VILLAGE OF GRAFTON

PLAN COMMISSION MEETING MINUTES

MAY 26, 2015

The Plan Commission meeting was called to order at 6:00 p.m. by Chair Jim Brunnquell. The Pledge of Allegiance followed.

Plan Commissioners present: Village President Jim Brunnquell, Carl Harms, Trustee David Liss, Amy Plato, Alan Kletti, Randy Silasiri, and Mark Paschke arriving at 6:30 p.m.

Officials/Staff present: Village Administrator Darrell Hofland, Director of Planning and Development Jessica Wolff, Village Attorney Mike Herbrand, and Administrative Secretary Deborah A. Brown

Other Officials present: Trustee Lisa Uribe Harbeck, Trustee Dean Proefrock, and Trustee Tom Krueger

Public present: Ozaukee Press Copy Editor Steve Ostermann and other citizens of the Community

MINUTES

> Motion by Commissioner Harms, seconded by Commissioner Kletti to approve the April 28, 2015 Plan Commission meeting minutes as presented. Motion carried.

HEAR PERSONS REQUESTING TO BE HEARD
None

Chair Brunnquell announced that the original agenda had an item for another Public hearing for a conditional use permit for a packaged beverage store downtown. However, that item has been removed from the agenda and will not be considered.

<u>COMMENCE PUBLIC HEARING</u>
<u>Statement of Public Notice</u>
Administrative Secretary Brown stated the purpose of the Public Hearing is for public review and comment on reconsideration for a conditional use permit (CUP) to be located on the north side of Washington Street (WIS60) west of I-43 (Parcel 10-020-06-011.00) to allow for a McDonald's restaurant with drive through facilities.

Village Attorney Mike Herbrand gave a summary of the events which lead up to this Plan Commission meeting. On March 24, 2015, the Plan Commission approved a conditional use permit for a McDonald's restaurant with drive through facilities on

Washington Street on the last remaining vacant property in the Grafton Commons' Planned Unit Development (PUD). It has been the Village's long-standing practice to apply the list of permitted and conditional uses in the C-4 zoning district to this PUD and other PUDs in the interchange area. Therefore, Village staff recommended that the Plan Commission analyze the request on the background of the restrictions of both the PUD and C-4 zoning districts. One of the 11 conditions of CUP approval was Village Board approval of a zoning ordinance amendment to allow restaurants with drive through facilities as a conditional uses in the C-4 district, since that use is not currently allowed.

On April 6, the Village Board denied the C-4 zoning ordinance amendment.

On April 22, the applicant Continental Grafton LLC submitted its argument that the Grafton Commons PUD does not operate under the list of permitted and conditional uses in the C-4 district but rather the list of permitted and conditional uses in the PUD district in Table 19.03.0603 at the time the PUD was approved, which allows restaurants with drive through facilities as a conditional use. Also on April 22, 2015, the applicant filed for appeal with the Zoning Board of Appeals.

Upon further review of the applicant's position, Village staff agreed with the applicant as to the applicability of the C-4 zoning district to the subject parcel. At the April 28 Plan Commission agenda, Village staff asked the Plan Commission to reconsider the conditional use permit in light of the fact that the Plan Commission's earlier decision was based on incorrect information. The Plan Commission voted to reconsider the conditional use permit at the May meeting based on the conditional use permit section (Section 19.07.0103) and on the PUD section (Section 19.07.0209) of the zoning ordinance.

Attorney Herbrand stated further that based on further review by Village staff on the PUD requirements for the Grafton Commons, the PUD District plans are considered null and void because construction at Grafton Commons (including the property under review) has not been completed within three years of Village Board approval (see ordinance language below). The Village Board approved the Grafton Commons PUD on April 18, 2006.

He further noted that the Plan Commission is merely following procedure here tonight. They can deny the reconsideration of the conditional use permit for this project due to the first condition of the conditional use permit and because of the subsequent lapse in the PUD. The applicant can simply submit a new application and seek another PUD approval.

