

PLAN COMMISSION MINUTES

November 14, 2022

CALL TO ORDER: Chairman Wolter called the meeting to order at 6:30 pm.

ROLL CALL: Chairman Dean Wolter, Trustee Representative David Baum, Commissioners Peter Nilles, Bill Shadid, Bob Williams and Josh Tarantino were present. Commissioner Tony Laszewski was absent and excused. Also present were Community Development Director Jeff Retzlaff, Associate Planner Emily Zandt and Planning Assistant Lori Johnson.

PUBLIC INPUT:

- Melanie Smythe, N140 W17938 Cedar Lane – said she has nothing against developers but she has a passion for this community and the quality of life and is saddened to see more of our green spaces and farm land disappearing by large warehouses. Her concern is for the quality of life for the people who have been here. She mentioned the referendum and that it passed by less than 5 percent.

APPROVAL OF MINUTES:

MOTION Baum second Shadid to Approve the minutes from October 10, 2022.

MOTION carried unanimously.

TID No. 9 Boundary Amendment and Project Plan - Tax Incremental District No. 9 (TID#9) is a 38.15-acre "industrial" TID located at the Donges Bay Road @ Wasaukee Road intersection. TID#9 was created in June 2022 under Village Board Resolution No. 23-2022. The purpose for TID#9 was to provide infrastructure financing necessary to support the creation of a new industrial district in the southeast corner of the Village and the public infrastructure needed for the construction of the Village's planned Department of Public Works facility. Associate Planner Zandt summarized the proposal. Phil Cosson, Ehlers, reviewed the proposed Amendment and Project Plan.

Public Hearing Opened 6:51 pm.

- Scott Hefle, W159 N10514 Old Farm Road, cautioned the Plan Commission that a TID uses tax payer dollars and they should carefully weigh what is going on and make good decisions. He asked if anyone had talked to Mequon residents about their concerns.
- Ryan Evans, N108 W12729 Coneflower Circle, asked for consideration with light pollution and the number of trucks. Put some berms up in consideration for the neighborhood.
- Luke Korth, 12122 W. Shawnee Pass, Mequon, had concerns with light and noise pollution and wetland filling. He asked if there are plans to install berms to help reduce noise and light pollution.

Public Hearing Closed 7:01 pm.

MOTION Baum second Shadid to Approve the amendments to the boundary map and Resolution 03-2022.

Discussion followed. Commissioner Williams asked a question on cash flow related to the tax value and asked if a sensitivity analysis was done. Mr. Cosson said it was not included in the packet but he could get a revised packet back to staff. Chairman Wolter questioned if the Developers agreement will be finalized at the time it goes before the Village Board. Village Administrator Steve Kreklow said the agreement would not be available at that point, but most of the terms that were laid out were included in the sale agreement. The bulk of what was negotiated on the initial parcel has nothing to do with the amendment. He said the sale on the Krause property is not final yet but the developer agreement will probably be much smaller since those other issues were already addressed.

MOTION carried unanimously.

Kevin Behnke, Apple Works Winery – W179 N12536 Fond du Lac Avenue. The property owner, is requesting approval of an amendment to Conditional Use Permit #01-13 to revise the hours of operation and expand the existing winery operation to include an existing 2,880 sqft renovated barn with a seating capacity of 125 persons, additional on-site vehicle parking, and use of the existing dwelling as a “bed & breakfast” type short-term rental on the 10.8 acre Apple Works Winery property. Director Retzlaff summarized the proposal.

Public Hearing opened at 7:19 pm.

- Adam Forstner, W190 N12705 Deerwood Circle, commented it's a very low-key place, small Business like this is sought after, he supports the changes.
- Jan Miller, W151 N10297 Windsong Circle West, spoke in favor of the proposal, classy, low-key business, has been in the community, checks off all the questions from the past, family owned business, should support bed and breakfast.
- Deborah Hembrook, N128 W17358 Holy Hill Road, supports the expansion, said it's a lovely place, owner greets everyone, barn is gorgeous place, very impressed when there, owners into safety and regulations.
- Bob Warren, W168 N10766 Juniper Drive, supports and is impressed with the operation, Behnke wants to work with neighbors and Village, put extra insulation in the barn, sound limits are proactive, confident concerns from abutting neighbors would be addressed
- Sam Kruschell, W177 N12581 Apple Blossom Lane, biggest concern is noise, sound monitoring system is great but questioned if it was done when there were 125 people there. Traffic comes down private driveway all the time, not super for it, for the winery but expanding is snowballing it.
- Kirk Will, W177 N12604 Apple Blossom Lane, Chairman Wolter read comments into the record. He is opposed, greatly increased traffic and noise if approved, owner doesn't follow through with promises, 2050 Plan falls under rural preservation district, asked to deny the proposal.

