

**PLAN COMMISSION MINUTES
5500 SCHOFIELD AVENUE
WESTON, WI 54476
MONDAY, AUGUST 29, 2011 – 5:30 P.M.**

I. CALL TO ORDER

Village President, Fred Schuster called the special meeting to order at 5:35 p.m. Members present were John Evans, Karen Schmutzler, Dave Diesen, Mark Maloney, and Dan Froelich. Mike Stenstrom was unexcused. Community Development Director, Jennifer Higgins, Building Inspector, Scott Tatro, and Recording Secretary, Valerie Parker were present. There was 10 audience members present.

II. PUBLIC HEARINGS

A. PUBLIC HEARING – APPLICATION REZN-8-11-1224 REQUEST TO REZONE A PORTION OF 6615 COUNTY ROAD J FROM M-1 (MANUFACTURING AND WAREHOUSING) TO M-1 (MANUFACTURING AND WAREHOUSING) WITH AN OIP (INSTITUTIONAL AND PUBLIC SERVICE OVERLAY DISTRICT) FOR PEOPLE’S STATE BANK.

1. OPEN HEARING AND SOLICIT PUBLIC COMMENT

Attorney David Eckert, on behalf of People’s State Bank, was present in support. He introduced Ken Stengal, of People’s State Bank, and Pastor Ken Moberg, of Highland Community Church, and Attorney Scott Jackman, representing Highland Community Church. He stated that this will allow the transaction (closing on the property) to occur in the next several weeks. Zuleger asked if they are willing to have this rezone request contingent on a successful closing. Eckert stated that they would be willing to do this.

No one spoke in opposition.

Zuleger pointed out that this purchase by the church will take about \$1 million out of the Tax Incremental Financing (TIF) district. He stated that it does not really hurt the Village’s ability to serve debt, but it is in the TIF district, and will become a tax exempt property. It was pointed out that our TIF district is cash flowing at this time.

Virgil Kufahl, 10001 Schofield Avenue, was present. Kufahl stated that he spoke to the applicants and they were able to answer his questions already.

2. CLOSE HEARING

Schuster closed the hearing at 5:35 p.m.

3. DISCUSSION AND ACTION ON REZN-8-11-1224

Evans stated that although he has a concern of our losing tax base, he has more of a concern on the empty building. He is okay with this, now knowing that the TIF district is cash flowing. Jackman and Moberg explained that they are only purchasing a portion of the lot. *[Clerk’s Note: The church group is purchasing a portion of the Callon Corners property at 6615 County Road J, which consists of the existing building and parking lot.]* Zuleger pointed out that this will bring in more activity to this corner, and will hopefully improve the chances of future development in this area.

****M/S/P Maloney/Diesen: to provisionally approve application REZN-8-11-1224, contingent on the successful closing of this property.***

III. PUBLIC COMMENT

None.

IV. UNFINISHED BUSINESS**1. APPLICATION REZN-7-11-1216 AMENDMENT TO OPERATIONAL PLAN FOR OME (OVERLAY MINING EXTRACTION) AT 3810 CAMP PHILLIPS ROAD (EAU CLAIRE RIVER, LLC) – DENIED BY PLAN COMMISSION ON 08/08/2011 AND REFERRED BACK TO PLAN COMMISSION BY VILLAGE BOARD ON 08/15/2011.**

Schuster explained that the Plan Commission denied this on August 8th, then the Village Board on August 15th, after receiving some new information, referred it back to the Plan Commission.

Zuleger stated between the Plan Commission's last regular meeting, where they denied this request and at the last Village Board, we heard from seven different neighbors, surrounding the Eau Claire River LLC property, asking if we were not being prudent in not granting the amendment to the operational plan. He stated that three lead neighbors (Joe Jordan, Mike Schoenherr, and Scott Turner) came forward along with phone calls received from other neighbors. The consensus of the neighborhood, when we put these operational plans in place to preserve the quality of life, those folks had the consensus that by allowing Eau Claire River LLC to bring in additional gravel to satisfy the Domtar bid, that it would somehow expedite the project as a whole, make the project go faster and cut down on the noise, the dust, and other nuisances that go along with this operation, that they would be in favor of this current request. In answering the requests of the taxpayers, the Village Board took that into consideration and had then sent this request back to Plan Commission for reconsideration.

