

TOWN OF GREEN BAY PLANNING COMMISSION MINUTES

DATE: 9-17-19

TIME: 7:00 p.m.

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

OTHERS PRESENT: Town Clerk, Debbie Mercier; Attorney, Matt Parmentier; and town resident, Debbie Olson.

APPROVAL OF LAST MEETING'S MINUTES (7:01-7:02) : John Metzler opened the meeting and asked if the meeting notice was properly posted in 3 places. Dawn Goodman confirmed it was. The 6/18/19 meeting minutes were reviewed.

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

ISSUE #1: Initial Review of the Town of Green Bay Code of Ordinances with Attorney Matthew Parmentier in order to update. (7:03 pm to 9:37 pm)

Attorney Parmentier passed out binders entitled "Current Town Ordinances" for each Planning Commission member and Town Clerk, Debbie Mercier. He referred to a 6-page Memorandum document, dated September 10, 2019, which reviewed each Ordinance along with comments. This document was distributed to the Planning Commission for review before the meeting in order to facilitate informed discussion for the meeting. The ordinances were color-coded either green (keep the ordinance as is), yellow (retain the ordinance but amend and/or discuss it), red (ordinance should be eliminated from the codebook).

Note: The floor was opened for comments at 7:20pm and closed at 9:37pm

1. Zoning Ordinance.

It was explained that the intention of the meeting and review is to identify major issues, such as important topics that the Zoning Ordinance *does not cover*, places where the Zoning Ordinance *is not consistent* with major developments in new law, and topics that might be better addressed *outside* of the Zoning Ordinance.

- i. The Zoning Ordinance currently includes road dedication standards. These are typically included in land division ordinances. Attorney said he will bring us a model for road/subdivision/land division.
- ii. The sign regulations are out of compliance with the U.S. Supreme Court decision in *Reed v. Town of Gilbert* because they impose content-based restrictions on signs. He discussed this in more detail. He will bring us a new model to review.
- iii. The Town does not have regulations on wireless facility siting that are compliant with Wis. Stat. § 66.0404. The Town should absolutely add them. He recommended we use the Town's Association model. He will bring us a new model to review.
- iv. The Town's current farmland preservation certification will be expiring soon. The Town's preferences for recertification were briefly discussed. It was agreed he would do this project with us.

2. Public Nuisance Ordinance.

- a. The Town uses a very common Public Nuisance Ordinance that attorneys have had good luck enforcing over the years. It can be retained as-is unless the Town wishes to enumerate any additional nuisances. There was discussion if there is necessity to pursue all nuisance cases. A town may choose which ones to pursue, but it must have a “rational basis”. Stronger enforcement strategy was briefly discussed. Citations are only good if the party being cited has the means to pay them. Sound standards were discussed: different ones for different zones is a possible. Attorney also noted that someone may sue based on an ordinance violation, but the Town will not pay. The Claimant pays in that situation.

3. Non-Metallic Mining Reclamation Ordinance.

- a. The codebook currently includes a copy of Brown County’s Non-Metallic Mining Reclamation Ordinance along with a notation that reclamation is now handled at the County level, which is correct. Therefore, this ordinance can be removed from the Codebook.

4. Solid Waste & Recycling Ordinance.

- a. This ordinance is substantively consistent with the DNR’s model ordinance. However, because of its age, some of the statutory references in the ordinance are outdated. This does not affect its enforceability, but the Town should consider replacing it with the current DNR model ordinance that contains updated references. Attorney will bring us the updated model.

5. Ordinance Licensing Sexually-Oriented Establishments.

- a. The substantive terms of this ordinance are largely acceptable. The use of licensing for adult establishments (as compared to conditional use permits) is appropriate to avoid the application of various constitutional doctrines related to excessive discretion. But this ordinance predates court precedent emphasizing the importance of making (and documenting) legislative findings as part of adopting adult entertainment ordinances. Attorney will replace the existing ordinance with a similar ordinance that incorporates legislative findings. He has samples. Part of that process also involves the Town Board reviewing summaries of studies on the “adverse impacts” of adult entertainment establishments. He explained this in more detail.

6. Uniform Dwelling Code.

- a. Attorney recommended there needs to be an update to include Commercial Building Inspections.

7. Speed Limit on State Road 57.

- a. After clarification on the matter with the Town’s clerk, on the purpose of this and some missing information, it was determined this ordinance was not needed.

