

**JOINT ARCHITECTURAL BOARD/PLAN COMMISSION MINUTES  
MONDAY, MARCH 19, 2018  
7:00 PM  
BOARD ROOM  
MUNICIPAL BUILDING, 210 COTTONWOOD AVE.**

Present: Jeff Pfannerstill, Randy Swenson, Jack Wenstrom, Tim Fenner and David deCourcy-Bower.

Absent: James Schneeberger and Tim Hallquist

Others Present: Administrator Cox, Building Inspector Hussinger and Deputy Clerk Bushéy

Roll Call

**1. Motion (deCourcy-Bower /Swenson) to table the Jt. Architectural Board/Plan Commission minutes of February 19, 2018 meeting until the April 16<sup>th</sup> meeting. Carried (5-0).**

**2. Architectural Board and Plan Commission review and consideration of site, building and landscaping plans for a building addition and soccer field shelters at Lake Country High School, 401 Campus Dr.**

Dave Boyd from Groth Design Group was present for Lake Country Lutheran High School to explain the proposed addition and soccer field shelters. He said the proposed addition will be a new gym with storage, a stage for performances along with 5 new classrooms, a new Art room and some space for music. One-third of the 2<sup>nd</sup> story will be for classrooms and the addition will sit a little lower because it will be a practice gym. The exterior on the addition will match existing facade, grading has previously been done in anticipation of an addition, and windows will be added for the classrooms for natural light. Grounds and landscaping was also done in advance for the anticipated addition. Lake Country High School would also like to add two soccer field shelters to the soccer field with the first shelter being 28 ft. in length and the second shelter being 20 ft. in length, with the shelters being comparable to baseball dugouts.

Motion (Wenstrom/Swenson) to approve site, building, and landscaping plans for building addition and soccer field shelters for Lake Country Lutheran High School. Carried (5-0).

**3. Plan Commission consideration of rezoning of the property located east of 1270 E Capitol Drive (former Slugger's property) from RS-3 Single-Family Residential District to the newly created RSE-2 Single-Family Residential Estate District.**

Administrator Cox stated this is the next step as they move along in the process. The Plan Commission recommended the RSE-2 zoning district to the Village board who will would be

considering that at the 3-26-18 Village Board meeting. Mr. Eisenhut is in the process of finalizing the CSM and the materials that go with that, for April review and he wanted to get this piece moving along as it takes a little longer for a zoning change as it needs several reviews by Plan Commission and the Village Board including the Public Hearing. The goal is to hold the hearing at the end of April along with consideration of the CSM.

Administrator Cox said The RSE-2 district is on the whole site of the property and has carried through the Upland Conservancy overlay on the back of the lot. The next step will be to hold a Public Hearing which will take place on March 26<sup>th</sup>, 2018. Fenner asked if the CSM that was prepared comply with the Zoning they are considering now in terms of frontage and area, Administrator Cox said yes. Fenner also asked if under the process, if they will assign under the official map this real estate to that district. Administrator Cox said this action will assign this property to this zoning. Fenner said he is reluctant to have any un-sewered development unless there are facts and circumstances that warrant it, but he said clearly in this case those exist. Administrator Cox said the Plan Commission will have one more look at this in April, Mr. Eisenhut will give the Plan Commission a statement that will describe the issue that will help the Plan Commission make that determination. deCourcy-Bower asked if there have been any change in the area of the Conservancy overlay since the previous. Administrator Cox said no, he took that particular version that comes out of the zoning overlays that are in the GIS right now.

Motion (Swenson/Wenstrom) to recommend to the Village Board to schedule a Public Hearing for rezone of property at 1270 E. Capitol Dr. to RSE-2 Single-Family Residential Estate District. Carried (5-0).

**4. Plan Commission consideration of an Extraterritorial CSM for the 15-acre parcel on the east side of Campus Drive north of the Lake Country Lutheran vacant property in the Town of Merton.**

Administrator Cox stated this is pretty minor and as he stated in his memo the reason this is getting done is that this parcel did not exist before Campus Drive was created and as far they understand there are only 2 things going on in the CSM.

1. To create a lot of record and have a description for that lot including boundary pins and a legal description.
2. A dedication of about 3 ft. of right away adjacent to existing Moraine Drive behind the parcel that fronts on Gail Lane. He said staff has no reason to object and recommends approval. He also said as a reminder the Preliminary plat has previously been approved. The cul-de-sac coming in off of Moraine Drive one of the conditions of the preliminary plat was no vehicular access out on to Campus Drive and that exists on the CSM, and that is a good sign they are willing to accept that and move forward. As staff understands it is still out there and a final plat is anticipated to come through eventually. Hussinger said he suspects the Town requires a greater right of way width so this is the first step in recreating a starting point for their process, he thought. Hussinger said it is important to note that there is no vehicular access allowed out to Campus Drive and it is acknowledged on the CSM.

