

MINUTES

1. Meeting called to order by Mayor Kupsik at 6:37 pm.

2. Roll Call

Present: Doug Skates, John, Gibbs, Ann Esarco, Tom Hartz, Tyler Frederick
Not Present: (1 Vacant Spot)
Also Present: Planner Mike Slavney, Atty. Dan Draper, Mayor Kupsik, Administrator Oborn,
Inspector Robers and Assistant Gregoles

3. Approve Minutes of April 18, 2016 Plan Commission meeting as distributed.

MOTION #1

Skates/Gibbs moved to approve the minutes of April 18, 2016 Plan Commission meeting as distributed.
The motion carried unanimously.

4. Comments from the public as allowed by Wis. Stats. §19.84(2), limited to items on this agenda, except for public hearing items. Comments will be limited to five (5) minutes. - None

5. Acknowledgment of Correspondence. - None

6. Downtown Design Review.

A. Application by Karlee Mann for Lefty's Too, W5244 Cty. Rd. ES, Elkhorn, WI 53121 for two exterior signs on the storefront at 223 Cook Street, Tax Key No. ZOP 00253.

DISCUSSION

Applicants Dona & Karlee Mann gave an overview of the application details and there was a brief discussion with the Commission.

MOTION #2

Skates/Hartz moved to approve the application by Karlee Mann for Lefty's Too, W5244 Cty. Rd. ES, Elkhorn, WI 53121 for two exterior signs on the storefront at 223 Cook Street, Tax Key No. ZOP 00253, contingent upon approval of agenda item #9. The motion carried unanimously.

B. Application by Barbara Krause for Nei-Turner Media Group, 400 Broad Street, Lake Geneva, WI 53147 for new exterior signage on the storefront at 400 Broad Street, Tax Key No. ZOP 00106.

DISCUSSION

Inspector Robers gave an overview of the application details and there was a brief discussion with the Commission.

MOTION #3

Hartz/Skates moved to approve the application by Barbara Krause for Nei-Turner Media Group, 400 Broad Street, Lake Geneva, WI 53147 for new exterior signage on the storefront at 400 Broad Street, Tax Key No. ZOP 00106. The motion carried unanimously.

C. Application by Pete Jurgens for Oakfire, 831 Wrigley Drive, Lake Geneva, WI 53147 a retractable awning on the storefront at 831 Wrigley Drive, Lake Geneva, WI, Tax Key No. ZOP 00340.

DISCUSSION

Mayor Kupsik stated that this item has been withdrawn by the applicant.

D. Application by Reed Andrew for Rootbeer Revelry, E10295 Forest Road, Baraboo, WI 53147, for new exterior Signage on the storefront awning at 729 Main Street, Tax Key No. ZOP 00275.

DISCUSSION

Inspector Robers gave an overview of the application details and there was a brief discussion with the Commission.

MOTION #4

Kupsik/Skates moved to approve the application by Reed Andrew for Rootbeer Revelry, E10295 Forest Road, Baraboo, WI 53147, for new exterior Signage, choice #1, on the storefront awning at 729 Main Street, Tax Key No. ZOP 00275. The motion carried unanimously.

E. Application by Bauer Sign Company for @properties, 880 Main Street new exterior monument sign at 880 Main Street, Tax Key No. ZOP 00337.

DISCUSSION

Inspector Robers gave an overview of the application details and there was a brief discussion with the Commission.

MOTION #5

Gibbs/Skates moved to approve the application by Bauer Sign Company for @properties, 880 Main Street new exterior monument sign at 880 Main Street, Tax Key No. ZOP 00337. The motion carried unanimously.

- 7. Continued Public Hearing and Recommendation on a Conditional Use Application filed by Milliette Family LP, 493 Wrigley Drive, Lake Geneva, WI 53147, to install an accessory structure (Pier) closer to the lake shore than the primary structure, within Lakeshore Overlay Zoning District located at 493 Wrigley Drive, Lake Geneva, WI 53147, Tax Key No. ZOP 00369.**

DISCUSSION – Gary Milliette, applicant

Applicant gave an overview of the application details and a brief history of Baker Park. There was a brief discussion with the Commission as well as some clarification from attorney Draper (see below).

PUBLIC SPEAKER #1 –Dwayne Clark, Campbell Street, LG

Clark stated that he is in favor for the new pier and cannot understand why the commission would not approve it. The new pier would be nicer than what is there now.

