

TOWN OF GREEN BAY PLANNING COMMISSION MINUTES

DATE: 10-29-19*

TIME: 6:30 p.m.

(*Note: due to PC members & Attorney availability/conflict in schedules, this meeting was held later in the month than the usually scheduled meeting date).

PRESENT: Dawn Goodman, Gary Jonet, John Metzler, Jason Miller; Brad DeChamps, Dylan Mercier, Mike Gilson.

OTHERS PRESENT: Jean Haroldson; Town Chairman, Cary Dequaine; Town Supervisor, Matt Bosman; Town Clerk, Debbie Mercier; Attorney, Matt Parmentier.

APPROVAL OF LAST MEETING'S MINUTES (6:31-6:32) : John Metzler opened the meeting and asked if the meeting notice was properly posted in 3 places. Dawn Goodman confirmed it was. The 9-17-19 meeting minutes were reviewed.

MOTION MADE BY: Jason Miller to accept the minutes as presented. **MOTION 2NDED BY:** Mike Gilson. **AYES: 7 MOTION CARRIED.**

ISSUE #1 (6:33-6:45): Zoning Amendment Request #1188-J and new CSM review for Jean Haroldson, and surveyor, David Chrouser of Mau & Associates. This concerns part of GB-197-2, located at Church Road and Highway T, which will have a proposed "Lot 1" that would be rezoned from Agriculture to single family residential.

Jean Haroldson appeared alone, without her surveyor Mr. Chrouser. The Planning Commission reviewed copies of the CSM and the information related to it. Zoning Administrator, Gary Jonet, explained that the rezone was from A-1 Agriculture to E-R Estate Residential. Gary Jonet cautioned that because the parcel was in the Exclusive Agriculture designation with the Farmland Preservation program, Jean would be notified of tax implications. Jean stated she was aware of that. The Planning Commission verified the actual location of the proposed re-zone and where the driveway would be (it will be off CR T, just past the pre-existing shed). Jean explained that the property was purchased (the land and the barn) for her daughter so that she has room for animals she wishes to care for at that property someday. There was discussion about if the plot had sewer or not. John Metzler cautioned if there is a new home built on the new site, they may have to run sewer to it. Jean stated the intention was not to have a home there--it's for her daughter to raise animals eventually. Jean stated that her daughter currently owns the buildings that Jean's parents built (the house and barn, to the south of the proposed new Lot). Jean wants to purchase the additional land so her daughter will have room to do that in the future. Gary Jonet explained that the Town follow's the State of WI rules as far as required acres per animal (1.5 acres per animal unit, with a minimum of 3 acres required). It was noted that it would be 2 different owners of adjoining lots. Jean explained that her daughter will purchase the extra property from her when she gets the money to do so. Gary clarified: "so she will be purchasing the lot that you are separating from the other lands?". Jean confirmed that and explained that the reason they are doing so now is because of an impending sale of the Ripp Family's adjacent farmland in March. Gary confirmed that she would then own approximately 5 acres. Gary re-confirmed with Jean that the parcel with the home and barn was already re-zoned to E-R. Jean confirmed that was true.

MOTION MADE BY: Dylan Mercier to **Recommend** to the Town Board:

1. **Approval of the CSM (concerning GB-197-2)** for Part of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 15, T24N-R22E, Town of Green Bay, Brown County, WI.
2. **Approval of the Zoning Amendment Request #1188—J**, of Jean Haroldson (David Chrouser of Mau & Associates, Agent), **to Rezone from Agriculture to E-R Estate Residential, PART of GB-197-2, Lot 1:** located at the corner of Church Road and County Highway T (also known as North New Franken Road).

MOTION 2NDED BY: Jason Miller. **AYES:** 7 **MOTION CARRIED.**

Public Hearing was set for 6:45 pm November 12, 2019 (Note: Town Clerk Debbie Mercier cautioned that there is an Annual Budget Meeting taking place that same night which could delay the start of the Public Hearing 30 to 45 additional minutes).

Note 1: Debbie Mercier added that Jean needs to bring the original CSM for her to sign off on at the Public Hearing or they can get it at another time shortly after.

Note 2: Jean Haroldson left the meeting at this time.

Note 3: Attorney Parmentier was able to join us earlier than anticipated, so the next part of the meeting started earlier at 6:54pm.

