

## TOWN OF GREEN BAY PLANNING COMMISSION MINUTES

**DATE:** 11/15/16

**TIME:** 7:00 p.m.

**PRESENT:** Bob Boncher, Mike Gilson, Dawn Goodman, Gary Jonet, Jason Miller, Jack Salewski .

**ABSENT:** John Metzler, due to work obligations.

**Others Present:** Sharon Depeau,.

**\*Special Note:** In the absence of Planning Chairman John Metzler, Gary Jonet assumed the position of chairman and ran the meeting.

**APPROVAL OF LAST MEETING'S MINUTES:** Gary Jonet opened the meeting and asked that the meeting notice was properly posted in 3 places. Dawn Goodman confirmed it was. The October 18, 2016 meeting minutes were reviewed. Gary Jonet asked that a correction be made to Issue #4 Review of Culvert Standards discussion (The sentence that discussed the standards should read: "He then reviewed the culvert standards, including steel **or concrete** vs. plastic culverts (steel **or concrete**) are the Town's requirements." PC Secretary, Dawn Goodman, made the corrections accordingly. Bob Boncher made a motion to accept the corrected minutes. Jason Miller seconded the motion. All 6 members approved.

**ISSUE #1: Review and possible development of bed and breakfast and Boarding House zoning requirements, policy. (7:03pm to 8:35pm).** PC Secretary Dawn Goodman stated the Town Board instructed her and the PC to continue working on the matter. She noted that the Town of Green Bay is one of the few area municipalities that does not have policy about Bed and Breakfasts at this time.

She passed out and reviewed with the PC, packets of information for the PC members to review which she put together that included: Information from the "State of WI Chapter ATCP 72: Hotels, Motels, and Tourist Rooming Houses" and also "State of WI Chapter ATCP 73: Bed and Breakfast Establishments"; information from the Town of Scott website, including definitions and their district regulations; information from the Door County Tourism Zone Commission; information from the City of Green Bay Zoning website, including definitions and zoning regulations; City of De Pere definitions and their zoning conditional use information regarding B&B's; information from the Village of Ashwaubenon new definitions and standards regarding Short-Term Rentals; and May Case Law Update from May 31, 2015 (a summary of WI court opinions related to planning from the [www.wisconsinplanners.org](http://www.wisconsinplanners.org) website regarding the WI Court of Appeals ruling and interpretation of the City of Cedarburg's zoning ordinance regarding short-term rentals in single family residential districts issue and an example of "clear and unambiguous law" in this regard. (see attached packet).

Mike Gilson stated he had contacted the Village of Ephraim (Door County, WI) to obtain their regulations and they sent him a definition and where they permit B&B's. He read them aloud. Jason Miller noted that the wording was what the State of WI Statute said. Dawn Goodman made copies of Mike Gilson's information and passed it out to the PC members to look over. It was noted that the e-mail stated BB's were allowed in Commercial Zoning in Ephraim. There was discussion about Door County and the Village of Ashwaubenon being very different situations than most others because of the high amount of tourism. Jason pointed out the stipulation that a B&B be "the owner's personal residence" is good because it prevents a group or individual from coming in and running multiple B&B's.

Dawn Goodman reviewed what was needed if the PC wants to establish policy about Bed and Breakfasts:

A Definition to be added to the Town's Definition area; determination of what zone's in the Town they be permitted in (and stipulations in that regard); and that legal notices and a Public Hearing will take place before the Town's December meeting.

Zoning Administrator, Gary Jonet, stated he thought Bed and Breakfasts should be allowed in every residential

zone.

Bob Boncher agreed and referred to the Town of Scott's zoning, which allows them in Rural Residential and Agriculture districts as well. Dawn Goodman stated that the Town of Scott is probably most similar to the Town of Green Bay. The PC reviewed the Town of Scott information then.

Dawn Goodman then referred the PC to the information she had passed out regarding May 2015 case law regarding the importance of any Planning Policy developed by the Town being "Unambiguous" and clearly stated.

Gary Jonet noted that the Case law talked about "Permitted" uses. He noted that if Conditional Uses were utilized, that should cover the situation because Conditional Uses allow for special stipulations to be made on a case by case basis and the Public Hearings that go along with a Conditional Use allow neighbors or anyone objecting to a Bed and Breakfast in their area to be heard and the Town then could take that into consideration in their final decision on the matter and not allow one based on those objections.

Mike Gilson expressed concern that he did not believe it was legal to "pick and choose" like that. If you can get a Bed and Breakfast with a Conditional Use Permit, how can the Town then deny the permit just because a few people are against it? He stressed, "You are ALLOWING IT with a Conditional Use Permit in those districts!"