MOTION #6

Skates/Gibbs moved to close the public hearing. The motion carried unanimously.

DISCUSSION – Attorney Draper

Attorney Draper gave a brief overview of the email document that was sent to the commissioners on May 13, 2016. In the configuration that was submitted with the application, if the pier is moved 12 ½ ft to the right/North it would then comply with the ordinance. In addition, there must be no navigability issues and the DNR must approve the application. No letter has been received from the DNR as of yet. Whatever the Plan Commission does tonight will be contingent upon the DNR approval. In summary, stating that in order to make this pier work the applicant needs to comply with the set back requirements by moving the pier 12 ½ ft to the right/North, must meet all the criteria of Baker Park and is subject to Navigability and must have DNR approval.

MOTION #7

Kupsik/Skates moved to approve the recommendation on a Conditional Use Application filed by Milliette Family LP, 493 Wrigley Drive, Lake Geneva, WI 53147, to install an accessory structure (Pier) closer to the lake shore than the primary structure, within Lakeshore Overlay Zoning District located at 493 Wrigley Drive, Lake Geneva, WI 53147, Tax Key No. ZOP 00369, contingent upon complying with the set back requirements by moving the pier 12 ½ ft to the right/North and must have a written letter of approval from the DNR. The motion carried unanimously.

8. **Continued Public Hearing and recommendation on a Conditional Use Permit to use the Single Family Residential (SR-4) zoning requirements in an Estate Residential (ER-1) zoning district for a new home filed by Lake Geneva Architects, 201 Broad Street, Lake Geneva, WI 53147 on behalf of Quint & Rishy Studer, 1919 E Larua Street, Pensacola, FL 32501 at 1408 W Main Street, Tax Key No. ZYUP 00094K.**

DISCUSSION

This application has been withdrawn by the owners.

9. **Public Hearing and Recommendation on a Conditional Use Application filed by Karlee Mann, W5244 Cty. Rd. ES, Elkhorn, WI 53121, for Lefty's Too to operate a Commercial Indoor Entertainment facility (Restaurant) at 223 Cook Street, Lake Geneva, WI 53147, Tax Key No. ZOP 00253.**

DISCUSSION – Dona & Karlee Mann, Applicant

Applicants Dona & Karlee Mann gave an overview of the application details and there was a brief discussion with the Commission.

PUBLIC SPEAKERS – None

MOTION #8

Hartz/Skates moved to close the public hearing. The motion carried unanimously.

MOTION #9

Gibbs/Hartz moved to approve the recommendation on a Conditional Use Application filed by Karlee Mann, W5244 Cty. Rd. ES, Elkhorn, WI 53121, for Lefty's Too to operate a Commercial Indoor Entertainment facility (Restaurant) at 223 Cook Street, Lake Geneva, WI 53147, Tax Key No. ZOP 00253, they will comply with the Fire Department and State Health Department and including all finding of facts and staff recommendations. The motion carried unanimously.

10. **Public Hearing and Recommendation on a Conditional Use Application filed by Carolyn Sue Gifford to operate Family Daycare Home (Four to Eight Children) in a Single Family (SR-4) zoning district at 191 W South Street, Lake Geneva, WI 53147, Tax Key No. ZA160800001.**

DISCUSSION – Carolyn Gifford, 191 W South Street, LG

Applicant gave an overview of the application details and there was a brief discussion with the Commission. Parking and drop off was discussed. Esarco/Skates suggested a sidewalk or pathway for people to utilize rather than the grass.

PUBLIC SPEAKERS - None

MOTION #10

Kupsik/Hartz moved to close the public hearing. The motion carried unanimously.

MOTION #11

Hartz/Skates moved to approve the Recommendation on a Conditional Use Application filed by Carolyn Sue Gifford to operate Family Daycare Home (Four to Eight Children) in a Single Family (SR-4) zoning district at 191 W South Street, Lake Geneva, WI 53147, Tax Key No. ZA160800001, including finding of fact and staff recommendations. The motion carried unanimously.

11. Public Hearing and recommendation on a Conditional Use Application filed by Steven Johansen for Maple Park Inn, N4590 Ostrander Road, New London, WI to operate a Bed & Breakfast establishment at 920 Geneva Street, Lake Geneva, WI 53147, Tax Key No. ZOP 00235.