ISSUE #2: Continued Review of the Town of Green Bay Code of Ordinances with Attorney Matthew Parmentier in order to update. (6:54 pm to 9:20 pm)

Attorney Parmentier referred to the new black binder he had sent each Planning Commission member and Town Clerk Debbie Mercier in mid October for review prior to this date's meeting in order to facilitate informed discussion. Said binder contains 10 sample ordinances to review and discuss at this meeting based on the discussions at the last September 9/17/19 meeting. Attorney commented that the Town should be able to get a nice sample code book by the time this material is finished being reviewed. He then passed out additional hand-outs.

1. **Sample Land Division Ordinance.** Attorney handed out "*Brown County WI's Chapter 21 Land Division and Subdivision Ordinance*". He started by noting that the Town's zoning code has Road Standards in it, which is not usual (he actually had not seen that before). Those standards usually are in Land Division areas of zoning code. He brought a sample from the Town of Fond du lac, which is a little more developed than the Town, but not entirely that different. He gave an example: when someone brings a CSM to the Town for review, it has only general guidelines like lot sizes & minor dimensional standards. The advantage of having this Land Division Ordinance would allow the Town to get into a much more details than it can without one.

He gave examples of the important things Land Division Ordinances cover:

- "Standards for Public Improvements", like roads and infrastructure. The technical aspects of the CSM and the review process. He then stated if the Town wants to get into more specifics, it probably is covered already. He directed the PC to the "*Brown County Chapter 21*" he just handed out, which applies to any CSM that comes through the Town. They will be reviewing the more technical stuff, so they already actually have most of that covered.
- He cautioned the Town also wants to be sure to have the Road Standards in place.
- **MOST IMPORTANTLY, the Town needs a "General Provision/Standard" that specifies the Town will not accept any Dedication of Public Improvements unless the Town has a "Development Agreement" in place to do so.** That's what is missing of what is of value.

He stated it would be best to add to what the Town already has, since some of it is already in the Zoning Ordinance—"let's add it to the Zoning Ordinance since we already have that as the main location for those types of items and let's make it a more complete list by adding what we care about in the Zoning Ordinance".

Town Clerk Debbie Mercier stated that plugging in the Certified Survey Map language would be good since we do not have that currently. The Attorney said it should be worded something like: "We will review it to make sure it is in compliance with the current zoning code". The Town can still review it, but keep in mind that Brown County will be reviewing it for the more technical aspects.

2. Sample Sign Ordinance. Attorney stated the Town’s current Sign ordinance is no longer enforceable because it violates 1st Amendments rules. Attorney stated it is not allowable to look at “*what*” the sign says. It’s now about the “*sign structure*”. The Town can go zoning district by zoning district—“here are our standards in this district”. It can decide what it wants in each district, following these as its guide. He stressed that **the Town needs to have “Indemnification”, “Abandoned Signs”, and “Penalty” sections** for sure. The Town’s task will be to decide each district’s requirements. Those present decided to do a “fill in the blank” version of the Ordinance based on what is most standard in most communities (the attorney used this recently in Sheboygan Falls and that worked well for them). It was noted the State Highway/DOT standards are different--they have a different set of rules altogether. Zoning Admin. Gary Jonet stated the Town could probably keep most of our standards it already has, but in a more condensed form. There were discussions over billboards, residential signs (some believe there should be minimal signage in those areas). Most agreed what the Town has works well. Gary Jonet added it can be hard to enforce because most people come up with larger signs than allowed. Most present agreed smaller signage is most desirable and suitable in residential. Town Clerk Debbie Mercier reminded everyone that the new Overlay District has it’s own set of sign standards. The lawyer suggested he will subtract out the presented model’s specific areas and send it back for us to fill in our own. Gary Jonet stated he thought that was best. All agreed.

3. Sample Cell Tower Siting Ordinance. The Attorney handed out “*Wisconsin Statute 66.0404. Mobile Tower Siting Regulations*”. He reviewed with the PC the Town’s recent Cell Tower Conditional Use Permit to see where it is at currently. He asked if the State Statute was mentioned during the process. All PC & Town reps. confirmed it had been mentioned. He explained that it is the standard now and that it was designed by most of the tower development groups. It was developed in 2013 as a “pre-emptive” statute, setting the standards for all ordinances related to mobile tower siting regulations with the main goal being to limit local control to deny anything they want. It’s been in effect for a few years now. It makes many ordinances that do not comply with the statute unenforceable. Attorney cautioned: **any ordinance the Town develops in this regard MUST follow these regulations**. The Town needs to get the updated information and regulations into its book, since there will be more requests for towers and/or upgrades to any pre-existing systems.

Attorney then explained there are different types of structures addressed:

1. New Constructions or Substantial Modification of Facilities and Support Structures.
2. Collocations of Existing Support Structures:

He stated that **the most important item the Town MUST follow is (4) “Limitations”**, which lays out an extensive list of everything the Town *cannot* do--see items 4 (a) through (w).