Public Hearing closed at 7:32 pm.

MOTION Baum second Shadid to Approve a conditional use permit amendment to CUP#01-13 for the 10.8-acre Apple Works Winery property located at W179 N12536 Fond du Lac Avenue subject to the following conditions (these conditions are inclusive of the conditions that apply to use of the property for the winery operation and associated activities; these conditions replace those adopted in the original permit #01-13:

- 1. This permit authorizes limited uses and activities as set forth in the original application for CUP# 01-13 and the amendment application dated August 5, 2022, including special “events” and in the supporting documents made part of the application on file with the Village. All of the operational characteristics and services as described, as well as any commitments made by the Applicant as set forth in the application, supporting documents, and made during presentations to the Village Plan Commission, Village Board and Village staff are deemed to be conditions of approval.***
- 2. For purposes of administration and enforcement of this CUP, the following terms are defined:***
 - a. “Event” or “events” is/are an organized or spontaneous party, meeting, dinner, wine tasting, celebration, ceremony, wedding, reception, workshop, conference, corporate function, or other similar activity held for the benefit of and attended by persons in addition to and/or other than the property owner for a common***

purpose that occurs on the property on an irregular, periodic or one-time basis. This definition does not include uses or activities that are typical and customary accessory uses to a single-family residential use, such as private parties, gatherings and similar activities conducted by and for the benefit of the property owner and his/her immediate family (spouse, domestic partner, child/stepchild, parent/stepparent). This definition does not include regular activities uses or activities that are typically and customarily associated with the daily operation of a café, restaurant, or bar/tavern.

- 3. If the use, activities and/or operation subject of this permit falls out of conformity with the conditions herein, or where there is a change in the nature, character, intensity or extent of the permitted conditional uses and activities which cause special problems or harmful effects associated with the permitted uses and activities that were not revealed or anticipated at the time this CUP was granted, or, where conditions imposed by this CUP that were anticipated to mitigate or eliminate harmful effects associated with the uses and activities but are subsequently insufficient to do so, or, for similar cause based upon consideration for the public comfort, safety, and welfare, this conditional use permit may be terminated or modified by the Village Board by the amendment to or addition of conditions after public hearing thereon.*
- 4. In the event the Village receives complaints regarding noise, activities or other negative impacts on surrounding neighborhood and properties, the Owner/Operator shall work cooperatively with the Village to mitigate and resolve the issue.*
- 5. Site improvements, buildings, signage, exterior lighting, and any other improvements on the property that are necessary for the land uses and activities authorized under this CUP shall be reviewed and approved by the Village through the Zoning Permit or Site Plan application process as determined by the Village Zoning Administrator. If required, Site Plan review and approval will include Plan Commission review and approval.*
- 6. Building permits and commercial building code plan approval are required for the proposed remodeling; contact Inspection Services prior to any work for details on the required permits and plan approvals.*
- 7. Washington County shall be consulted regarding compliance with all applicable POWTS sanitary requirements that may result from the expanded use of the renovated barn and overall property for public and private events and uses.*
- 8. Applicant to obtain all required liquor licenses and/or permits from the state and Village prior to any events held on the property.*
- 9. All signage, temporary and permanent, requires a permit; contact Planning & Zoning Services for details.*
- 10. A pre-occupancy inspection of the renovated barn by the Village Building Inspector and Fire Chief is required prior to commencing use of the renovated barn for winery events.*
- 11. This Conditional Use Permit shall be transferable to an immediate family member only. In the event there is a change in the owner/operator of the winery operation outside the immediate family, this CUP shall become null and void. A new CUP shall be required in order for a new owner/operator to commence operation of a winery, event venue and/or storage operation from this property.*
- 12. In the event the Village receives complaints regarding noise, activities or other negative impacts on surrounding neighborhood and properties, the Owner/Operator shall work cooperatively with the Village to mitigate and resolve the issue.*
- 13. Applicant to obtain all required liquor licenses and/or permits from the State and*

Village.

