



# City of Manitowoc

900 Quay Street  
Manitowoc, WI 54220  
www.manitowoc.org

## Meeting Minutes Plan Commission

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Wednesday, September 3, 2014

6:30 PM

Council Chambers

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### I. CALL TO ORDER

The Meeting of the City Plan Commission was called to order by Chairman Justin Nickels at 6:30 PM.

### II. ROLL CALL

**Present:** 8 - Steven Alpert, Dave Diedrich, Daniel Hornung, Nickels, Dan Koski, Jim Muenzenmeyer, Jim Brey and Dennis Steinbrenner

Staff Present: Paul Braun, Lisa Mueller

Others Present: Steve Hendrickson, Sarah Jacobchick, Sara Oostolyke, Norman Oestreich, Patrick Mealy, Kathryn Mealy, Ruth Mleziva, Milt Mlesiva, Deputy Chief Kadow, Jody Deering (Benley Manor), Rick Schwarz

### III. APPROVAL OF MINUTES

[14-1765](#) Approval of the Minutes of the August 6, 2014 Meeting.

**Moved by Dietrich, seconded by Hornung, that the Minutes be approved. The motion carried by the following vote:**

**Aye:** 8 - Alpert, Dietrich, Hornung, Nickels, Koski, Muenzenmeyer, Alderperson Brey and Steinbrenner

### IV. PUBLIC INFORMATIONAL HEARINGS

[14-1630](#) Communication from J&T REI, LLC requesting a variance to the 2500' rule for a planned CBRF on Cappaert Road to be developed into an 8 bed CBRF, recommending placing on file.

*PC22-2014: J&T REI, LLC d.b.a TLC Homes, Inc.; Request for Exception to 2,500' Separation Requirement Pursuant to Wis. Stat. § 62.23(7)(i)1. for Establishment of an 8-person Community Based Residential Facility (CBRF) at 2233 Cappaert Road.*

*Mr. Braun read the following back ground information into the record.*

1. Request is from Tim Frey as President of TLC Homes, Inc., which is a provider of group homes and associated services for challenged individuals. They are requesting that the City grant an exception to the 2,500' spacing and density requirement under Wis. Stat. § 62.23(7)(i) to operate a Community Based Residential Facility (CBRF) for a maximum of 8 persons.

2. The parcel is identified as Tract 4 of a Certified Survey recorded in Volume 10, Page 81. The parcel is a vacant lot located east of Cappaert Road and south of Plank Road. The average lot depth is 172 feet and the width is 90 feet wide for a lot area of

15,480 square feet. The address will be 2233 Cappaert Road.

3. The zoning on the property is B-1 Office – Residential District. Maximum Lot Coverage in the B-1 is 50% of the lot area.
4. The proposed building is approximately 56' x 65' which is 3,640 sq feet. The building will also have 8' x 47' porch along the front for a total lot coverage of 4,016 sq feet; which is 26% lot coverage. The building is identical to the building currently being constructed on Paul Road.
5. The structure will have 8 bedrooms, storage and bathroom facilities, along with a living room, kitchen and dining areas. There will be on-site parking for 6 vehicles. I note that there are no overnight or winter parking ban restrictions on either side of Cappaert Road.
6. The petitioner has been advised that we will require a formal site plan submittal for the project. The current plan is to begin construction in mid to late September with completion planned in April 2015 and licensing to start in May 2015.
7. J&T REI, LLC, which Mr. Frey is a member of purchased the property from Dominic Cilliberto on July 28, 2014. J&T will lease the building to TLC Homes, Inc.
8. A CBRF is included in the definition of a "Community Living Arrangement" under Wis. Stat. § 62.23(7)(i). A CBRF is specifically defined under Ch. 50 "Uniform Licensure" as a facility for 5+ adults who are not related, and do not require care above intermediate level nursing care reside and receive care, treatment or services that are above the level of room and board, but include no more than 3 hours of nursing care per week per resident. CBRF's are further regulated under Department of Health Services (DHS) 83 which details regulations and standards for the care, treatment and services, as well as the health, rights and welfare of residents of a CBRF.
9. TLC is requesting that the City grant an exception to the 2,500' provision contained in Wis. Stat. § 62.23(7)(i)1. which states that the City may, at its discretion, grant an exception to this statute to permit a Community Living Arrangement to locate within 2,500' of an existing CLA. The proposed CBRF is located approximately 428 feet from Harmony of Manitowoc West, which is a 43 bed CBRF located at Remiker Lane and Cappaert Road; and 1,367 feet from HIL Sierra Home which is a 4 bed Adult Family Home located on Kellner Street; and 2,200 feet from HIL Northwind and HIL Southwind which are 4 bed Adult Family Homes located on Country Lane. TLC Homes currently operates 6 other Community Living Arrangements in the City.
10. Wis. Stat. § 62.23(7)(i)2. States that the City may, at its discretion, grant an exception to the density requirement to permit a Community Living Arrangement if the total number of Community Living Arrangements exceeds 25 or if the total capacity exceeds 1% of the City's population. The statute also states that if in the aldermanic district there are more than 25 Community Living Arrangement or if the total capacity exceeds 1% of the population in the district an exception to the density requirement is needed.  
  