Noteworthy: attorney explained that the Town cannot charge a “*yearly (recurring) fee*”. He cited in particular Section 4 (e) under “Limitations, which prohibit it. He also explained “*Reasonable Fees*” can only be equal to “*reasonable costs*” (see section 4 (d) 1 & 2). There was discussion as to what the fees will be in light of this.

Attorney stated the Town must follow the “*Application*” procedure (and make sure we act within the time limitations listed there). There are 2 stages:

He explained: “The ‘*Completeness Review*’ is where it all is. The Town will only have 10 days to review and notify an applicant as to the Completeness of the application. It could require the Town to hold additional/special meetings or it can have very particular information requested that could result in a slow down that would extend the time to another regularly scheduled meeting.

The Town would follow (2) *New Construction or Substantial Modification of Facilities and Support Structures Items (a)-(b) 1-6*.

Attorney also noted that Item 2 (b) 6, regarding the “*Search Ring*” is the most contested part of New Construction or Modification of facilities and support structures. (*Note: The search ring is defined as shape drawn on a map to indicate the general area within which a tower can be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area*).

He cautioned: the explanation as to why the site is chosen and why a new facility is being constructed rather than a Collocation/Modification to an existing tower has to be examined carefully. He explained that tower developers often claim a situation is “*economically burdensome*” so that they can build their own towers rather than Collocate.

He further explained that after the application is considered Complete, within 90 days of its receipt, the Town must complete all of the following or the applicant may consider the application approved, except that the applicant and the Town may agree in writing to an extension of the 90 day period:

1. Review the application
2. Make a final decision
3. Notify the applicant in writing of final decision
4. If decision is to deny application, written notification with substantial evidence, which supports decision.

Attorney noted that when the Town reviews the application, it is set up as a Conditional Use permit, but it cannot be done like a traditional Conditional Use permit because there is the extra restrictive list (above) that must be taken into account.

Attorney noted that **a Denial will lead to the Town being sued**. He cautioned that it would be costly and lengthy to defend a denial. He noted that one was recently denied in Cedarburg and it held up in court, but it was not easy or cheap.

Town Clerk Debbie Mercier questioned if it is possible to meet the 10 day rules of review since the Town only meets every 30 days (monthly). Attorney stated that having an attorney (him?) review it may be necessary in order to comply.

The PC agreed to go with the sample ordinance the Attorney had brought for review, agreeing for him to modify it accordingly for the Town.

4 & 5. The attorney referred the PC to both sample ordinances: **4. Sample Basic Farmland Preservation District (Without “Non-farm” Residences)** and **5. Sample Basic Farmland Preservation District (With Nonfarm Residences)**. He then handed out the updated “*State of Wisconsin Chapter 91: Farmland Preservation*” to refer to. He stated he’d try to make it as simple as possible compared to the initial development process the PC & Town went through. He directed everyone to section “*91.44 Permitted Uses*” and “*91.46 Conditional Uses*”, stated the regulations would be limited to these sections of permitted and conditional uses. He stated “the easiest approach is to do only what is listed in these 2 areas. Keep it simple. Also include the definitions, of course. That’s the simplest version”--see **4. Sample Basic Farmland Preservation District (Without “Non-farm” Residences)**. He stated that if the Town does this, it makes it easy to match up with the statute, giving landowners maximum property rights with their tax credits as well. He noted there is one variation: “*Nonfarm Residences*”. These are allowed in the Farmland Preservation Act. He further explained there can be a Conditional Use permit that allows for these, allowing for them without having to rezone--4 lots are allowed. He cautioned it would make it more complicated because of rules that have to be followed. He then referred to tab **5. “Sample Basic Farmland Preservation District (With Nonfarm Residences)”** and gave out a sample “Base Farm Tract Map” explaining these Non Farm Residences are tracked using one of these maps, which shows land that is contiguous and under common ownership--multiple farms & parcels adjacent to each other, allowing up to 4 parcels per Base Farm Tract. The Town would have to map out where these Base Farm Tracts are. It gets 1 acre of non-farmland for every 20 acres agriculture for your Base Farm Tract--a 1:20 ratio. The Town would have to know the land in questions, and it must be contiguous. The idea is the Town will not have to rezone these non farm residences

when someone wants to split off a lot for a house. He stated the Tab 5 version is actually a simpler version of an ordinance and that it includes the additional language on Non-Farm Residences (he referred us to the sample wording). Someone then stated they did not understand the benefit of this simpler option and that it actually seemed more complicated because of the continual referral to the map and having to make sure the property and map matched. The attorney conceded it could be more complicated. He cautioned that the Base Farm Tract Map is “locked in” once it is adopted and that it cannot be changed. There was then discussion about “Use Value Conversion Fee”. Finally it was decided there was too much work involved in the Tab 5 option and the final decision was to go with Tab **4. Sample Basic Farmland Preservation District (Without “Non-farm” Residences)**.