DISCUSSION – Sue Johansen, applicant

Applicant gave an overview of the application details and there was a brief discussion with the Commission.

PUBLIC SPEAKER #1 –Joe Railton, 930 Geneva Street, LG

Railton expressed his concerns about having a transient business next door to his home for various reasons, including resale depreciation of his home and safety concerns for his grandchildren. He also pointed out that he did not know how they will meet the requirements to even have a B&B (i.e. two exits, 5 bathrooms, etc.) He stated that there is no prevailing necessity for this use. If they are allowed to have 4 people per room that means they could potentially have 20 people at one time staying in this building next door to his home.

PUBLIC SPEAKER #2 –Carol Railton, 930 Geneva Street, LG

Railton voiced her opposition to this item, agreeing with comments made by her husband Joe Railton. In addition she brought up a safety concern with regards to the daycare service that is also in the neighborhood. Stating that having many visitors to this property is a safety concern for the neighboring residents.

PUBLIC SPEAKER #3 –Wendy Smith, 1004 Geneva Street, LG

Stated her opposition to the recommendation of this item and urged the commission to consider the residential area and protect it.

PUBLIC SPEAKER #4 –Cindy Fueredi, 1010 Geneva Street, LG

Stated her opposition to the recommendation of this item and urged the commission to consider the residential area and protect it.

MOTION #12

Gibbs/Skates moved to close the public hearing. The motion carried unanimously.

DISCUSSION

Inspector Robers stated that the applicants will be coming forth to get permits to add a bathroom and the home does have two exits on it. Slavney stated that since 1989 the western edge of downtown has been a consistent source of discussion and concern. Confirming that the neighborhood has been consistently opposed to businesses going beyond the Cook Street frontage. Skates stated that in another location this applicant would do a great job. However, having a daycare so close is a concern and also stated his concerns for setting a bad precedence and feels it is important not to head in the wrong direction, because then where do you stop?

MOTION #13

Hartz/Skates moved to deny the recommendation on a Conditional Use Application filed by Steven Johansen for Maple Park Inn, N4590 Ostrander Road, New London, WI to operate a Bed & Breakfast establishment at 920 Geneva Street, Lake Geneva, WI 53147, Tax Key No. ZOP 00235, including finding of facts for denial. The motion carried unanimously.

12. Public Hearing and recommendation on a Planned Development (PD), Precise Implementation Plan (PIP) submitted by Leslie N Scherrer Pella for PSG, Inc., 448 Falcon Ridge Drive, Suite B, Burlington, WI 53105 for property located at 414 & 416 Baker Street, Tax Key Nos. ZBS 00001 & 00002.

DISCUSSION – Leslie Scherrer Pella, applicant

Applicant gave an overview of the application details and there was a brief discussion with the Commission.

PUBLIC SPEAKERS –None

MOTION #14

Skates/Gibbs moved to close the public hearing. The motion carried unanimously.

MOTION #15

Skates/Gibbs moved to approve the recommendation on a Planned Development (PD), Precise Implementation Plan (PIP) submitted by Leslie N Scherrer Pella for PSG, Inc., 448 Falcon Ridge Drive, Suite B, Burlington, WI 53105 for property located at 414 & 416 Baker Street, Tax Key Nos. ZBS 00001 & 00002, including finding of fact and staff recommendations. The motion carried with 5 Yes votes and 1 Abstained (Kupsik).

13. Public Hearing and recommendation on a General Development Plan (GDP) Application filed by Lake Geneva 50120, LLC c/o GMX Real Estate Group, LLC, 3000 Dundee Rd, Northbrook, IL 60062 for two new commercial buildings in the Planned Business zoning district at 281 N Edwards Blvd., Tax Key No. ZA297300001.

DISCUSSION – Andrew Goodman, GMX Real Estate (applicant)

Goodman gave an overview of the application details and there was a brief discussion with the Commission.

PUBLIC SPEAKERS –None

MOTION #16

Gibbs/Hartz moved to close the public hearing. The motion carried unanimously.

MOTION #17

Hartz/Gibbs moved to approve the recommendation on a General Development Plan (GDP) Application filed by Lake Geneva 50120, LLC c/o GMX Real Estate Group, LLC, 3000 Dundee Rd, Northbrook, IL 60062 for two new commercial buildings in the Planned Business zoning district at 281 N Edwards Blvd., Tax Key No. ZA297300001, including finding of fact and staff recommendations. The motion carried unanimously.