8. Compliance Assurance Plan.

- a. The Town is required to have a Compliance Assurance Plan, and this ordinance satisfies that requirement. It can be kept as-is.

9. Ordinance Creating Joint Municipal Court.

- a. Assuming the Town wants to continue its membership in the Brown County Joint Municipal Court, this ordinance can be retained as-is.

10. Ordinance Adopting New Franken Fire Department Operating Agreement.

- a. This ordinance approves a 2007 Operating Agreement for the New Franken Fire Department. A copy of the Agreement is intended to be attached to the ordinance, but that is missing. The

Agreement should be attached so that the ordinance is complete. The Town Clerk stated she will find a copy to include. Attorney stated an ordinance is not necessary in order for the Town to enter into an operating agreement for a joint fire department. Final thought was to find the Agreement so it's included and leave this as-is.

11. Sex Offender Residency Ordinance.

- a. The law relating to the residency of sex offenders has changed considerably over the last few years. The Attorney has sample sex offender residency ordinances that he will share with the Town. Attorney discussed the 2 designations of offenders (Town can only regulate one type, State regulates others); designation of sensitive areas; setback distances (some have changed); and data justifying enforcement (essential to defend a Town decision). Attorney explained necessity of "case-by-case" decision process and having a Board appointed to make such decisions--the Town Board can play that role. The Town can also regulate that Chapter 980 sex offenders (violent offenders) are only allowed if they are from Brown County (can't say from our Town). Attorney stated it was an important ordinance to have in place. The final thought is that the Town still wants to regulate the residency of sex offenders, so Attorney will bring in an updated ordinance and studies to justify our restrictions.

12. Wind Energy System Ordinance.

- a. What we had was very good for the time it was developed--it pre-dates PSC 128, the administrative code section that comprehensively changed the way that wind energy systems are sited. Under PSC 128, pre-existing ordinances were rendered unenforceable. Attorney will bring sample ordinances that are compliant with PSC 128 and share them with the Town. This ordinance will be replaced with the new version so that the Town will retain the authority to regulate wind energy systems where possible.

13. Solar Energy System Ordinance.

- a. The Town does not have anything addressing this increasingly popular energy system. All agreed the Town should have some authority to regulate these energy systems as well. Attorney suggested addressing both large-scale and small-scale systems. He will bring in a model ordinance.

14. Outdoor Furnaces Ordinance.

- a. This ordinance is based on the DNR's model ordinance, although it only regulates some of the activities that the model ordinance does. There are a couple of drafting issues to clean up. Otherwise it can be kept as-is.

15. Short-Term Rental Ordinance.

- a. This ordinance is based on the Towns Association model ordinance and is consistent with the recent state law limiting municipal authority over short-term rentals. It can be kept as-is.

16. Ordinance Establishing Driveway Requirements for Emergency Services.

- a. Part of the Ordinance that was recently passed was not included for the Attorney to review. He will need to review it before more commentary can be provided. PC Secretary, Dawn Goodman, gave him the full ordinance and PC member, Dylan Mercier, also gave him a copy of the Town of Scott model that it was based on. All explained the background and reasoning behind the

requirements and subsequent ordinance. Attorney will review in order to understand where it came from and why it was developed (in conjunction with the shared Fire Department's latest request). He will give us more advice and possible changes in the future.

- b. Note: the following commentary was based on only part of the information being available. The substantive requirements of this ordinance are acceptable and consistent with what any towns require. However, the ordinance is drafted as a stand-alone ordinance and it is not clear from the ordinance how driveway approvals are administered (e.g., are driveway permits required)? In addition, attorney suggests including a forfeiture for violations to provide the Town with better enforcement authority for residents who do not comply. Finally, because this ordinance is a stand-alone ordinance and was not adopted as part of the zoning ordinance, the rules regarding nonconformities do not apply. Presumably, the ordinance is intended to impose its driveway requirements prospectively. If that's the case, it is suggested being explicit about it in the ordinance.

17. Ordinance Establishing Fire Protection Charges.

- a. This ordinance imposes charges for fire protection, which the Town is permitted to do under Wis. Stat. § 60.55. The ordinance references a fee schedule setting forth the specific fee amounts. The Town should ensure that it has one on file. (see #19 below).