- 14. There shall be no licensing for the sale or dispensing of hard liquor on site for business purposes. In the event the property owner would like to apply for additional liquor licensing (i.e. hard liquor license), an amendment to this Conditional Use Permit is required to be approved by the Village Plan Commission and Village Board prior to the issuance of said permit.***
- 15. The property owner shall record a deed restriction for the subject property that limits access from STH145 to the existing driveway only and prohibits any new or additional access driveways unless approved by the WisDOT and Village of Germantown. Said deed restriction shall be recorded prior to or concurrent with Village approval of the Site Plan for the event venue project or six (6) months after the date of recording of this CUP, whichever comes first.***
- 16. Not including service staff, the maximum property capacity shall not exceed 175 persons at any one time.***
- 17. Operational hours for the winery and events are permitted to be 10:00 am to 9:00 pm Sunday through Saturday.***
- 18. Outdoor music is allowed only on/from the outdoor patios north/northwest of the tasting room building. Outdoor music shall be permitted between 12:00pm and 6:00pm only on Sunday through Thursday, and from 12:00pm until 9:00pm on Friday and Saturday. Outdoor music shall be limited to low impact acoustic-type instruments (e.g. string instruments, piano, woodwind instruments) with small, low wattage amplifiers or personal-sized PA system speakers by solo artists or small ensembles.***
- 19. Indoor music is allowed only in the tasting room building and the renovated barn shall be permitted between 12:00pm and 6:00pm only on Sunday through Thursday and from 12:00pm until 9:00pm on Friday and Saturday.***
- 20. The hours of operation shall be between 10:00am and 9:00pm Sunday through Thursday, and between 10:00am and 11:00pm on Fridays and Saturdays. Only clean-up type activities may take place between 10:00pm and 11:00pm on Friday and Saturdays.***

Discussion followed. Mr. Behnke said he's held true to the 2013 proposal that the operation would be quiet but he can't control people driving on the private driveway. He said he does not serve hard alcohol and there are no police reports. He is asking for 2 additional hours and the bed and breakfast. The home was built by German immigrants and it would be nice to preserve that history. There have been no problems with the winery and people come from all over, it is a destination business. He explained the sound analysis equipment can produce sound data on any day and he monitors it 24/7. He stated he will keep the sound analysis system in. Mr. Behnke said he had a problem with Condition #11 as it relates to the CUP may transfer to a family member only.

Discussion continued. Mr. Behnke said the business expansion is 75-100 feet of area. He said he had remodeled the barn for his daughter to get married in. Director Retzlaff explained the new shed and renovated barn are not part of the current winery operation. He also explained the intent of Condition #11 is to require a non-family owner to get a permit and state what their intention is. Chairman Wolter stated a new owner would need to resubmit their application and if the business is the same the permit would be reissued to them or anything additional could be approved. Mr. Behnke asked if Old Germantown has that condition. He confirmed no hard alcohol would be served and is not included in this proposal. Trustee Baum commented that Plan Commission approved the last proposal but Village Board shot it down. He said he supported the proposal then and supports it now adding that

more neighbors came out to the last meeting. Chairman Wolter commented the Village Board did not want to mix the business with residential. But the Board is now changed with new members. He said the proposal is not much different than the last time and he supports it. Mr. Behnke added the proposal is a lot smaller. He said he has no intention to expand the menu past the frozen stuff he offers; he does not want to be a restaurant. He mentioned the catering kitchen is for catered events such as bridal showers that he has held there.

MOTION to Amend Baum second Williams to add Condition #21 that the sound measuring system be operational while the business is operational.

MOTION to Amend carried unanimously.

MOTION to Amend Shadid second Baum to revise Condition #19 that indoor music is permitted until 10 pm.

MOTION to Amend carried unanimously.

MOTION to Approve as amended carried unanimously.

MOTION Baum second Shadid to Approve the proposed “bed & breakfast” style short-term rental, staff recommends adding the following conditions:

22. The short-term rental can only operate if the owner of the dwelling also resides on the property and serves as caretaker for the short-term rental;

23. If and when the dwelling used for the short-term rental is no longer used exclusively as a short-term rental, said dwelling would be deemed to no longer be an accessory structure and use thereof, and as a result, would have to be divided off onto a separate parcel pursuant to Section 17.13 in order for the dwelling to be used as a principal residential use;

24. The owner/operator of the short-term rental shall satisfy all rules, regulations, and licensing requirements for short-term rentals adopted and enforced the Village of Germantown at the time the dwelling commences being used as a short-term rental, and, all applicable Washington County and State of Wisconsin regulations and licensing requirements, including but not limited to registration and licensing with the Wisconsin Department of Revenue (DOR) and/or Department of Agriculture, Trade & Consumer Protection (DATCP) for purposes of code compliance and collecting applicable state, county and local sales, room and other taxes.

25. Prior to commencing operation of the short-term rental, the owner/operator shall provide a detailed plan of operation to the Community Development Department.

Trustee Baum commented he had the privilege of working on a farm style venue similar to this and it has been a hit of that facility. He said this would not be a detriment to the area.

MOTION carried unanimously.