Zuleger stated that there are basically 4 issues here. The first issue being the nuisance that comes with the gravel crushing operation; which is supposed to take place limitedly in this season as the road construction gets taken care of. The gravel crushing and machinery operation has two parts to it; that being Eau Claire River, LLC (Gary Guerndt) and Merrill Gravel and Construction (Dick Schumitsch Family) also doing work there on Camp Phillips Road. A lot of times it is difficult for the taxpayers to sort out whether or not it is the Eau Claire River, LLC, or the Merrill Gravel and Construction operation. Whatever Plan Commission decides to do tonight, we will in part Merrill Gravel and Construction, because we feel they have a significant role in preserving the quality of life in this neighborhood (dust control, hours of operation, etc.). Zuleger stated that the second issue is the moving target that we have in front of us with respect to how the first operational plan was approved, the amendment, and now this request. We want the Plan Commission to have some kind of finality and some enforcement responsibility on this crushing phase of the operational plan of the OME that we have granted. Zuleger stated that the third part of this is the public interest part, in that we have some skin in the game with respect to maintaining our Village roads. Not approving this request would put Ross Avenue into an accelerated degradation, by Eau Claire River, LLC, taking this product to the Christiansen pit. Zuleger pointed out that by allowing Eau Claire River, LLC, to take the product to Christiansen's pit, only moves the nuisance issues from one side of the neighborhood to another. Zuleger stated that finally we have issues with compliance. We have had some compliance issues that have to be dealt with, and we feel that the compliance issues get mixed in with Merrill Gravel and Construction being on site and working on the Camp Phillips Road project.

Zuleger stated that after taking into consideration the taxpayers concerns, he drafted a 5-part Recommended Modifications to the Eau Claire River, LLC, Operational Plan (attached). He stated that this modifies the base document dated January 17, 2011, which was modified on May 12, 2011. This will be the second time we modified the operational plan to satisfy right now (not the crusher) the neighbors concerns with quality of life. Zuleger then read through 5

points of this document. Zuleger summed up that this modification covers our operational issues of Eau Claire River, LLC; our concerns about road degradation; the quality of life issues that taxpayers have; and to try to put some "teeth" in Eau Claire River, LLC, ability to try to control their site with Merrill Gravel and Construction; and the Village is going to get a little more aggressive with Marathon County Highway on trying to mitigate the nuisances caused by the CTH X project. Schuster questioned if Eau Claire River, LLC, does have control with respect to the hours of operation, noise, dust control, of Merrill Gravel and Construction. Zuleger explained that this is Guerndt's (Eau Claire River, LLC) property, and we are stating in this modification that Guerndt has to control his property with the Village's backing. Guerndt pointed out that Merrill Gravel and Construction was given a copy of the hours of operation. Guerndt then also pointed out that in a way to keep the neighbors happy, he has been watering down the roadway to prevent dust, when Merrill Gravel and Construction should have been doing it. Schuster questioned if within the contract that Merrill Gravel and Construction has with Marathon County, if they in fact are responsible for watering the roadway and if there are hours of operation established. Zuleger stated that we do have an 8:00 p.m. provision in our code for construction to cease by 8:00 p.m. Donner clarified that they have to work under our Village Ordinance for the hours. Donner stated that initially Schumitsch told him that there would not be any overtime or weekend work; however, as the project continues and delays occur that they need to work outside of the hours to keep up with the schedule. Schuster wanted to make sure that through our ordinances we can enforce this, but we are putting the responsibility on Guerndt to do so. Zuleger stated that staff will talk to Jim Griesbach, of Marathon County Highway Department, and deal with the channels we need to deal with. If Merrill Gravel and Construction continues to work beyond the allowed hours, the Village of Weston can cite them under Village ordinances. Guerndt stated that he initially gave Schumitsch a copy of the hours of operation at the start of the project. Donner stated that about 3 or 4 weeks ago, he had also given Schumitsch a copy of the hours of operation, after an incident with after-hours work being done.

Evans pointed out that one issue that seems to be left off of this modification is the revised date that Eau Claire River, LLC, was offering if their request was approved. The original operational plan called for a project completion of 12/31/14. He was under the impression that there would be a new completion date of 12/31/13. Zuleger stated that staff did not feel comfortable putting a new date on this modification, because we did not know how much this would accelerate the project.

Joe Jordan, 4102 Camp Phillips Road, was present in support. He stated that with being in a business climate where it all comes down to supply & demand, Guerndt's permit allows him to remove 300,000 cubic yards of sand that will result in a pond (at a particular size and depth he and Guerndt had agreed upon). If a shorter date is put on here, as far as the removal of the sand, we are asking Guerndt to either haul that sand out of there, whether needed or not, or Jordan will end up with taking something (pond) that is less than what he bargained for. He stated that he does not believe anyone is having an issue with what is going on with the removal of the sand, it is not a problem for anyone if the berm stays in place where it is parallel to the pipeline, and they get all the digging done between Camp Phillips Road and the pipeline. Once that part of the site is restored, all the neighbors on Camp Phillips Road will be happy. The only people that would then have to deal with the appearance in the back would be himself, and there could possibly be some noise issues to the neighbors on the back side. Jordan asked if we could consider this request from a supply and demand perspective; that there may be a season here where demand is down.

