

ZONING BOARD OF APPEALS
GRAFTON, WISCONSIN

Minutes of Zoning Board of Appeals Meeting Held on June 25, 2015

ROLL CALL

The meeting was called to order by Greg Eichstaedt. Present were Board members Eichstaedt, Bartlein, Effinger, Rieck and Tomczyk. Also present were Tom Johnson, Building Inspector, John St. Peter, special counsel to the Board, Deborah Tomczyk and Jessica Polakowski, of Reinhart, Boerner, Van Deuren, S.C. (appearing on behalf of the appellant Continental Grafton LLC (“Continental”)), Michael Herbrand and Johnathan Woodward (appearing on behalf of the Village of Grafton (“Village”)). Approximately 20 members of the public were also personally present.

Note: A transcript of the entire proceedings was made by Ms. Peggy Mitchell, RMR, CRR, of Brown & Jones Reporting, Inc. The original transcript is being held by the Board’s legal counsel, John St. Peter.

BOARD ORGANIZATION

The first order of business was the election of Board officers. After a call for nominations the following officers were elected by unanimous ballot:

Greg Eichstaedt	Chairperson
Mike Effinger	Vice Chairperson
Don Tomczyk	Recording Secretary

CONFIRMATION OF NOTICE/BUILDING INSPECTOR’S REPORT

Mr. Johnson confirmed public notice of the Board’s meeting. Mr. Johnson announced that the Board was meeting to conduct a contested case hearing on the appeal filed by Continental regarding action by the Village’s Plan Commission dated March 24, 2015 relating to the Plan Commission’s consideration of a conditional use permit to allow a McDonald’s restaurant with drive-through facilities to be located on the north side of Washington Street, west of I-43 on parcel #10-020-06-011-00. In its March 24, 2015 decision the Plan Commission approved the proposed McDonald’s restaurant subject to various conditions, including condition 1, which states that the Village’s Zoning Ordinance must be amended to allow drive-through facilities as a conditional use in the C-4 zoning district. Continental’s Notice of Appeal and Application for Review was marked as Exhibit 2.

EXHIBITS

A total of 19 exhibits were offered and received by the Board at the hearing. A copy of the list of exhibits is attached and incorporated into these minutes. The original exhibits are being held by the Board’s legal counsel, John St. Peter.

PUBLIC COMMENTS

The Board next received comments from the public. Before receiving public comments Mr. St. Peter administered the oath to all members of the public wishing to speak. By agreement of counsel, non-witness speakers were allowed to speak before Continental and the Village called their respective witnesses. Sharon Leberfing spoke in favor of the McDonald's proposal.

CONTINENTAL'S PRESENTATION

Continental presented its appeal to the Board. As summarized in Exhibit 2, Continental appeals the zoning interpretation of the Village Plan Commission, which at its March 24, 2015 meeting approved a conditional use permit for the proposed McDonald's subject to 15 conditions. Among the conditions was that the Village's Zoning Ordinance needed to be amended to allow drive-through facilities as a conditional use in the C-4 zoning District. As explained by Continental, the location of the proposed McDonald's restaurant is in a stand-alone Planned Unit Development District. Therefore, the Plan Commission's condition purportedly requiring approval of a zoning amendment in the C-4 zoning District by the Village Board is irrelevant and invalid. As all discretionary Village approvals for the McDonald's have been granted by the Plan Commission, Continental contends that the Village must issue the requested permits without delay. In addition to its presentation of various exhibits in support of its appeal, Continental presented the testimony of Steve Wagner, Senior VP of Continental Properties and Steve Kilian, Jr., one of the owners of Kilian Management Services Company, which owns an existing McDonald's in Grafton. These witnesses provided historical background of Grafton Commons and the procedural history preceding this meeting. The witnesses were cross examined by Mr. Herbrand. The specific exhibits and witness testimony supporting the appeal are set forth in the hearing transcript.

VILLAGE PRESENTATION

The Village began with comments by its legal counsel conceding that the location of the proposed McDonald's is in a stand-alone Planned Unit Development District and not C-4 zoning. However, Village legal counsel noted that at the time of the March 24, 2015 Plan Commission meeting both the Village and Continental mistakenly assumed the existence of the C-4 zoning applicable to the proposed McDonald's. Further, it was not until April 22, 2015 that Continental raised the issue of the stand-alone Planned Unit Development District zoning. Thereafter, on April 28, 2015 the Plan Commission adopted a resolution to reconsider Continental's request for a conditional use permit. Then, on May 26, 2015 the Plan Commission adopted a resolution denying the conditional use permit as requested by Continental for a McDonald's restaurant with drive-through facilities due to the expiration of the Grafton Commons PUD.

CONTINENTAL'S REBUTTAL

Continental was given the opportunity to rebut the case presented by the Village.

**LEGAL
SUBMISSIONS**

Legal submissions were submitted by Continental and the Village, respectively, marked Exhibits 18 and 19. In addition, legal counsel for Continental and the Village presented detailed closing arguments to the Board.

BOARD ACTION

Exhibits 1 through 19 were received without objection. Preceding Board action Mr. St. Peter presented three versions of a proposed resolution. The first version was a resolution finding that the Board of Appeals lacked jurisdiction to hear the appeal. The second version accepts jurisdiction and grants Continental's requested relief. The third version accepts jurisdiction but denies the appeal. After further discussion, motion by Board member Rieck to accept jurisdiction and grant Continental's requested relief. The motion failed for lack of a second. Thereafter, there was a motion by Mr. Tomczyk finding that the Board lacked jurisdiction over Continental's appeal. There followed discussion of the motion, both pro and con. After further discussion the following resolution was approved on a vote of 4 yes, 1 no:

RESOLVED that, for the reasons described on the record at its June 25, 2015 hearing, which are incorporated by reference, the Village of Grafton Zoning Board of Appeals finds that it has no jurisdiction over Continental Grafton LLC's Application and, accordingly, takes no action on it.

FURTHER RESOLVED that the Village of Grafton Zoning Board of Appeals is aware that Continental Grafton LLC has, in other forums challenged the effect of the Village of Grafton Plan Commission's May 26, 2015 reconsideration of the Conditional Use Permit and expresses no opinion on the legal effect of that reconsideration.

ADJOURNMENT

No other business coming before the Board the meeting was adjourned.

Respectfully submitted,

Don Tomczyk, Recording Secretary

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Disposition Of Original Exhibits:

Attached To Original Transcript

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