6. **Sample Adult-Oriented Establishments Ordinance**. The attorney explained that this ordinance is about building a “legislative record”, that it’s a 1st Amendment issue (adult expressive activity), which cannot be prohibited. The Town would not be regulating anyone’s conduct--it would be regulating the bad things that happen when someone has this adult-oriented business. He explained: the Town needs to show studies that document what the secondary effects of these businesses are. Once the Town does that, it has laid the legal foundation for what it is doing--that was missing from our original ordinance. He cautioned the Town must connect the standards in our ordinance with those. The ordinance he presented is what he has been recommending to most towns he works with. He explained it would only be permitted in Commercial and Industrial districts and only with a license—he explained licenses are utilized because they are “more rigid and more ministerial”, and would be handled similar to the Town’s liquor licensing process, requiring a yearly re-licensing. He explained: “So the process involves someone finding a commercial or industrial zoned property or ask to have one rezoned. And they will have to apply for a license, which is similar to the liquor license rules: required to be over 18, no criminal record. A Fee has to approximate the cost to review, run a background check, etc. Note: there was an option to allow liquor. It was decided not to allow alcohol. The attorney stated he would draw up new ordinance utilizing the model he presented.
7. **Sample Sex Offender Residency Ordinance and Sample Recitals and Exemption Language for Same**. Attorney stated ‘it is developing and getting harder to regulate this’. He explained that what he gave for review is both an ordinance and an amendment of it that should provide what the Town would need. He reviewed it. He first reviewed *Definitions*. He noted in particular there are 2 types of offenders and that Violent offenders can only be regulated by the State, so they are not covered by this ordinance. All the crimes of sex offenders are listed (about 2 pages) along with a definition of residences. He further explained: “the real substance of this ordinance is the “*Residency Restrictions*”.” This particular model has a 1,500 foot set back distance. He further explained that distance is picked and then the Town would identify the things it wants the Set Back measured from (e.g.: schools, parks, daycares, paths, public athletic fields used by children, etc.). Once it picks the distances, then the Town would draw circles around those places. He cautioned: if it limits too much, there will not be anywhere for the offender to live, which is NOT allowed. Then it must be changed so that there are approximately 20-25% (that’s his recommendation) of residential property still available. Town Clerk Debbie Mercier stated the Town just may need to review it, since it already has a map in place. Attorney stated the Town can utilize the list in this model, which is a common model, and add to it if there is something not covered. He stressed the Town must decide 2 things: the *Set Back Distance* and if it wants to subtract or add to the list. PC Chair John Metzler asked if senior citizen centers are included. PC member/secretary Dawn Goodman stated they should be included because the aging population is so high and because so many suffer from mental and physical vulnerability (she suggested they are even in peril from fellow residents who may be offenders living within the facilities). The attorney stated the distance and list need to be determined yet by the PC. He then continued reviewing the ordinance model. He pointed out there are also *Residency Restrictions* and *Residency Restriction Exceptions*; that there are *Safety zones* identified; and there are also *Original Residency Restrictions* (most go county-wide now—he cautioned it can’t be too restrictive).

He explained the Amendment in this model shows how the Town builds a case as to *why* it has the restrictions--showing studies/data why it is implementing the restrictions. The Town **also MUST have a Petition for Exemption protocol** to permit someone to be allowed in an otherwise restricted area. He went on

to explain there are criteria a Residence Board reviews (the list in the model is standard and utilized by most now). He stressed that in order for the Town's ordinance to be defensible, it must have this protocol.

Town Clerk Debbie Mercier asked if the Residence Board review of the Petition for Exemption would be at a Town Meeting and if the Town Board could handle it. The attorney stated it would have to be at an *Open* meeting but that the Town Board should **not** handle it. He stated that the Residency Board is an Appointed Board (usually not elected officials since a decision might interfere with a re-election). It could be a collection of people, no requirements. Town Clerk Mercier speculated that there are not many requests, so it may not be as contentious as in some communities for the Town Board to actually do the Residency Board.

The Attorney went on to caution that care must be taken in how the measurements are done.