Gary Jonet agreed and stated, "But it would give the Board the power to create the Conditions. For example, it could state it would only allow a certain number of people at one time. If a neighborhood (even a Planned Residential Development) comes in and opposes all Bed and Breakfasts, the Board could consider that and allow a lesser amount of people in that Bed and Breakfast so that the traffic, for example, would be kept down and less bothersome to the people in that area." He then added that even PRDs are zoned Residential.

Jason Miller suggested the PC proceed with defining what a Bed and Breakfast is. Mike Gilson stated the State Definition would be the best to use. After some discussion, all agreed.

The question arose if "Boarding House" needed to be defined and/or updated. Dawn Goodman read aloud the definition from the Town's latest Definitions on its website. It was decided that definition need not be revised.

Sharon Depeau questioned what the difference was between a Boarding House and Bed and Breakfast. That was explained. She speculated that she might do a Boarding House instead of a Bed and Breakfast so that she would not have to do anything then. Mike Gilson stated that she would then need to be rezoned.

Jason Miller reviewed what the Town of Scott had for its Bed and Breakfast regulations in its various districts. He questioned if the stipulations they make (regarding being licensed by the State, parking and signage) should be utilized in the Town's policy development also.

Gary Jonet stated it would be stipulated in the Conditional use permit itself.

Jason pointed out that the State Regulations were stipulated as a requirement in each Town of Scott district. Other PC members pointed out that State laws regarding Bed and Breakfasts must be followed for any Bed and Breakfast in the State.

Mike Gilson stated he did not know if he agreed with *not* including the State Law as a stipulation because "if you can't be there (in that zoning district), than why would they use it (the State Law)?" Mike Gilson stipulated it seemed to be a potentially "grey area".

Dawn Goodman suggested comparing what Ephraim used as its definition to the State of Wisconsin's definition, side by side. Jason pointed out that Ephraim's differed from the State in that the State allows for "stays no longer than 10 nights in a 12 month period."

Dawn also pointed out that Ephraim added “was originally built and occupied as a single-family residence”. She stated she thought that should not be used in the Town’s definition. Gary Jonet and Jason thought it should be included so that someone does not come in and change the nature of a neighborhood or area, possibly tearing a home down and replacing it with a structure that no longer fits into the character of the rest of the neighborhood (e.g. tearing down a historic home and replacing it with a new, modern looking home).

Dawn Goodman stated she understood and agreed that would be good to include that wording to avoid something like that.

Mike Gilson reminded the PC of the Comprehensive Planning meetings when the residents voiced their preference for the area to remain rural in nature.

There was more discussion about length of stay and how much if any limit should be put on it—would that deter tourism for visitors who want to stay longer for some reason? Would longer stays then actually be considered rentals? Are rentals by tourists/transients, more desirable than Bed and Breakfasts? Which is able to be controlled better by the Town?

Dawn Goodman noted that enforcement and collection of fees can be more complicated than is anticipated. She cited as an example of what she read about on the Door County Tourism Zone Commission’s website: that rentals, Bed and Breakfasts and other similar lodging got so complicated and there are so many to collect from, that they hired an accounting firm to collect for them. Who would the Town have regulating them?

Another alternative, “Air B&B’s”, was discussed also. It was noted that they are hard to regulate because there is little policy currently about them (a recent local television news investigation was covering the topic and brought up many of the issues in the community and elsewhere that are arising from them). It was noted that they often go undetected; and that people that stay in them who have an issue may have no recompense or help available because of the lack of regulations. It was also noted that taxes are often not paid/collected, so municipalities and the State miss out on the usual revenue they would bring in. Who would the Town have regulating them and catching people not following the rules?

There was speculation if there might be some already in the Town.

Jason Miller speculated that the Town would not be able to do much about an Air B&B if there is a problem unless it falls under violations of other Town regulations like too many people coming and going, noise, etc. Mike Gilson pointed out later that the best policing of these (and Bed and Breakfasts) will be the neighbors.

Dawn Goodman stated that the Comprehensive Planning advisors suggested the Town address “Short-Term Rentals” because the area is already experiencing them, and the Town is likely to have them due to its proximity to Door County (and the Shrine), etc. Dawn suggested the PC should include a definition “Short-Term Rentals” as well and that Ashwaubenon’s wording could be utilized. She then referred to info she had included in the packet earlier: the Village of Ashwaubenon’s recent revision to its ordinance in July 2016 (which deleted Transient Residential Facilities and created Short-Term Rentals instead). She read the Ashwaubenon definition aloud: “Short-Term Rental (STR): A lodging place where sleeping accommodations (rooms or the entire dwelling unit) are offered for pay to tourists, vacationers, business people, or transients. Also known as a Tourist Rooming House. “Short-Term Rental” does not include: a private boarding or rooming house per Wisconsin Statutes, not accommodating tourists or transients; a hotel, bed and breakfast establishment.”

