

MINUTES OF THE
OAK CREEK PLAN COMMISSION MEETING
TUESDAY, MARCH 8, 2016

Mayor Scaffidi called the meeting to order at 6:00 p.m. The following Commissioners were present at roll call: Commissioner Dickmann, Commissioner Johnston, Commissioner Carrillo, Alderman Bukiewicz, Mayor Scaffidi, Alderman Guzikowski, Commissioner Siepert, and Commissioner Chandler. Commissioner Correll was excused. Also present: Kari Papelbon, Planner; Pete Wagner, Zoning Administrator; Jim Piraino, City Electrical Inspector; and Ron Pritzlaff, Oak Creek Water and Sewer Utility.

Commissioner Siepert moved to approve the February 9, 2016 meeting minutes. Alderman Guzikowski seconded. On roll call: Commissioners Dickmann and Johnston abstained. All others voted aye, excluding Commissioner Correll, who was not present. Motion carried.

Commissioner Siepert moved to approve the February 23, 2016 meeting minutes. Alderman Guzikowski seconded. On roll call: Commissioner Dickmann, Mayor Scaffidi, and Commissioner Chandler abstained. All others voted aye, excluding Commissioner Correll, who was not present. Motion carried.

Zoning Text Amendment
Proposed Amendments to Section 17.0808
Outdoor Lighting

Mayor Scaffidi introduced discussion regarding the proposed amendments to the zoning ordinance for outdoor lighting. Zoning Administrator Pete Wagner noted that discussion on this item is being continued from the last Plan Commission meeting on February 23, 2016, as many of the commissioners were not in attendance. At that meeting, the recommendation was to move forward with three of the four proposed amendments to the exterior lighting ordinance. The remaining amendment is regarding exterior building lighting, specifically LED lights typically seen highlighting windows, awnings, and building edges throughout the City. Mr. Wagner explained that he has made a request to the City Attorney to determine if this type of lighting can be prohibited. At the time of this meeting, City Attorney Karls did not yet have an opinion on whether or not the City could impose a ban on this type of lighting. Mr. Wagner noted that he wanted the fuller Plan Commission to discuss how to proceed with regulating the use of these fixtures as proposed by staff, or wait until a future date after Attorney Karls provides an legal opinion on whether the City can prohibit them, and if so, what steps the City would take to deal with existing lighting of this type.

Mr. Wagner noted a prior discussion with electrical inspector Jim Piraino, where it was mentioned that the NEC Code addresses the issue of temporary lighting, specifically a maximum of 90 days for holiday lighting. They discussed the possibility of incorporating a similar ordinance, but making it even more restrictive, stipulating 90 days "per calendar year". The hope is that imposing this limitation would be enough to discourage new businesses from investing in the lighting. Electrical Inspector Jim Piraino noted that he is seeing an increasing incidence of these lights within the City, citing examples such as Oak Creek Plumbing, New Spice II, Wyss Auto, the Sikh Temple, Colders, and even residential homes. Mr. Piraino noted that the Sikh Temple has circumvented the 90-day limit by leaving their lights on for 89 days, turning them off for several days in between, then back on, at which time the 90-day clock starts over.

Mr. Piraino added that he has talked with several other municipalities who are at about the same point as Oak Creek in addressing this issue. Some cities are considering an outright ban of the fixtures, others are making it a condition that businesses have to apply for a permit and appear before their Plan Commission to seek approval. Mr. Piraino went on to explain his speculation that since many of the businesses featuring this type of lighting appear to be using the same type of product, there may perhaps be a company approaching local business owners, soliciting the LED lights as a means of drawing attention to their locations. His concern is that use of the lighting will quickly get out of hand. Alderman Bukiewicz reiterated his opinion expressed in the prior meeting that he feels this type of lighting should be banned, as it detracts from the overall appearance of the City. An electrician by trade, Alderman

Bukiewicz went on to explain that this type of lighting is cheaply made, and he is concerned about proper installation and whether it meets code. Commissioner Dickmann inquired whether the intensity of the lighting is the same whether they are mounted on the inside or outside of a window. Mr. Piraino stated that he has not seen any outside-mounted lighting. Another issue is businesses that use roof-mounted lighting. He cited Oak Creek Plumbing as an example, noting that a good portion of their roof lights are burned out, which detracts from the overall appearance of the building.