Currently there are 32 facilities with a total of 408 beds licensed in the City which is greater than 1% of the population. In Aldermanic District 10 there are 88 beds licensed which is greater than 1% of the District's population which would be 34.
11. 8 individuals will reside at the facility moving from an existing CBRF TLC operates. The individuals are aging and developing mobility issues. The CBRF license TLC will

hold would allow developmentally and physically disabled individuals along with traumatic brain injury adults. During the day the home will have at least one employee on-site when a resident is present, it will also have 2 staff on duty morning and evening hours to assist residents in getting ready. On Weekends 2 staff will be present during the mid-day hours. Most of the residents work at Holiday House during the week so they will not be at the facility.

12. The subject parcel has an estimated fair market value of \$33,450 and generates approximately \$752 in real estate taxes. Surrounding land uses are residential and commercial to the north and east, multi-family to the west and residential to the south. Surrounding zoning is: "R-4" Single and Two Family, "R-6" Multiple Family, "B-1" Office Residential, "C-1" Commercial and "B-3" General Business.

13. Under the "B-1" zoning, a Community Living Arrangement for 15 or fewer individuals is a permitted use, and does not require a Conditional Use Permit (CUP).

14. As mentioned in past meetings regarding this kind of request, the purpose of the 2,500' spacing requirement is to disperse Community Living Arrangement's throughout the community, and to avoid over intensifying the location of such person's into limited geographic areas.

15. Community Living Arrangements are regulated under Wis. Stat. § 62.23(7)(i) which includes the following provisions:

- A. (7)(i)1. is in regard to the 2,500' separation requirements for Community Living Arrangement's and that an agent of a facility may apply for an exception to this requirement, and the exception may be granted at the discretion of the City ;
- B. (7)(i)2. is in regard to population density requirements; and
- C. (7)(i)3. states that a Community Living Arrangement is entitled to locate in any residential zone without restriction as to the number of Community Living Arrangement's and may locate in any residential zone, without being required to obtain "special zoning permission", except for the annual review provision under (7)(i)9. of the statute.

16. Additionally, CBRF's are regulated by the State's Department of Health Services, and are further required to meet the certification requirements under Wisconsin Administrative Code DHS 83. The Division of Supportive Living is responsible for the licensing of all CBRF's in Wisconsin, and no CBRF's can operate unless they have been certified to do so by DHS.