Attorney Herbrand then outlined the Section 19.07.0209 PUD Planned Unit Development District Procedures.

19. Expiration of Approved PUD Planned Unit Development District Plans. If the applicant does not commence construction within an approved PUD District within one (1) year after Village Board approval of the PUD District plans, or **complete construction within three (3) years of the approved PUD District**

plans, the approved plans for the PUD District shall be considered null and void. A new PUD District application and required plans shall be required to be approved by the Village under the procedures set forth in this Section. The provisions of this Paragraph shall only apply to those PUD Districts approved after the effective date of this Ordinance.

He added further that the Plan Commission's approval in March was contingent on a zoning code text amendment, but that has since changed. The Village staff does invite the applicant to submit a new application for an updated PUD plan to be considered through the Village's standard PUD review process including Plan Commission public hearing and recommendation to Village Board and final Village Board approval.

At this time, Chair Brunnquell opened the floor for comments or concerns from the public.

Attorney Deborah C. Tomczyk of Reinhart Law-1000 W. Water Street #1700-Milwaukee, WI representing Continental Grafton LLC spoke.
Attorney Tomczyk stated that she appreciates the opportunity to speak on behalf of her client. She stated that all the Village staff reports contain the facts in this matter. She stated that going through all three staff reports since March 24, 2015, tell the order of events and she will go through the substance of the reports which will show the proposed use as a PUD. She also noted that a traffic study was done and the project meets all the criteria. The Village Engineer was satisfied with the plans as well.

From the substance of all the staff reports by the Village, this project meets all the requirements but the C-4 zoning district. The only condition that this conditional use permit does not meet is the first condition which stated Zoning Ordinance amendment to allow drive through facilities as a conditional use in the C-4 zoning district to be approve by the Village Board. By removing this condition, this conditional use permit would be approved. This condition #1 has no real impact on the Grafton Commons PUD. The Plan Commission reviewed the concept plan in February of this year and then on March 24. The Plan Commission approved the CUP with 11 conditions. She is asking the Plan Commission to stand behind their decision which was based on the Village staff report submitted. It is only one condition that was not correctly stated and that condition #1 has no impact on the approval of this CUP. Architectural Review Board also was held on March 24, 2015 and approved based on the Village staff report.

Then on April 28, 2015, another Village staff report with the same issues introducing yet another issue of deciding whether a restaurant with drive through facilities constitutes a minor or major amendment to the Planned Unit Development; a major amendment would be forwarded to the Village Board for a public hearing and final action. The Village staff report for this May meeting presents another recommendation regarding whether the Grafton Commons PUD plan is valid. The Village cannot constantly change the rules on these issues; there needs to be consistency. She asked the Plan Commission to stand behind the decision made back in March.

The Attorneys then shared their opinions on the circuit court hearing which took place today in Washington County.

Commissioner Silasiri stated that the Plan Commission must do the right thing and that making a quick decision would be a mistake. The Plan Commission is not stopping the project, just restarting the process. A change must be made and the Plan Commission needs to look at the facts. The site was reviewed and approved, in error, with the assumption that it was in the C-4 zoning district. The rest of the conditions with this CUP request are in line with the PUD. Now the Plan Commission must look at the time frame in which this CUP was reviewed and approved. It is not valid because time has lapsed for the original PUD. The Plan Commission must look at following the procedures of the Village with due process.

Commissioner Paschke noted that the issue at hand is to validate the current PUD. What is there to review in the code to know the current PUD zoning is validated? Director Wolff indicated that the code is not clear. General planning practice would indicate that the undeveloped portion of the PUD should go back to the original be A-3 Agricultural Holding District. A more lenient interpretation is the one outlined in the Village staff report that only the PUD "plan" is expired, not the PUD "zoning."

Commissioner Harms stated that he is in favor of the McDonald's at this location.

Commissioner Plato asked about the timeline for McDonald's to resubmit a new Planned Unit Development. Director Wolff responded two to three months.