14. Public Hearing and recommendation on a General Development Plan (GDP) Application filed by Geneva Lakes Dream Homes c/o Ernie Truchscherer, PO Box 259, Lake Geneva, WI 53147 for three new commercial buildings in the Planned Business Park zoning district at lots #49 – 52 Tax Key Nos. ZLGBP200030 - 200033.

DISCUSSION – Warren Hansen & Ernie Truchscherer (applicants)

Hansen and Truchscherer gave an overview of the application details and there was a brief discussion with the Commission.

PUBLIC SPEAKERS –None

MOTION #18

Gibbs/Skates moved to close the public hearing. The motion carried unanimously.

MOTION #19

Kupsik/Fredrick moved to approve the recommendation on a General Development Plan (GDP) Application filed by Geneva Lakes Dream Homes c/o Ernie Truchscherer, PO Box 259, Lake Geneva, WI 53147 for three new commercial buildings in the Planned Business Park zoning district at lots #49 – 52 Tax Key Nos. ZLGBP200030 – 200033, including finding of fact and staff recommendations. The motion carried unanimously.

15. Public Hearing and recommendation on a Precise Implementation Plan (PIP) Application filed by Geneva Lakes Dream Homes c/o Ernie Truchscherer, PO Box 259, Lake Geneva, WI 53147 for three new commercial buildings in the Planned Business Park zoning district at lots #49 – 52 Tax Key Nos. ZLGBP200030 - 200033.

DISCUSSION – Warren Hansen & Ernie Truchscherer (applicants)

Hanson and Truchscherer gave an overview of the application details and there was a brief discussion with the Commission. Additional monument signage was discussed at length.

PUBLIC SPEAKERS –None

MOTION #20

Hartz/Kupsik moved to close the public hearing. The motion carried unanimously.

MOTION #21

Skates/Gibbs moved to approve the recommendation on a Precise Implementation Plan (PIP) Application filed by Geneva Lakes Dream Homes c/o Ernie Truchscherer, PO Box 259, Lake Geneva, WI 53147 for three new commercial buildings in the Planned Business Park zoning district at lots #49 – 52 Tax Key Nos. ZLGBP200030 – 200033, finding of fact and staff recommendations including providing shrubs along the bike path and City staff to approve, provide dark colored retaining wall and overhead doors to closely match the building colors, provide soldier course on the top of the trash enclosures, Parking lot light fixture mounting height at 20ft, bike racks in u shape for 10 bikes, to provide a Bike Path in NW corner (eliminate 2 parking stalls and add bike rack) and approval of both monument signs. The motion carried unanimously.

16. Adjournment

MOTION #22

Skates/Gibbs moved to adjourn the meeting at 8:58 pm. The motion carried unanimously.

/s/Jackie Gregoles, B&Z Administrative Assistant

THESE MINUTES ARE NOT OFFICIAL UNTIL APPROVED BY THE PLAN COMMISSION

MEMORANDUM

TO: Mayor, Members of the Plan Commission, City Administrator, and City Clerk

FROM: Daniel S. Draper, City Attorney

DATE: May 9, 2016

RE: Pier Application by Milliette Family LP – 493 Wrigley Drive

The Plan Commission has requested that I submit a memorandum concerning the legality of the request for a pier permit dated February 4, 2016. The application is a request for a 100 foot pier with four (4) boat slips located off of 493 Wrigley Dr., Lake Geneva, Wisconsin (hereinafter the “Milliette Property”) in what is commonly known as Baker Park.

At issue is whether or not the placement and length of the pier comply with City ordinances and the requirements of Baker Park.

The proposed pier in question is located in Baker Park. Restrictions on piers located in Baker Park are set forth in the original 1898 dedication of land for Baker Park. In the dedication, the “dedicators reserved for themselves and their successors-in-interest the right to build a bath house, boat house and pier, and the right to tie boats to the pier on the property dedicated to the City.” *City of Lake Geneva v. Pappas*, 186 Wis.2d 576, 522 N.W.2d 36, 36 (1994) an unpublished decision of the Court of Appeals of Wisconsin. “In March 1986, the City passed a resolution regulating the piers, boat slips and buoys the successors to the dedicators [of Baker Park] could place in the riparian space. The resolution stated that the one pier and four buoys or slips allowed each successor would be used as private property and ‘may be used by the owners personally or commercially subject to any state, federal or local ordinances to the contrary.’ *Ibid.*

The length and placement of piers are defined in Sec. 90-142 and Sec. 90-143 of the Municipal Code of the City of Lake Geneva (hereinafter the “Code.”) Sec. 90-142(a) establishes that the maximum length for a pier shall be 100 feet waterward from the shoreline.