There was discussion amongst the PC members if this was the time to add “Short-Term Rental” to the definitions. Some stated it seemed to be relevant to the situation.

Bob Boncher read aloud from Item #13 in the Ashwaubenon packet, which states: “A conditional use permit will not be issued until the following contingencies have been met:

- a. County health department inspection completed

- b. License from the County received
- c. General building inspection completed by the village and no outstanding orders remain

Mike Gilson noted that it would take a lot of work to get a Short-Term Rental up and running: groups to get permits, licenses and inspections from. Dawn Goodman pointed out that the intention is to protect the neighbors, the Town and all concerned, including the owner of an establishment.

Dawn Goodman suggested that the Town should at least be up-to-date with the surrounding communities on its policies regarding Bed and Breakfasts. She stated having additional policy regarding Short-Term Rentals would be wise as well since “they are already here, knocking at our door”.

Jason Miller questioned if just putting a definition for “Short-Term Rentals” would be correct or would it also involve the addition of more policy in other sections of the Town’s zoning book? He pointed out all of the stipulations regarding it that Ashwaubenon included in the packet Dawn passed out.

Dawn Goodman agreed that it should/would involve additional policy being developed for Short-Term Rentals. She suggested the STRs be allowed under Conditional uses in all of the same zones as Bed and Breakfasts.

Jason Miller suggested that Short-Term Rental definition and policy be delayed, due to the potential complexity of wording and where to insert it, for another time and that the focus for this PC meeting remain on developing only a “Bed and Breakfast” definition and determining the permitted zoning areas they are allowed.

Gary Jonet stated that those things are supposed to be covered already in the B-1 Business District—see under Permitted Uses (“1: Dwelling Units and rooming units are not permitted below the second floor except as the residence of the owner or operator of a business on the premises”) (also see under Conditional Use #10. Dwelling Units and rooming units, above the ground level.). He stated they (Short-Term Rentals), should be a B-1 Business. He referred to a past incident in the Town when the rules had to be enforced to put a stop to a residence along the Bay that was being rented out on a weekly basis continuously like a hotel or resort situation.

Dawn Goodman suggested that was an “Air B&B” situation. Gary Jonet agreed. He stated they would be zoned a Business and still require a Conditional Use permit.

Dawn Goodman suggested that most people who run them are not doing that (not putting them in Business Districts) and they are operating under the radar. Gary Jonet agreed, stating: “they are just not getting caught at it. That is where they are permitted in our zoning now”

Jason questioned if adding policy on Short-Term Rentals will prevent Air B&Bs in the Town.

Dawn Goodman stated it would not prevent them but would allow the Town to potentially have some control over them. She then suggested the Town consult with The Town’s Association first before enacting policy on it.

Mike Gilson agreed, stating, that it seems a little complicated. All PC members agreed.

Bob Boncher suggested Dawn Goodman contact the County to see what their requirements are on Short Term Rentals since Ashwaubenon refers to the County in some of their requirements. Dawn agreed to do so.

Mike Gilson suggested Dawn Goodman also review what Ephraim/Door County have about it. She agreed to do so.

The PC members decided to finish the Bed and Breakfast definition and zoning designation first and return to Short Term Rentals at a future time.

It was decided by all to utilize the State of Wisconsin Definition for Bed and Breakfasts Establishments from Chapter ATCP 73, which reads: “*Bed and Breakfast Establishment means any place of lodging that provides 8 or*

*fewer rooms for rent to no more than a total of 20 tourists or other transients for more than 10 nights in a 12-month period, is the owner's personal residence, is occupied by the owner at the time of rental, and in which the only meal served to guests is breakfast".*

It was further decided by all of the PC members that Bed and Breakfasts may be allowed (subject to the provisions of the Town Section XX . Subsection J) as a Conditional Use in the following Town zones:

Section VI:R-R Rural Residential.

Section VII:R-2 Residential.

Section VIII:E-R Estate Residential.

Section IX: Multi-Family.

Section XI:A-2: General Agriculture.

It was further decided by all of the PC members that when issuing a Conditional Use permit for a "Bed and Breakfast Establishment" in any of the above mentioned zones, the State of Wisconsin standards set forth in "Chapter ATCP 73 Bed and Breakfast Establishments" shall be utilized as a guide, in addition to the Town of Green Bay's standards and regulations.

Gary Jonet issued a Zoning Amendment number: #1019-J for the addition of all of the changes by the PC.