Commissioner Kletti noted that the Zoning Board of Appeals meeting is scheduled for June 11, 2015. Action should be taken at that meeting rather than the Plan Commission.

Chair Brunnquell noted that most planning projects in the Village go smoothly and that the Village has been business friendly for many years. The Village must treat developers fairly and with consistency. He stated further that due diligence has been done in regard to the PUD and the C-4. Further review and follow up on this conditional use now indicates that the PUD plan for the Grafton Commons has expired. So far, the Plan Commission approvals have been based on the conditions believed to be true and the Plan Commission must follow the due process.

<u>Bill Hass-1226 Water Terrace-Grafton, WI</u>
Mr. Hass is in favor of this drive through McDonald's restaurant. He stated that as a citizen, he would like to have a fast food restaurant in this location. The Village has tried for years to attract a restaurant to this site and they should be allowed to build.

With no further comments, Chair Brunnquell closed the public hearing.

Reconsideration for a conditional use permit (CUP) to be located on the north side of Washington Street (WIS60) west of I-43 (Parcel 10-020-06-011.00) to allow for a McDonald's Restaurant with drive through facilities

Commissioner Kletti suggested that the Plan Commission take no action.

> Motion by Commissioner Silasiri, seconded by Commissioner Paschke, to deny a conditional use permit as requested by Continental Grafton LLC for a McDonald's restaurant with drive through facilities to be located on the north side of Washington Street (WIS 60) west of I-43 (Parcel 10-020-06-011.00) due to expiration of the Grafton Commons PUD. Motion passed 5 – 2 (Liss, Kletti-nay).

Discussion of Transient Street Merchants

Director Wolff summarized the Village of Grafton regulations regarding transient street merchants. She noted that the Village adopted a Zoning Ordinance amendment in 2013 to regulate transient street merchants, including food trucks. The amendment addresses definitions, registrations requirements, prohibited practices, and revocation of permits. The Police Department runs a background check on all applicants. The annual fee is $300. Grafton Area Chamber of Commerce and other civic events such as the farmers market are exempt from these requirements.

The Planning and Development Department issued two transient street merchant permits in 2013 (hot dog stand and cheese curd van), three in 2014 (hot dog stand, cheese curd van, and deli truck), and two in 2015 (cheese curd van and BBQ truck). The locations of these merchants have been focused downtown and in the South Commercial District in the NAPA parking lot.

She noted that recently the Planning and Development Department received interest from another food truck operator to locate in the NAPA parking lot. There is also interest in organizing a food truck "rodeo" (a group of four or five food trucks) that would set up regularly this summer. She asked the Commission members for feedback on how they feel about regulating these types of food trucks as well as the support on these types of vendors in the Community.

Commissioner Silasiri had concerns regarding regulating where these food trucks would locate, the spacing in between each other, and clearly identifying the area in which the Village would allow these type of food vendors. He also would like to see each vendor have the proper insurance as well as the property owners having insurance coverage.

Commissioner Plato thought these food vendors would attract business and possibly help other businesses in the area. Director Wolff commented that there is a demand for this type of food vendor in the community and other communities have seen increases as well in this type of vendor.

Commissioner Harms was concerned about pedestrian safety and traffic.

Commissioner Paschke stated that he is in favor of these food truck vendors to a certain extent. He would like to see time limitations on when they can operate.

Commissioner Liss asked that the property owner's signature must be on the applications.

Trustee Uribe Harbeck asked about the annual $300 fee and would it be possible for a food truck vendor to only pay for a portion of the year. Director Wolff responded the the Village prorates the fee and that there have not been any instances of violation fees.

It was the consensus by the Commission members to have the Director of Planning and Development put together further information on regulating and oversight on the transient street merchant permitting process.

Old/New Business
None

ADJOURN

Motion by Commissioner Paschke, seconded by Commissioner Harms to adjourn the meeting at 7:14 p.m. Motion carried.