NEW BUSINESS

a. Discussion and possible recommendation on an architectural and site plan review for a 2,400 square foot outbuilding for the property located at 2277 CTH I [Petitioner: Jennifer Brinovec, Zoned A-1 Agricultural, 10.9 acres, NE ¼ Sec. 3]*

Jennifer Brinovec explained she would like to construct a 2,400 square foot steel outbuilding on their property located at 2277 CTH I to house their horses. They would not be boarding any horses.

A principal building of this size is allowed on their 10.9 acre lot, as there is no limit on the size of agricultural buildings on A-1 on lots greater than 8 acres. However, Section 320-25 of the Code explains that new buildings greater than 1,500 square feet are required to go before the Plan Commission and Town Board for architectural and site plan review.

Based on the proposal, Commissioner Pipkorn moved that the Plan Commission recommend the Town Board approve the architectural and site plan review for a 2,400 square foot outbuilding for the property located at 2277 CTH I. Commissioner Lewandowski seconded, and the motion passed unanimously. The Commission then moved to item #4a.

6. ADJOURNMENT

Commissioner Wundrock moved to adjourn the meeting. Commissioner Lewandowski seconded, the motion carried unanimously and the meeting was adjourned at 8:04p.m.

Respectfully Submitted,

Eric Ryer
Assistant Administrator/Clerk



Meeting Date: March 21, 2018
Agenda Item: # 5b

PLAN COMMISSION MEETING MEMORANDUM

MEMO TO: David Salvaggio, Chairman
Plan Commission, Town Board

MEMO FROM: Eric Ryer, Assistant Administrator/Clerk

MEMO WRITTEN: March 12, 2018

SUBJECT: Agenda Item # 5b: Discussion and possible direction on an Ordinance updating Section 320-76 Berm requirements, of the Town Code*

BACKGROUND

Section 320-76 addresses berms in the Town. Under this section, "berm" is defined as any mound or wall of soil or rock extending more than 50 linear feet or vertically higher than two feet above the center line of the road. A berm is determined as starting at the base where natural grade changes. Berms meeting this definition in all zoning districts require a conditional use permit. Berms must be located at least 10 feet from a road right-of-way, and all berms must be constructed such that the slope is not greater than one foot vertical to six feet horizontal (allowable to be mowed with a riding lawn mower).

There are, however, exceptions to when the ordinance does not apply including:

- (a) Temporary topsoil piles on construction sites.
- (b) Mound septic systems.
- (c) Landscaping areas not meeting requirements under Subsection A(1).
- (d) Berms under two feet above the center line of the road, less than 50 feet in length or with a slope of one foot vertical to six feet horizontal or greater in all zoning districts.
- (e) Planting berms of 25 feet or less in length and not exceeding a height of four feet above the center line of the road with a slope of one foot vertical to three feet horizontal.

More importantly, the Code specifies that only berms within 50 feet of public road rights-of-way must comply with Town Code. This means that berms constructed outside of 50 feet from public road rights-of-way are not regulated in any zoning district. This currently would allow any property owner to construct whatever berm they like without a permit so long as it is outside of 50 of the public right-of-way.

CLARIFICATION COULD BE HELPFUL

This ordinance has long provided questions from property owners seeking clarification as to what they are allowed to do in terms of berm construction, particularly along properties near arterial roads to block traffic noise.

ACTION REQUESTED

Staff requests the Commission discuss the issue of berms and if the code could benefit from clarifications/amendments. If so, the Commission could direct staff to draft an ordinance for consideration at a future meeting. Suggested issues include: 1) maximum height/slope, 2) should they be regulated in all zoning districts or just some, 3) should standards be set so not all berms would require a CUP etc.

ATTACHMENT

- I. Current berm ordinance

Town of Cedarburg, WI
Friday, March 16, 2018

Chapter 320. Zoning

Article VII. Traffic Visibility, Loading, Parking and Access

§ 320-76. Berm requirements.

[Added 4-5-2000 by Ord. No. 2000-11]

A. Berm defined.

- (1) Except as provided in Subsection **A(3)** below, as used in this section the term "berm" shall include any mound or wall of soil or rock (which may include clean concrete if suitably covered with topsoil) extending more than 50 linear feet or vertically higher than two feet above the center line of the road. A berm is determined as starting at the base where natural grade changes.
- (2) Berms within 50 feet of public road rights-of-way must comply with Subsection **A(1)**.
[Amended 10-4-2006 by Ord. No. 2006-11]
- (3) This section would not apply to the following:
 - (a) Temporary topsoil piles on construction sites.
 - (b) Mound septic systems.
 - (c) Landscaping areas not meeting requirements under Subsection **A(1)**.
 - (d) Berms under two feet above the center line of the road, less than 50 feet in length or with a slope of one foot vertical to six feet horizontal or greater in all zoning districts.
 - (e) Planting berms of 25 feet or less in length and not exceeding a height of four feet above the center line of the road with a slope of one foot vertical to three feet horizontal.