17. Among the requirements for operation of a CBRF include:

- A. Filing of a program statement with the State that details evidence of financial ability to operate, fire evacuation plan, resident rights and grievance policies.
- B. Providing evidence that the applicant for licensing has made a good faith effort to establish a community advisory committee (communication link between the facility and neighborhood).
- C. Staffing requirements:
  - 1. At least 1 staff present when 1+ residents present in house.
  - 2. At least 1 staff present when 1+ residents in need of supervision.
- D. Resident rooms which typically require:
  - 100sf/resident for single occupancy bedrooms.
  - 80sf/resident for multiple occupancies.
- E. Common dining and living space of 60sf per ambulatory or semi-ambulatory resident, and 90sf per non-ambulatory resident.
- F. Medication storage areas, and administration requirements.
- G. Criminal background checks.
- H. Training.

18. Notices were mailed from our office on August 27th to property owners within 200' of the subject property.

*I did have a conversation with Attorney Andy Stiemle, who represents Benley Manor which is across the street from facility. Andy called on behalf of the property manager and stated that his client was opposed to the development and had concerns regarding parking on Cappaert Road. I explained to Andy that there will be a paved parking area in front of the building so there shouldn't be individuals parking on the street and that the residents don't drive.*

19. *As an additional comment on the legal issues surrounding these facilities, Wisconsin courts have found that the spacing requirement and the variance procedure, as well as other siting and density criteria in the statute were inconsistent with the legislative histories of both the Federal Fair Housing Amendments Act of 1988 (which explicitly prohibits discrimination in housing because of a handicap and prohibits a refusal to make reasonable accommodations in rules, policies, practices or services when such an accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling) , and the Americans with Disabilities Act , and as a result, were pre-empted by both laws. So, while a municipality may not intentionally discriminate against the disabled, it may be unlawfully discriminating by failing or refusing to make a reasonable accommodation, which means that it would have to demonstrate and prove that the accommodation was infeasible or impractical, or would impose undue financial or administrative burdens.*

*Mr. Braun concluded his informational presentation to the Commission.*

*Mayor Nickels opened the discussion up to the Plan Commission.*

*Mr. Diedrich commented about the Community Living Arrangement map that shows all the existing facilities with a 2,500' radius drawn around them; and basically that any future CBRF will need to request an exception to the 2,500' radius rule. Mr. Braun stated that is correct and if a new facility doesn't need the 2,500' separation exception they will always need the density exception because there are more the 25 existing facilities and the population of the number of beds in the City is over 1% of the City's population.*

*Mr. Diedrich commented that at the Paul Road CBRF informational hearing earlier in the year a neighbor commented that if he knew the courts have stated that it is illegal for a community to not allow these facilities then why was the neighborhood invited to the meeting. Mr. Diedrich felt that the comment had merit and that the neighbors should be made aware of the courts opinion. Mr. Diedrich suggested that some verbiage be added to the public notice that is sent to the neighbors making them aware of the courts stance; and that a community cannot discriminate against Community Living Arrangements. The Commission agreed with the commentary and future notices will have some additional verbiage explaining incorporating the courts actions on the topic.*

*Mayor Nickels opened the discussion up to the public.*

*Jody Deerling, the property manager from Benley Manor which is across the street expressed concerns over on street parking in the area and traffic in general. The Commission stated that there will be an off-street parking lot for up to 6 cars so there shouldn't be any on-street parking issues. The residents do not drive so parking is for staff or visitors.*

*Historically the Commission has found that these facilities do not create any issues in*

*the neighborhood and there is an annual review of the facilities.*

*Steve Hendrickson, TLC Homes, stated that the plan is to start construction in October, 2014 and then apply for licensing from the State; the building must be completed prior to the State issuing any licenses. The facility will be open in spring of 2015.*

*The Recommendation to Council was: Grant exception to 2,500' spacing requirement and density requirement as requested by J&T REI, LLC d/b/a TLC Homes, Inc. (together "TLC") pursuant to Wis. Stat. § 62.23(7)(i)1. and 2. with the understanding that if TLC does not secure all required licenses from the State by September, 2015, this exception is void and terminates effective October 1, 2015.*

*Mr. Diedrich requested that in future public notice letters sent to the neighbors there should be text added explaining that the courts have determined that a municipality cannot discriminate against these facilities. The Commission agreed with Mr. Diedrich and would like the text added into future notices.*