Mayor Scaffidi asked Mr. Wagner to recap discussion of the City Attorney's input on this issue. Mr. Wagner reiterated that at the last meeting, the staff's opinion was rather than regulate the lighting, they would prefer to prohibit the lighting altogether but were unsure if there were legal grounds to do so, prompting a discussion with the City Attorney to obtain her legal opinion. Mr. Wagner noted that in the absence of Attorney Karls' opinion on the matter, the reason the discussion was brought back to Plan Commission so quickly was due to the absence of many Commissioners at the last meeting. More time is needed to obtain Attorney Karls' legal opinion, at which time the discussion will be brought forward once again to the Plan Commission. Mayor Scaffidi inquired whether Attorney Karls gave any indication when she would address the issue. Mr. Wagner answered that Attorney Karls hoped to have an answer by the end of March, to be addressed at the first April meeting of the Plan Commission, or perhaps even expedite the item to be addressed at the next Plan Commission meeting on March 22, 2016.

Commissioner Siefert asked whether staff has talked with other communities about the issue. Mr. Wagner indicated that staff has reached out by phone, but it appears no other communities have ordinances regulating the use of outdoor LED lighting. West Allis is currently in the process of addressing the issue. Mr. Piraino noted he has had conversations with West Allis as well as Wauwatosa, and both communities are in about the same position as Oak Creek. He further explained that he actually wrote the City's lighting ordinance, and thus is very familiar with its content. He noted one section of the ordinance dealing with flashing lights, which pose a distraction to passing motorists. At present, the lighting being used within the City has all been solid colors, but if businesses started to install moving or flashing lights, this would present a violation of the ordinance.

Mr. Piraino went on to explain his concern that if the City puts an outright ban on the lighting, there will be businesses complaining that their rights are being violated, but if we continue to allow it, there will be complaints from neighboring property owners that the lights are a disturbance to them. Mayor Scaffidi noted that for this reason, it is imperative to have the City Attorney provide a legal opinion, as he anticipates there being significant opposition from some of the area businesses if the lighting is banned altogether. Mr. Piraino added that if the City does prohibit use of the fixtures, how we would address the businesses that are currently using them. He suggested giving them a specified time period (90 or 120 days, for example) to remove the fixtures.

Commissioner Carrillo commented that she would like the City of Oak Creek to be the leader in banning the use of this type of lighting, and to abide by whatever legal measures are needed to accomplish that. She agreed with the idea to give businesses currently using the lighting a 90-day period to remove them. Commissioner Chandler inquired whether the Commission's goal is to ban the use of the fixtures altogether, or to stipulate when, where, and for how long the fixtures can be used. Mr. Wagner noted that at the last meeting, staff proposed a text amendment regulating their outside use, but has not been able to address the issue of using them inside. Staff has proposed regulating the allowed brightness of the fixtures (in lumens), and limiting the color to just clear white lights. The language of the proposed text amendment is modeled after an ordinance in Colorado from 2012. Mr. Wagner's anticipation is that staff will seek the City Attorney's opinion. If the City is legally able to prohibit use of the lighting, language will be drafted to address that. If there are no legal grounds to prohibit the lighting, staff will work with the electrical inspector to draft language addressing several ways to regulate it. This will be discussed at a future meeting, hopefully sooner than later.

Commissioner Dickmann noted his concern that any text amendments need to be general enough to cover not just LED lighting, but any other lighting of this type. Mr. Piraino's opinion was that to cover all types of lights, the language would need to be specific to the maximum number of lumens that can be used, not just the type of lighting.

Mayor Scaffidi summarized the Commission's consensus to obtain the City Attorney's opinion on the

matter, and move forward at that point. He will discuss the issue with Attorney Karls and attempt to expedite ongoing discussion. Item held.