B. Permit required.

- (1) General permit requirements. No berm may be located, erected, moved, reconstructed, extended, enlarged, reduced, converted, or altered without obtaining all permits required by this section and without being in conformity with the provisions of this section.
- (2) Conditional use permit required. Berms exceeding two feet in vertical height from the center-line elevation of the adjacent roadway in all zoning districts shall require a conditional use permit. Berms exceeding this requirement can be issued a conditional use permit by the Town Board upon compliance with the requirements of this section and approval by the Plan Commission and Town Board.

- (3) Approval process.
 - (a) The Plan Commission shall have the authority to recommend the height, location, slope and landscaping of the berm to the Town Board.
 - (b) The Plan Commission shall also notify neighbors within 1,000 feet of the property containing the proposed berm of a public hearing on the conditional use application.
 - (c) The Plan Commission, in determining whether to recommend the conditional use permit, shall apply the same standards as applied under Article V, Conditional Uses, of this Zoning Code.
 - (d) The Town Board has the authority to revise recommendations of the Plan Commission.

C. Permit application.

- (1) Applications for a berm permit shall be made on forms provided by the Town and shall contain or have attached thereto the following information:
 - (a) Name, address and telephone number of the applicant and location of the building, structure, or lot to which or upon which the berm is to be erected.
 - (b) Name of the person, firm, corporation, or business locating, erecting, moving, reconstructing, extending, enlarging, reducing, converting, or altering the berm.
 - (c) Written consent of the owner or lessee of the land upon which the berm is located or proposed to be located.
 - (d) Additional information as may be required by the Town Director of Public Works or the Town Plan Commission.
- (2) Plans and attachments. The following plans must be submitted for Town staff and Plan Commission review and must, at a minimum, include the following:
 - (a) Berm plan depicting location, setbacks, property lines, and proposed and existing grade contours.
 - (b) Proposed type of fill material.
 - (c) Planting plan, including grasses, shrubbery and tree types with spacing. It is recommended that the landscape plantings be spaced randomly to help visually break up the continuous line of the berm and that the berm be constructed in such a way as to be undulating and serpentine in appearance. It is also required that at least six inches of topsoil be placed on all berms in addition to suitable plantings.
 - (d) Proposed schedule for all phases of work.

D. General regulations. General regulations applicable to all berms receiving permits under this section.

- (1) Location.
 - (a) The berm shall be located at least 10 feet from a road right-of-way.
 - (b) An earthen berm shall not be constructed to obstruct the view of vehicular traffic for ingress and egress for any Town or other public road, private driveway, walkway or bike trail.

- (c) Berms shall not be placed in drainageways, floodplains, wetlands or conservancy zoned areas.
- (2) Slope. All berms shall be constructed such that the slope shall not exceed a slope of one foot vertical to six feet horizontal. The berm must be of no greater grade than would be allowable to be mowed with a riding lawn mower, or some similar device.
- (3) Drainage. All berm construction shall not impede surface water drainage or disturb existing drain tile systems.
- (4) Erosion control. All berm construction shall adhere to Chapter 110, Construction Site Erosion Control, of this Code where applicable.
- (5) Deadline. All berms shall be completed, including all landscaping, in accordance with the time frame established within the conditional use permit.
- (6) Permit conditions. All berm permits shall require the permittee to:
 - (a) Notify the Town Director of Public Works at the completion of the berm but prior to planting the berm to allow inspection of the berm;
 - (b) Obtain permission in writing from the Plan Commission and Town Board prior to modifying the berm plan;
 - (c) Maintain all road drainage systems, stormwater drainage systems, best management practices and other facilities identified in the berm plan; and
 - (d) Allow Town personnel or other agents authorized by the Town to enter the site for the purpose of inspecting compliance with the berm plan or for performing any work necessary to bring the site into compliance with the berm plan.
- E. Inspection. If berm development or berm activities are being carried out without a permit, Town personnel shall enter the land pursuant to the provisions of § 66.0119, Wis. Stats.
- F. Fees. Fees referred to in this section shall be the fee for a conditional use permit application as established by the Town Board as provided in the Town schedule of fees.
[Amended 10-4-2006 by Ord. No. 2006-11]