Sec. 90-143(e) states that “No wharf or pier shall be located, built, constructed or maintained on a lot or parcel within a distance of 12 ½ feet from a riparian proprietor’s property line, where such property line intersects the shoreline, as defined in Section 90-142. This restriction shall not apply to permissible preexisting wharves or piers as defined in Subsection (c) of this section.” *Ibid.*

Application of the above provisions is a little vague because the Milliette property and all other successors under the Baker Park dedication are not riparian property owners. The City is the only riparian property owner in Baker Park. *Assmann et al. v. State of Wisconsin Department of Natural Resources and City of Lake Geneva*, 128 Wis. 2d 555, 381 N.W.2d 620 (1985). An unpublished decision of the Court of Appeals of Wisconsin. The Court therein reasoned that

because the dedication of the property was statutory, the property was conveyed in fee simple to the City of Lake Geneva to be held in trust for the public. Only those rights specifically reserved by the original dedicators were passed on to the successors in interest. Those rights once again were the right to place a bathhouse, boathouse and a pier on the property dedicated to the City and to the right to tie boats to those piers. Under Sec. 90-143(e), what is “the riparian proprietors property line” for the Milliette property if the Milliette Family Partnership LP is not the riparian property owner?

The only reasonable way to interpret Sec. 90-142 and Sec. 90-143(e) would be to use the existing property line for the Milliette property (a successor to the dedicator) and extend the southerly property line of the Milliette property waterward a length of 100 feet. The northerly property line of the Milliette property would also be extended waterward a length of 100’ to establish the maximum length of the pier.

Next the pier must be located so that is no closer than 12 ½ feet “from a riparian proprietor’s property line.” Does that mean it must be 12 ½ within the above established lines extending waterward or must the 12 ½ foot setback simply be measured at the shoreline? An interpretation that the setback need only be measured at the shoreline may be too narrow a reading of Sec. 90-143(e). There are no previous interpretations of this setback requirement. It was originally adopted by all the communities surrounding the lake under the Uniform Lake law provisions of our book of ordinances. One can only guess as to what was the original intent of the ordinance. If the intent was to preserve navigability between the piers, then the 12 ½ foot setback should be maintained from the property line at the shoreline 100 feet out into the water. If the setback was adopted to preserve the uniform placement of piers at the shoreline, then it would not matter what the dimensions of the pier were once it is built over the water. That interpretation does not seem to make sense because of the potentially detrimental effect random location of piers in the water would have on navigability of the lake. Further, it must be noted that the uniform lake laws were adopted to regulate the use of the lake. Once again this was a provision adopted under the uniform lake laws. Therefore, the only reasonable interpretation of Sec.90-143(e) would be to require that the whole pier be located within 12 ½ feet of the boundary lines extending waterward so that navigability is preserved.

The Baker Park dedication and March 1986 City resolution would further restrict the pier from having more than four (4) boat slips and/or buoys or any combination thereof. In other words the combined number of boats slips and buoys cannot exceed four (4.)

Finally, Sec. 90-143(a) states that “A wharf or pier which interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless a permit is issued for the wharf or pier by the Department of Natural Resources[“DNR] under W.S.A § 30.12, or unless authorization for the wharf or pier is expressly provided.” Similarly, Sec. 90-143(b) states that “A wharf or pier which interferes with rights of other riparian proprietors constitutes an unlawful obstruction of navigable waters unless a permit is issued for the wharf or pier by the DNR under W.S.A., § 30.12, or unless authorization for the wharf or pier is expressly provided.” Therefore, DNR will also make a determination whether or not the pier affects navigability and riparian proprietor’s interests.

Conclusion

The application, violates Sec. 90-143(e) in that it is not within the 12½ feet setback required by the ordinance. It also interferes with the riparian rights of the City because of the piers close proximity to the City's property immediately to the south.

If you have any questions regarding this matter, please contact me.