Rezone

Jac and Joan Cole

1610 E. Puetz Road

Tax Key No. 826-9027-000

Mayor Scaffidi introduced a request by Jac and Joan Cole to rezone their property from Rs-3, Single Family Residential to A-1, Limited Agricultural. This request was brought before the Plan Commission several years ago, and at the time, the Coles were told that there were certain criteria that needed to be met before the rezone would be approved. The Coles have followed the process as directed and staff is now recommending that the rezone be allowed.

Zoning Administrator Pete Wagner explained the applicants are requesting that a portion of their property not located within the floodway zoning district be rezoned. Mr. Wagner displayed a rendering showing a floodway drainage improvement project that was conducted in 2014. When the floodplain was remodeled as a result of these improvements, a "zoning hole" was left behind on the subject parcel. Staff's intention was to fill that gap with an Rs-3, Single Family designation, which would have reflected the remaining portion not in the floodway. When staff notified the applicants of the City's intention to proceed with this zoning classification, the applicants made a request to rezone the property to A-1, Limited Agricultural. Staff review indicates that the applicants do meet the minimum standards for this zoning reclassification: minimum size is five acres, with the applicant's property at 5.0725 acres, and the width of the property is appropriate. The request is not in conflict with the Comprehensive Plan therefore staff recommends that the Plan Commission approves the request.

Mayor Scaffidi called for comments from the Commission. Hearing none, he called for a motion. Alderman Bukiewicz motioned that the Plan Commission recommends to the Common Council that the property at 1610 E. Puetz Road be rezoned from Rs-3, Single Family Residential to A-1, Limited Agricultural after a public hearing. Commissioner Siepert seconded. On roll call: all voted aye. Motion carried.

Temporary Use

April Bargar, Continental 77 Fund

9035 S. Howell Avenue

Tax Key No. 859-9035-000

Mayor Scaffidi introduced a request by the applicant for a seasonal flower and garden center. Zoning Administrator Pete Wagner further explained the applicant is Stein Garden and Gifts Just Plants temporary garden center, located in the Kohl's parking lot. This will be Stein's sixth year operating at the temporary site on the Kohl's parcel, and they have once again received permission from Kohl's for operation in 2016. The site will use approximately 16 parking spaces, and will consist of one tent, multiple metal racks, garden products, a small shed for customer transactions, and space for other supplies. A picket fence will surround the area, providing a barrier between customers and Kohl's parking lot traffic. Stein's is looking to operate from the last week in April through July 8, 2016. Mr. Wagner noted that before the garden center can open, they will need to obtain a tent permit. Staff recommends that the Plan Commission approves the temporary use permit subject to conditions.

Mayor Scaffidi added that he and Planner Kari Papelbon had received an email from adjacent property owner, Attorney Larry Bragman. Attorney Bragman requested that this letter be read into the record. The letter welcomed Stein's garden center to the area, but expressed concern that use of any pesticides may contaminate the adjacent property, where they hope to begin organic cultivation in the spring. Attorney Bragman urged the City to include guidelines in their decision to protect the rights of both property owners. Mayor Scaffidi called a representative from Stein's to speak on behalf of the operation regarding the use of pesticides on-site.

Bryan Linstroth, 2205 Ashland Avenue, Racine:

Mr. Linstroth commented that even at the main store sites, Stein's does not use any pesticides in their operation as they are not commercially certified do so therefore there is no worry or threat to the adjacent landowner. Mayor Scaffidi inquired whether there will be any change to the operation this year. Mr. Linstroth answered that they would use the same setup and staff as in previous years. Commissioner Chandler asked whether there have been any past complaints or issues with the operation. Mr. Linstroth indicated there have been no complaints in the past five years. Mayor Scaffidi inquired whether the Bragmans have raised organic produce at this location in the past. Mr. Wagner explained that they have not. At one point the land was being farmed but there has been no activity in the past few years. The property has been for sale for some time, and Attorney Bragman, who is a proponent of organic farming, felt this would be an appropriate use for the land until it can be sold. Mayor Scaffidi suggested that to assuage Attorney Bragman's concerns, staff should forward his email to Mr. Linstroth, and have him address the issue with Attorney Bragman directly.