Heritage Park – Keith Kindred, SEH, agent for Home Path Financial LP, property owner, is requesting approval of a final subdivision plat for “Heritage Park North” (35 single-family lots), a 32.98-acre residential development located east of Division Road and north of Revere Lane.

MOTION Baum second Nilles to Approve the final subdivision plat for the 35-lot Heritage Park North residential subdivision located east of Division Road and north of Revere Lane subject to the following conditions:

- 1. A Letter of “no objection” from the WI Department of Administration (DOA) shall be submitted to the Village prior to recording the final plat.***
- 2. As-built (record) drawings shall be submitted and accepted by the Public Works Department prior to the issuance of any building permits.***
- 3. All technical issues and corrections identified by the Village Surveyor (see September 16, 2022 memo) shall be addressed and reflected in the revised plat submitted and approved by Village Staff prior to the recording of the final plat.***
- 4. The Declaration of Covenants, Conditions and Restrictions of the Heritage Park North Subdivision shall be submitted prior to Village Board review. The document shall include the items specified under Section 9.11 of the Development Agreement.***

Chairman Wolter added his property backs up to this subdivision and said many of the people along Larkspur Lane were concerned about runoff and drainage. He commented when the big rain event happened that no water came across and flooded any of the properties. The drainage ditches worked to design and the retention ponds were full but not overflowing. He applauded the developer for the drainage and grading plan.

MOTION carried unanimously.

Associate Planner Zandt summarized the proposed subdivision sign.

MOTION Baum second Shadid to Approve the permanent real estate sign Heritage Park North residential subdivision subject to the following conditions:

- 1. Electrical permits shall be obtained from SafeBuilt prior to installation of any/all electrical components.***
- 2. The uplighting shall be shielded to reduce glare visible from Division Road and Tanglewood Drive by locating behind landscaping and/or with side shields.***

MOTION carried unanimously.

Mike Faber, Capstone Development Company – N128 W20955 Holy Hill Road. Site Plan Consultation for Phase II of the Capstone 41 Business Park and 294,600 sqft multi-tenant industrial building. Director Retzlaff summarized the proposal to for discussion. Mike Faber spoke on Phase II. He explained an opportunity opened up to receive precast concrete panels and to take advantage of they needed to have everything ready by May 2023. So footings and foundations would need to be done this fall, but they did not have enough time to fully design the building and go through the normal Plan Commission process. He explained they will put in the footings and foundation in December at their risk before Plan Commission approval. He is looking for discussion on any aspects of the plan. The building will feel like a close sibling to the other building with architecture in the same family. They know the expectation of the Village is to extend the exact same berm and landscaping that was approved for Phase 1 continuing along Holy Hill Road to the east and the grading of the site will probably provide better protection from the truck court. Both of the storm ponds were already constructed with Phase I.

Trustee Baum commented the plan looks like a bigger brother to the existing building, details and color are the same. Commissioner Shadid agreed. Chairman Wolter asked if the landscaping plan was similar. Director Retzlaff confirmed it was but asked about the color scheme. Trustee Baum suggested changing to more of an earthtone color pallet. Mr. Faber stated he currently has 2 interested users.

Taco Bell – N96 W17802 County Line Road. Lemberg Electric, agent for Michael Schmitz - Taco Bell, property owner, is requesting approval for ground, wall, and digital menu board for the new Taco Bell building. Associate Planner Zandt summarized the proposal.

MOTION Baum second Williams to Approve the proposed sign package for Taco Bell at N96W17801 County Line Road subject to the following conditions:

- 1. The applicant shall work with Planning Staff to modify the proposed pylon sign to meet the current requirements for ground signs as identified in Section 17.46 to include a masonry base (to match the masonry column of the building), 5" address coordinates, and a maximum height of 10'.***
- 2. Electrical permits shall be obtained from SafeBuilt prior to installation of any/all electrical components.***

MOTION carried 5-1 (Baum).

Raymond Company – N102 W19300 Willow Creek Way. Marilyn Renard, FastSigns, agent for Raymond (Stoffel Equipment Company, Inc) and Ryan Companies US, Inc property owner, is requesting approval for one (1) new wall sign. Associate Planner Zandt summarized the proposal.

MOTION Baum second Shadid to Approve the proposed wall sign for Raymond located at N102W19300 Willow Creek Way, Suite B.

MOTION carried unanimously.

ANNOUNCEMENTS: Chairman Wolter said anyone interested in the 2023 Budget should attend the Village Board meeting on 11/21/22.

ADJOURNMENT: There being no further business the meeting was adjourned at 8:35 pm.

Respectfully submitted,

Lori Johnson
Planning Assistant