

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
APRIL 13, 2016**

CALL TO ORDER: 5:30 p.m.

ROLL CALL: Chairman White, Members, Fritsche, Schleif and Hansen were all present. Community Development Director Retzlaff, Attorney Sajdak, Attorney Dineen and Secretary Johnson were also present. Member Filla previously recused herself.

Continuation of deliberation and action by the board from February 10, 2016, regarding the appeal of Rogahn Kelly, on behalf of JBJ Companies, INC., agent for Heritage Place Joint Venture, hearing held on 2-10-16: Appeal as filed by Rogahn Kelly, on behalf of JBJ Companies, Inc., agent for Heritage Place Joint Venture, appealing the decisions of the Village of Germantown Plan Commission from December 14, 2015, regarding the site plan application for the proposed six-building, 172 apartment residential development known as Saxony Village for the property located at: Tax Parcel GTNV#224-992 located at approximately N116 W16200 Main Street. (The continued hearing was transcribed by a court reporter.)

Attorney Dineen said there was a concern raised about the possibility that there had been ex parte communications or contacts with members of the Board of Zoning Appeals. Each member confirmed they had not received any ex parte communications or information and Attorney Dineen was satisfied that it had not occurred. Chairman White said the public hearing was closed on February 10, 2016 and he did not anticipate taking any additional evidence. Attorney Sajdak, Attorney Kelly and the Board of Zoning Appeals members all agreed they did not need to hear any additional evidence. Chairman White confirmed with Attorney Sajdak that he had not filed a brief. Attorney Sajdak said the arguments address all the issues appropriately. Chairman White asked Attorney Sajdak if there was any argument the Village is making with respect to the distinction between gross acreage and net acreage. Attorney Sajdak confirmed there was not an argument as it relates to that particular issue.

Attorney Kelly said there had been questions regarding the scope of the Plan Commission's authority and read from the Municipal Code Chapter 17.49 Architectural Control. He said the Plan Commission did not act on the confines of its authority and acted as if it was the owner of the property. Chairman White said Attorney Kelly only read from parts of the code and not the entire Chapter. Attorney Kelly detailed his position on the grant of authority of the Plan Commission citing specific cases, State Statutes and Supreme Court decisions. Chairman White confirmed that Attorney Kelly's argument is that the ordinance must be strictly construed and the Plan Commission must apply the ordinance. Attorney Kelly went on to state he feels the Plan Commission did not apply the ordinance by not referencing standards or statutes. Attorney Dineen said he believed there was not a violation of the code. Attorney Kelly continued with summarizing the actions of the Plan Commission, what they did and said and that their discussions did not equate to reasons, reference to standards or statutes. He said the Plan Commission stated their personal preferences and were exercising their will and not their judgment. He asked the Board of Zoning Appeals to reverse and reinstate the developments plan with respect to the number of units at 172, allow the building to be placed where they are on the plan and that they be allowed to exercise at their discretion to use flat roofs versus gabled roofs.

PUBLIC HEARING Cont.:

Attorney Sajdak stated his response. He agreed that in a text book scenario everything Attorney Kelly described is what should happen where Plan Commissioners point to very specific code provisions, but in reality Plan Commissions do not operate that way. He said they deal with all the circumstances and discussions that happen around them and have influenced them. He said the issue is whether or not the Plan Commission operated within the law that is provided. He continued to explain the actions of the Plan Commission do not need to point to a particular ordinance to deny. He stated the applicant doesn't list all the public comments and concerns brought up during public comment or the significant discussion on net versus gross that gave the Plan Commission valid reasons for their decisions.

Attorney Kelly said the Plan Commission needs to point to an ordinance or statute when they deny. He continued with his summary stating the Plan Commission does not have the authority to redesign a development. He said he doesn't believe the Plan Commission acted according to law and there is no evidence to justify their decision.

MOTION (White/Fritsche) to go into closed session per WIS. Stat. 19.85(1) (A) for the purpose of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before the Board and after the closed session it may reconvene in open session to announce its decision per WIS. Stat 19.85(2).

Chairman White stated the 4 members of the Board and Attorney Dineen will go into closed session and return into open session for a decision. Neither party had any objection to the Board going into closed session.

Roll Call vote and MOTION carried unanimously.

The Board convened to closed session at 7:07 p.m. into conference room A.
Meeting reconvened in open session at 9:21 p.m.

MOTION Fritsche second Hansen that the Board of Zoning Appeals finds Plan Commission exceeded its authority in reducing the units from 172 to 142 and grants the appeal.

Roll Call vote and MOTION carried unanimously.

MOTION Hansen second Schleif that the Board of Zoning Appeals finds that the Plan Commission exceeded its authority in reducing the number of apartment buildings from 6 to 5 along with the associated attached garage buildings and prohibiting any buildings from being located in the southeast corner of the site based on the record and the appeal on this item is granted.

Roll Call vote and MOTION carried 3 (Fritsche, Hansen and Schleif, Aye) to 1 (White, Nay).

MOTION Schleif second Fritsche that the Board of Zoning Appeals finds a gabled roof requirement the Plan Commission properly exercised its power.

Roll Call vote and MOTION carried unanimously.

Chairman White said the Board will issue a written decision and it will be filed with the secretary, and distributed.

NEXT MEETING DATE AND TIME: April 27, 2016 at 5:30 p.m.

ADJOURNMENT: *MOTION Schleif second Fritsche to adjourn the meeting at 9:26 p.m.*

Roll Call vote and MOTION carried unanimously.

Respectfully submitted,

Lori Johnson
Secretary