It was further decided that a public meeting will be held before the Town Meeting on December 13, 2016 at 6:30pm.

**MOTION MADE BY Jason Miller to recommend to the Town: recommend the Town of Green Bay Board Approve and Accept the following changes to the Town of Green Bay's Code of Ordinance:**

1. Addition of "*Bed and Breakfast Establishment*" and the following wording defining that term to the Town of Green Bay Code of Ordinances, Chapter 1: Zoning Ordinances, Section III. Definitions.  
B.Words Defined: #12.*Bed and Breakfast Establishment means any place of lodging that provides 8 or fewer rooms for rent to no more than a total of 20 tourists or other transients for more than 10 nights in a 12-month period, is the owner's personal residence, is occupied by the owner at the time of rental, and in which the only meal served to guests is breakfast".* Note that all numbering for definitions subsequent to #12 shall be amended to one number higher, due to the insertion of this new definition to that section.
2. Add "Bed and Breakfast Establishments" in the following, "Chapter 1: Zoning Ordinances, Districts", under "Conditional Uses":

Section VI:R-R Rural Residential, C. Conditional Uses #6. Bed and Breakfast Establishments

Section VII:R-2 Residential, C. Conditional Uses #6. Bed and Breakfast Establishments.

Section VIII:E-R Estate Residential, C. Conditional Uses #11. Bed and Breakfast Establishments.

Section IX: Multi-Family, C. Conditional Uses #7. Bed and Breakfast Establishments.

Section XI:A-2: General Agriculture, C. Conditional Uses #11. Bed and Breakfast Establishments.

3. When issuing a Conditional Use permit for a “Bed and Breakfast Establishment” in any of the above mentioned zones, the State of Wisconsin standards set forth in “Chapter ATCP 73 Bed and Breakfast Establishments” shall be utilized as a guide, in addition to the Town of Green Bay’s standards and regulations.

**MOTION 2NDED BY:** Bob Boncher.

**AYES:** 6 **NAYS:** none. **ABSTAIN:** None. **MOTION CARRIED.**

**Public Hearing set: Tuesday 12/13/16 at 6:30pm.**

**Old Business (8:36pm to 8:44pm) : Necessity to review Special Events Regulations and Permit with concerned citizens and Shrine representatives at a Planning Commission Meeting on December 20, 2016**

Dawn Goodman, Gary Jonet and Jason Miller explained that a large group of Town residents and church representatives showed up at the Public Hearing on 11-14-16 and were very concerned about the Special Events Regulations and Permit; they asked for less ambiguous stipulations and further clarification on its wording and requirements. Jason further stated that the public requested stipulations as to what penalty or policy is in place if a person and/or group does not get a permit and under what conditions a permit would be denied. It was further explained that some individuals misunderstood who was required to obtain a permit. Church representatives asked that they be exempt from having to get a permit. It was further explained that a Shrine representative also asked to be exempt and that he asked to meet with the Town to possibly develop special Shrine-related policy and that he stated he will be at our next Planning Commission meeting about it to give input on re-developing the ordinance and permit. As a result, the Town Board sent it back to the Planning Commission to make changes at their December Planning Commission meeting. Jason Miller stressed that it was a productive situation because Supervisor Ryan DeBroux brought up legitimate concerns the Fire Department, law enforcement and the Town have about being more aware of all of the Shrine’s functions (and other events being held in the Town) in order to ensure public safety. Jason explained that currently, due to lack of any policy in the Town, large numbers of people may turn up for an event without any notice which could potentially then pose problems with traffic, public safety, etc. The PC will take all of this into consideration for their December PC meeting.

**ISSUE #2: Continued review of Culvert standards (8:45pm to 8:48pm).**

Dawn Goodman explained that John Metzler had expressed to her at the 11/14/16 Town Meeting that he felt everything was covered in the Minutes from the October Planning Commission discussion on this subject and that nothing more need be done about it. He said he just felt it should be reviewed because of the Board of Appeals feelings concerning it being unnecessary and an extraneous expense for property owners. Gary Jonet explained why the Board of Appeals hearings needed to take place. Gary stated it was actually cheaper to pay the \$450 Board of Appeals fee than over \$1200 for a new culvert.

The Planning Commission decided to Table it until John Metzler is back at the meeting. If it necessary to discuss it anymore, then it would be covered under “Old Business”.

**Other Business:** None

**Date & Time of Next Planning Commission Meeting were set:** Tuesday, December 20, 2016 at 7:00 pm.

**Motion to Adjourn Made by:** Bob Boncher, Jason Miller seconded. **AYES 6 NAYS:** None. **Motion Carried.**  
**Time of Adjournment:** 8:49 p.m.