18. Fire Chief Ordinance.

- a. This ordinance authorizes the New Franken Fire Department's fire chief to issue orders, citations, and perform other enumerated activities. The ordinance is acceptable. However, there are two versions – one from 2012 and one from 2016. The 2012 version has, therefore, been repealed by adoption of the 2016 version. Attorney discussed with the Town Clerk and PC what led to the 2016 version being adopted to determine how to proceed.

19. New Franken Fire Department Fee Schedule.

- a. Attorney felt the substantive terms of this document are acceptable, but he had structural questions about it. For example, the document suggests that this document is a zoning amendment, although it is unrelated to zoning. It's also unclear whether it is intended as a resolution (which is typical for fee schedules) or an ordinance (which would be more appropriate given that the document imposes penalties for non-compliance). After further discussion, Attorney will make changes accordingly.

20. Employee Grievance Procedure.

- a. This document was adopted in response to the 2011 "Budget Repair Bill," which required municipalities to adopt grievance procedures applicable to discharge, discipline, or employee safety. It can be retained as-is, but because it is not an ordinance, it should be kept outside of the codebook.

21. Offenses Against State Laws Subject to Forfeiture.

- a. This document adopts by reference certain state statutes related to drug paraphernalia. Doing this allows the Town to enforce them through citations. The document refers to itself as "Addendum A." After discussion, it was determined that it belongs with the Uniform BCJMC Ordinance.

22. Uniform BCJMC Ordinance.

- a. This ordinance adopts various statutes by reference to allow the Brown County Sheriff's Department to be able to enforce them. "Addendum A" discussed above is part of this ordinance.

Important Final Notes/Comments:

- Future meetings will focus on filling in the details (attorney referred to it as "sausage making") for areas that needed updating. It will **not** involve a "Chapter per meeting" approach.
- The finalization will be an "all at one time" adoption approach.
- Discussion re: the roles and duties we all assume in the process (Planning Commission and the Town Board). Attorney referred to State Statute 62:23:7 and a sub section. He will provide that info to Town Clerk in the future. Attorney reminded all: the PC is a Zoning Body.
- Planning Commission will still weigh in on content of materials covered. It makes "Recommendations to the Town regarding the materials.
- The Town will assume majority of public hearing & implementation roles—posting notices, placing ads in the newspaper, holding hearings, adoption.
- Because the revisions will be to the Zoning Ordinance, it requires procedures for Zoning Ordinance Amendments.
- The Code Book amendment process also requires special procedures and notices. It must go through a formal Planning Commission Hearing and Recommendation just like a rezone or zoning ordinance amendment would.
- It will be a double process.
- The attorney believes he can have all the materials we need to begin the process within a month.
- The attorney thought it may take 2 meetings to accomplish everything—it will depend on the Planning Commission's approval of the samples and revisions he will bring.
- The Farmland Preservation update will be another, separate meeting.
- Once the initial meetings are done the following will take place:
 1. Zoning Public Hearing (the Town Board handles this, per Town Clerk). Will need a Planning Commission Recommendation for this hearing.
 - a) The Public Hearing can start with the Planning Commission making it's Recommendation or:
 - b) The Planning Commission will make a recommendation at a prior meeting (the usual method we currently use). Attorney cautioned: this can only be done on the Zoning Ordinance materials.
 2. At the Public Hearing (it really will be 2 hearings, which could be combined into 1 meeting comprised of 2 Public Hearings):
 - a) The Zoning Ordinance Amendments
 - b) The Code Book as a whole.
- There will be a newspaper legal notice informing the public of the process and that there will be a Public Viewing of the materials for approximately 2 weeks at the Town Hall via appointment with the Town Clerk.

- People wishing to give input regarding the materials presented for public viewing will need to come to the Public Hearing with their comments—no comments/input will be taken while they view the materials.
- The Public Hearing will *not* be an exhaustive/all-encompassing review of the materials (it will be assumed anyone commenting at the hearing will have already viewed the materials in question).
- Town Clerk Debbie Mercier stated The Town Board members will be given the materials to view and will be brought up to speed *before* the hearings, so that they also will be familiar with all of the revisions.

Old Business: None at this time.

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

SPECIAL NOTE: Date & Time of Next Planning Commission Meeting were set for **LATER in month** due to Attorney and some Planning members availability: **Tuesday October 29, 2019 at 7 pm.**

Motion to Adjourn Made by: Jason Miller. Brad DeChamps **2nded.** **AYES: 7 NAYS: 0. Motion Carried.**
Adjournment time: 9:40 pm.

Planning Commission Chairperson

Planning Commission Secretary