DeCourcy said he knows they have been through this several times, but if Arrowhead drive were to go thru to Campus Drive at some point was it going to go to the North, Administrator Cox said yes.

Motion (deCourcy-Bower/Wenstrom) to approve the Extraterritorial CSM for the 15-acre parcel on east side of Campus Drive north of Lake Country Lutheran vacant property in the Town of Merton. Carried (5-0).

**5. Plan Commission consideration of amendments to the Sign Code related to signage in the Institutional and Park and Recreation Districts.**

Administrator Cox said this is the Plan Commission's second look at this and this particular item was discussed at the previous meeting to allow the change in message boards could be considered in an institutional district. The language was looked at the previous meeting and now the Plan Commission will review the ordinance and decide if to recommend approval to the Village Board. Fenner asked if changeable copy reader board includes not only electronic but also letters etc., and Administrator Cox said yes they are all included in on lump.

Hussinger said it is important to note that condition #4 every sign & sign location is unique. He said what might be ok in one area might not be ok in another area like downtown or next to house. Administrator Cox said what they may allow on for example North Shore Ave they may not allow on E. Capitol or E. Imperial. Pfannerstill said each one of these type issues will be case by case because the surrounding areas could be so different.

Motion (Fenner/deCourcy-Bower) to recommend to the Village Board the zoning sign amendment as presented. Carried (5-0)

**6. Plan Commission discussion related to Conditional Use Permits and, specifically, Conditional Uses in the Q-1 Quarrying/Extractive District including potential amendments to the Hartland Zoning Code.**

Administrator Cox said this discussion is a very preliminary and very early on conversation. He said we are not at a point of hard recommendations at this point. He said he just wanted to introduce the topic and talk a little bit about some of the issues the Village faces with the change in the state law. He said as some background, he sent them the Act and the Villages Conditional Use ordinances. He said Commissioner Fenner provided some material that came from a law firm that works with a number of Towns Associations which talks about the new law and some of its impacts. The author works for the Town of Delafield, and Delafield just moved forward on a moratorium on Conditional Use permits. Administrator Cox said the reason they did that is because they are very heavy users of Conditional Use permits, virtually everything they approve in regards to residential development is done by Conditional Use, and that is not the case in Hartland. Fenner said he read everything including the code and the new law. He said looking at what we have now compared to what the law seems to say we have to have, he identified a number of issues and concerns he would invite staff to address as they attempt to do this. First and foremost

he said when someone comes in for authorization whether it be for a Conditional Use or zoning change, he would like to see our ordinances provide that the applicant has to submit a written narrative with the application which demonstrates how the Conditional Use or zoning requirements will be met and satisfied; and attach any reports, engineering studies, etc. to that application. He said the burden of proof particularly for Conditional Uses, is basically that the applicant has to satisfy those elements and standards that are being imposed. He said rather than have staff try to draft something simply because the applicants have not done anything, he said the burden should be on them to go thru our ordinances and tell us how they are going to satisfy the standards. He said he would like to have that written in somewhere as part of the process of the amendment. One of the other things related to that is juridical issue, he said currently the Commission acts as an advisor board to the Village board. He said if you read the materials in there, you will see that the legislature has essentially made the Conditional Use process not a legislative process but a quasi-judicial process which suggests now when we do things we are going to in essence have something akin to finding some fact and conclusions of support of action that are being taken. He went on to say the materials suggest that perhaps Conditional Uses are no longer to be reviewed by the Village Board and the Plan Commission's action are final because there is a 30 day review to the circuit court. He went on to say some of the materials suggest maybe you could continue to go to the Village Board for approval but he said if that is the case then the Village Board would be acting in the quasi-judicial capacity too.

Hussinger stated, doesn't the Plan Commission dive and expose details and sort of prepare it for the Village Board. Fenner went on to ask when Administrator Cox discusses this with the Village Council, one of the issues should be, is a Conditional Use from the Village Board now or from the Plan Commission because of the juridical issue? Administrator Cox said what was raised in the piece from Eric Larson was, has it now become a quasi-judicial and non-legislative. And every action you have reviewed has been a piece in the legislative cod, because then it goes up to the Village Board and they make a decision based on sometimes factors other than fact.

Fenner said if it does, then the question becomes what is the standard of review by the Village Board now. Administrator Cox said that is certainly the question in the case of Conditional Uses. Fenner said he thinks we need some legal advice, what our attorneys believe is the role of the Village Board assuming it is to continue in some capacity with Conditional Uses. Pfannerstill added that is one of the main reasons that there is a Plan Commission and Arch. Board. He said instead of having an 8 hour Village Board meeting there are commissions that are set up that have people look into these things with people that are more insightful and more familiar. He said what he does agree with, is the way the law is written. He said if everything that has to be met, every stipulation to be provided in a Conditional Use is met, then the Plan Commission does its homework and says yes they have met everything the Village Board can't say no simply because they don't think that is the best use. He went on to say if the Plan Commission missed something and then it is caught then Village Board can say this isn't being met.