Commissioner Chandler inquired about the number of signs being used to advertise the garden center. Mr. Linstroth commented that it is actually the same number of signs used in prior years, however this year they have updated the logo along with the new branding for the entire company.

Mayor Scaffidi called for a motion. Commissioner Siepert motioned that the Plan Commission approves the temporary use permit for the temporary garden center at 9035 S. Howell Avenue, subject to the following conditions:

1. That all building and fire codes are met.
2. That the temporary use shall expire on July 8, 2016.

Commissioner Dickmann seconded. On roll call: all voted aye. Motion carried.

Certified Survey Map

Ron Pritzlaff, Oak Creek Water and Sewer Utility

9175, 9235, and 9325 S. 5th Avenue; 3953 and 3975 E. American Avenue

Tax Key Nos. 869-9006-000, 869-9995-004, 869-9995-003, 869-9997-001, and 869-9998-003

Mayor Scaffidi opened discussion by explaining the request to combine the subject properties. Planner Kari Papelbon noted that all properties, with the exception of 3953 E. American Avenue, were combined on a previous CSM, with the exception of 3953 E. American Avenue. This property would be added on the proposed new CSM.

Ron Pritzlaff, Oak Creek Water and Sewer Utility:

Mr. Pritzlaff explained that the City purchased the property at 3953 E. American Avenue in October of 2015. The request is basically to add the newly acquired parcel to the existing CSM. The previous CSM was not recorded, as at the time the City was still in negotiation with the previous property owner. The decision was made to postpone recording of the CSM until negotiations to acquire the new property were complete.

Mayor Scaffidi called for a motion. Alderman Bukiewicz motioned that the Plan Commission recommends to the Common Council that the Certified Survey Map submitted by Ron Pritzlaff, Oak Creek Water and Sewer Utility, for the properties at 9175, 9235, and 9325 S. 5th Avenue and 3953 and 3975 E. American Avenue be approved, with the following condition:

That all technical corrections, including, but not limited to spelling errors, minor coordinate geometry corrections, and corrections required for compliance with the Municipal Code and Wisconsin Statutes, are made prior to recording.

Commissioner Johnston seconded. On roll call: all voted aye, with the exception of Commissioner Siepert who abstained. Motion carried.

**Rezone/Conditional Use Permit Amendment
Ron Pritzlaff, Oak Creek Water and Sewer Utility
9175, 9235, and 9325 S. 5th Avenue; 3953 and 3975 E. American Avenue
Tax Key Nos. 869-9006-000, 869-9995-004, 869-9995-003, 869-9997-001, and 869-9998-003**

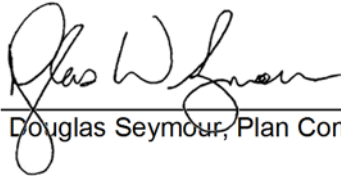
Mayor Scaffidi introduced this item as a rezone of the property at 3953 E. American Avenue. Planner Kari Papelbon added that the request is to rezone this property from Rs-4, Single Family Residential to comply with the I-1 Institutional zoning for the remainder of the properties, and to amend the legal description on the existing Conditional Use Permit to include 3953 E. American Avenue.

Mr. Pritzlaff noted that there were some deferred assessments on some of the properties, and the Utility has paid those assessments effective March of 2016.

Mayor Scaffidi called for a motion. Commissioner Dickmann motioned that the Plan Commission recommends to the Common Council that the property at 3953 E. American Ave be rezoned from Rs-4, Single Family Residential, to I-1, Institutional, and that the legal description in Section 1 of the Conditional Use Permit for 9175, 9235, and 9325 S. 5th Avenue; and 3975 E. American Avenue is amended to include 3953 E. American Ave., after a public hearing. Commissioner Chandler seconded. On roll call: all voted aye, with the exception of Commissioner Siepert who abstained. Motion carried.

Commissioner Carrillo motioned to adjourn. Alderman Guzikowski seconded. On roll call: all voted aye. Motion carried. The meeting was adjourned at 6:39 p.m.

ATTEST:



Douglas Seymour, Plan Commission Secretary

3-14-16

Date