There was then discussion concerning Sex offenders in churches. The attorney explained that restricting offenders regarding churches is governed by the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). (Pub.L. 106-274). *Note: According to Wikipedia, it's a Federal Law that prohibits the imposition of burdens on the ability of prisoners to worship as they please and gives churches and other religious institutions a way to avoid zoning law restrictions on their property use. Enacted Sept. 22, 2000).* **The attorney cautioned anything in this regard is complicated and could become a legal challenge.**

Final decision: the Town needs to determine distance (including places near the border of the town) and edit the list of locations.

8. Sample Wind Energy System Ordinance. Attorney stated Town **must now follow PSC 128** (the State's regulations that sets the standards). He explained: the way wind siting works is like the Cell tower siting process: Application Process; Completeness Review Process; Review of the merits of the application itself; Notifications of property owners and residents; Public participation, etc. (there are 27 sections total in the model). He noted there are different size systems: Big and Small systems.

He then referred to an "Exhibit A, which included the actual state rules. He stated that the Town can be less restrictive but NOT more restrictive than the rules. He then referred to *PSC 128: "Subchapter II: Owner Requirements"*, referring in particular to "*PSC 128.10 Incorporating owner requirements into local ordinances*". He pointed out "*PSC 128.13 Siting Criteria*", referring to the "*Table 1 of Setbacks*"—and again stated the Town can be less restrictive but NOT more restrictive than the rules are. Then he referred to "*PSC 128.14 Noise criteria (3) Noise Limits*" which regulates "50 dBA daytime and 45 dBA nighttime". Then he referred to "*PSC 128.15 Shadow flicker*" and noted that only 30 hours of shadow flicker per year are allowed—an engineer usually has to be hired to model with a computer for the measurements; and then he mentioned Signal Interference and Stray Voltage are also addressed.

He noted in particular: "*PSC 128.19 Decommissioning*" allows for a protocol requiring them to take down the towers when they no longer work or are not being used and require them to provide financial security for it that could include a letter of credit, a bond, and/or money in escrow accounts.

Important side note: John Metzler asked if Cell towers also have that option (Decommissioning \$). The Attorney stated yes, up to \$20,000. They have a complex clause. Attorney stated "what you do is approve it, but it is conditioned upon them providing the Town with a bond, or letter of credit (which he said is better than a bond) or money in an escrow account (which he said is also better than a bond).

Attorney stated he will add that to the Town's Cell tower ordinance.

Very important side note: Attorney cautioned that **Letters of Credit** can expire if you do not monitor them. He recommends they have language **that they automatically renew forever**, otherwise they routinely expire after a year and can't be used.

On the wind turbine, they have to provide 3 estimates as to the cost of decommissioning by 3rd parties

agreeable to all concerned, and the Town would go with that as the basis for the amount of maturity. As time goes on, the costs will rise. The statute lists 100%.

Attorney recommended a Deposit of \$5,000 and as the Town incurs legal costs/expenses, then it can notify the owner/developer for more money. If there are extra monies left, the Town will refund it back at the end.

He suggests the Town use the model he presented with the Town's information modified accordingly. All agreed.

9. Sample Solar Energy System Ordinance. Attorney explained that Solar has “free standing” and “building mounted” systems. There are more regulations and rules for the free standing systems due to the popularity of solar farms. There are regulations based on what district they were in also. There's an Application process...the PC decided to do the more precise ordinance, to be proactive.
10. Sample General Penalty Ordinance. The Town does not have one yet. He likes to have this in case a particular ordinance does not have one.

Important Final Notes/Comments:

The PC asked the Attorney if there is anything else the Town should address, looking forward. He suggested 5G might need regulations—esp. where to put the rite of way antennas that are utilized. He stated it will be a while til it gets to this area.

The Attorney has “Fill in the blank” versions of the above studied models he will send to the PC to work on. Then he will produce the first draft of all the material covered. He estimated there will be at least 1 more meeting to iron out all the details.

The PC & Town Board members & Clerk decided to do the “Fill in the Blank” process at the November PC meeting without the Attorney (11/19 won't work for him & the upcoming Thanksgiving holiday complicates it more). If something comes up, he is available for questions via his cellphone or e-mail--there will not be extra costs because of it.

Matt Bosman offered to attend the PC meeting also to give input.

Old Business: None at this time.

Any Other Business as authorized by law. None at this time.

Date & Time of Next Planning Commission Meeting were set for Tuesday, November 19, 2019 at 7pm.

Motion to Adjourn Made by: Mike Gilson. Jason Miller **2nded. AYES: 7 NAYS: 0. Motion Carried.**
Adjournment time: 9:25pm.

Planning Commission Chairperson

Planning Commission Secretary