Hussinger said in the Q-1 district there are 11 specific Conditional Uses permitted but they are generic, like mixing of asphalt but it doesn't tell us what time of operation, odor, smoke etc., and so we need to develop those standards. He then asked does that get hammered out here at Plan Commission as part of the Site Plan of Operations. Fenner said he thinks in an ordinance. He said what he has seen in communities is they have a section for Conditional Uses like us and then they

have a section of approval standards that are very general in nature. He said then what happens is you go to the Zoning district, you see permitted uses, conditional uses and then you will see specific standards relating to that conditional use in that district. He went on to say he likes the approach the Village has taken here, where there is a general section that simply defines the general standards. He said then you have to go to the next level on the specifics, and that means a district by district review. Hussinger said so you are satisfying both standards, the general and the specific and Fenner said yes. Pfannerstill said with the law change it came up to the discretion of either the Plan Commission or the Village Board, however if you get someone that really wants to mince words, there needs to be more concrete, black and white listings where you go to the general and then the subsection of the specifics that pertain to that item.

Fenner said the one thing they do that is consistent is, that any use/permitted use as well as a Conditional Use requires a site plan. He said because if we were going to make it specific to Conditional Uses, we would have to make it part of the hearing process and after reading this he likes that approach. Administrator Cox said the requirement for a Site Plan is elsewhere in the code for commercial or non-residential.

Fenner said the material suggests that if someone has the opportunity to quarry, if we believe the that operation is going to cause water runoff to Bark River and we are going to deny on that basis; they have the right to come in and say ok here is what I'm going to do to stop that. So as part of the process he said he assumes those kind of things you would want to come to the Plan Commission level rather than the Village Board. Plus we have to figure out procedurally how that is going to fit into the process. Fenner said one thing he would like to see for every Conditional Use permit, is that they have provisions indicating that it can be revoked in the event the conditions aren't satisfied. He said there should be timeframes if the conditions require construction activities and letters of credit, to enhance or enforce construction.

Pfannerstill pointed out there are things in place in the code that address violations and penalties. Fenner brought up the topic of a Public Hearing and that it if is done in a quasi-judicial manor the practice in most businesses is that it is done under oath and that opens the door to examination and cross examination. Administrator Cox said that is one of the comments in there, that it may change the flavor of the Public Hearing.

Fenner said this not only applies to Conditional Uses but to special exceptions also and special exception permits are issued by the Zoning Board of Appeals. He said he didn't know if our ordinance authorizes it, so he asked if we need to be looking at any amendments to the ordinances for the Zoning Board of Appeals. Administrator Cox said he didn't think so, because we don't use exceptions and Hussinger said that is something that is heard at the Village Board level. There was brief continued discussion on Special Exceptions.

Hussinger said we are talking about 2 things, procedurally how to modify our process and code. Plus also, do we want to discuss specific standards down at the gravel pit. Administrator Cox said the issue we are facing is, we are going to have to try move forward on attempting to create standards and one of the things we have been looking at is using some of our previous Conditional Use permit and try to get things laid out. Administrator Cox added that there are performance standards in the code. deCourcy-Bower brought up 2 points –

1. Are the Conditional Use's we currently have or are there Conditional Uses that are not currently captured that need to be captured?
2. Are there Conditional Uses that we can get rid of?

Hussinger said Conditional Uses apply to a lot of different uses and Administrator Cox said the challenge is, if it is not a CU then what is it. Because if it is not a permitted use then it is a prohibited use. There was more general discussion on Conditional Use standards.

Pfannerstill said this is something we will still have to look into more. Fenner suggested focusing on the quarrying one first, since that is the one that is coming up. He went on to say let's tighten up the general one and then look specifically at the quarrying one to see what standards need be done. Administrator Cox said we could look at the moratorium route also. He encouraged everyone to look at what we have, at what is out there, what are some concerns we have and if and how it needs to be addressed.

deCourcy-Bower said it would be useful to be have a list and what we have used Conditional Uses for. Hussinger said we have a copy of every CU that has been issued.

There was discussion on the wording and type of a temporary Conditional Uses. Pfannerstill said we have to address the quarry issue, so let's talk about the quarry issue at the next meeting. He then suggested giving a time-frame of 2 months for staff and everyone to look into things and give their opinions. deCourcy-Bower brought up that maybe a lot of the current Conditional Uses could be more like a permit. Fenner said he would like to see a draft of amendments of what the Plan Commission should recommend to the Village Board, with the first specific one being quarries and then doing the rest at their leisure.

## **7. Adjourn**

Motion (Swenson/deCourcy Bower) to adjourn. Carried (5-0). Meeting adjourned at 7:59 PM.

Respectfully submitted by  
Recording Secretary,

Deidre Bush  y, Deputy Clerk