**This Communication was recommended for approval to the Common Council.**

**Aye:** 8 - Alpert, Dietrich, Hornung, Nickels, Koski, Muenzenmeyer, Alderperson Brey and Steinbrenner

## **V. REFERRALS FROM COMMON COUNCIL: None.**

## **VI. OLD BUSINESS**

### [14-1764](#)

PC18-2014: Update - Manitowoc County Request to Demolish Building at 823 Washington Street

*Mr. Braun gave the Commission an update regarding Manitowoc County's plan to raze a building located at the southeast corner of Washington Street and S. 9th Street; the former County Health Offices. At the June 2014 Plan Commission the County presented their plan to raze the building. From that meeting the City and State Historical Office placed conditions on the project prior to razing the structure. Some of the conditions were that the County must advertise that the building is available to be relocated and the notice must be placed in the local and regional newspapers. The County didn't receive any offers on the building. If no offers were received the County would have to document the structure with a written narrative including photos. The County would also need to ask the local historical society to walk through the building so they can remove any historical artifacts.*

*Mr. Braun stated to the Commission that the County has addressed all of the conditions that were required by the City and State agencies and that the Building Inspector will be instructed to issue the razing permit as needed. No action was required from the Commission the topic was an update.*

**This Report was discussed. No Action taken.**

### [14-1766](#)

Discussion regarding Comprehensive Plan Review.

*Mayor Nickels gave the Commission a brief update regarding the hiring of the Community Development Director. The Community Development Director will replace the retired David Less and Mr. Braun will be the City Planner.*

*Mayor Nickels said at this time he doesn't have any specific items to discuss related to the Comprehensive Plan but just wanted to have the Commission become more familiar with it.*

*The Plan Commission wanted to determine a few priority items that are discussed in the comprehensive plan. Three main items were discussed: sign ordinance, housing code / property maintenance and the Canadian National property west of N. 10th Street.*

*The Commission discussed updating the sign code which is in Chapter 15 of the Municipal Code. The discussion centered around the ambiguities in the sign code and that it is very difficult for contractors and staff to interpret and understand. There are sections of the code that are contradictory. The Commission felt that if there are outside entities that have a model sign ordinance in place, such as Vandewalle and Associates the City should look into hiring them to make the process more streamlined and efficient. The Commission will have to look 20 years out to determine where the city wants to be in regards to our sign code. After the discussion, it was determined that a subcommittee would be set up to look at the sign code changes in more detail to determine the best route to go to make the code changes.*

*The Commission also discussed housing code and property maintenance issues, and how properties that are not maintained are a negative influence on the neighborhood. The Commission would like to look at the housing stock in the City and try to find ways to improve it. The old housing code enforcement program that the City ran approximately 4 years ago was very successful and should be reinstated. Blighted properties in a neighborhood bring all other neighboring properties down and create many other issues such as crime, low land values, low reinvestment and poor resale.*

*The Canadian National peninsula property which is west of N. 10th Street and north of the Manitowoc River was also discussed in generalities by the Commission. The Commission felt that this site is integral to the downtown and needs to be a redevelopment site.*

*The Comprehensive Plan discussion was general discussion and no specific action was taken by the Commission.*

**This Report was discussed. No Action taken.**

## **VII. NEW BUSINESS: None.**

## **VIII. MISCELLANEOUS: None.**

- A. Manitowoc County Activities: None.
- B. Certified Survey Maps (CSM): None.
- C. Summary of Site Plans: None.

## **IX. ADJOURNMENT**

**Moved by Muenzenmeyer, seconded by Alpert, that this meeting be adjourned.  
The motion carried by the following vote:**

**Aye:** 8 - Alpert, Dietrich, Hornung, Nickels, Koski, Muenzenmeyer, Alderperson Brey and Steinbrenner

Respectfully Submitted,

Paul Braun  
Interim Secretary