Evans pointed out that those neighbors who submitted their comments (and who were reconsidering) were now okay with this request because it meant the project would moved

along faster (and finish sooner). Evans stated even if they would be willing to agree to finishing 6 months sooner, he would feel better; this way the Village can show the neighbors that the Village is looking out and working for them. Jordan stated that Guerndt would like to get this project done sooner than later, but the reality of it is there may be a season where there will be little activity there. Evans stated the Village is projecting it will be better and stated even if they could agree to shorten this by 4 months.

Schuster reiterated that the neighbors are asking for a shortened project. If we act on this without changing (shortening) the completion date, what will the Village tell the taxpayers. Jordan stated that once Merrill Gravel and Construction is out, which the project is planned to be completed by October 15th, most of the complaints will go away. The only issues that may come back would be from the backside of the property. The front section will get done sooner.

Gary Guerndt, owner of Eau Claire River, LLC, 8209 Ryan Street, was present in support. Guerndt stated that they take pride in their work, and his company's name is all over that project. They want to get through this part of the project and get to the back. Evans stated that even if we could at least get a confirmation that the front will be done within a certain amount of time, he would be more favorable. Diesen stated having the front portion along the road finished, and ahead of time, makes a statement that they can get it done; no one will see what is going on in the back.

Diesen questioned if by the middle of summer in 2012 (July 1st) they could have the front done (from Camp Phillips Road back to gas line easement). Maloney suggested we give them a deadline of 12/31/12 to complete the front of the property. In January, 2013, Guerndt could submit a report to the Village on their progress.

Zuleger commented that with our ordinances, we can supersede the County. Guerndt stated that he did speak with Schumitsch with regard the importance of his attending this meeting also. Guerndt stated the Schumitsch thought it was petty to have to attend (and had other plans). There was some discussion on Guerndt working with the Village on the well site, which has delayed his project some. Guerndt stated that Merrill Gravel and Construction will be out of there with the completion of the project.

Zuleger asked Mitch King if he wants to speak. King stated he has issues with #1 of the modification, as far as where is the product going out? King stated that there are no guarantees that the exportation of materials is going out is to Domtar. Schuster stated that Eau Claire River, LLC, is asking for permission to bring additional aggregate in, not out of his site.

****M/S Diesen/Schmutzler: to approve application REZN-7-11-1216. Diesen withdrew his motion.***

****M/S Evans/Froelich: to approve application REZN-7-11-1216, according to the 5 points listed in the Recommended Modifications to the Eau Claire River, LLC, Operation Plan, drafted by Zuleger; with an additional 6th point that the front of property (entire eastern side, between Camp Phillips Road and the pipeline) be completed by December 31, 2012.***

****M/S Diesen/Evans to amend the motion to include that Eau Claire River, LLC, submit to the Village of Weston a review/progress report of the project on an annual basis. Q: Schuster clarified that the overall project completion will remain as December 31, 2014.***

All ayes for the original motion and amendment. Motion carried.

<<Higgins will remind Guerndt when to come in. Zuleger stated that he and Donner will speak to Dick Schumitsch, of Merrill Gravel and Construction, tomorrow.>>

VIII. ADJOURN

****M/S/P Schmutzler/Diesen: to adjourn at 6:20 p.m.***

Respectfully submitted,

Valerie Parker

Valerie R. Parker,
Recording Secretary

VILLAGE OF WESTON
PUBLIC HEARING COMMENT

This form is to be completed and submitted before the start of the hearing.

PLEASE PRINT

Date: 8-29-2011

Name: VIRGIL KUFALL

Address: 10001 SCHOFIELD AVE RINGLE

Issue: REZONE

Do you wish to make an oral statement? Yes No
Position In Support In Opposition Undecided

Representing (If someone other than yourself) _____

Comments _____

**RECOMMENDED MODIFICATIONS TO THE
EAU CLAIRE RIVER LLC OPERATIONAL PLAN
(January 17, 2011. Modified May 12, 2011)**

1. Eau Claire River LLC (ECR LLC) may be allowed to increase the amount of imported aggregate into the Camp Phillips Road facility by 6,000 yards (total of 12,000 yard per agreement) to be used in the site preparation of the biomass plant in the Village for Rothschild. To insure that Eau Claire River LLC does not exceed the allowed amount of imported aggregate, ECR LLC shall provide the Village of Weston with weekly weight tickets of imported material. Any violation of the total amount of imported aggregate allowed shall result in a fine no less than \$5000 and immediate termination of this agreement.

2. In supply of road base material to the biomass plant, ECR LLC shall **ONLY USE** the following transportation route for delivery: Camp Phillips Road south to STH 29 west to Business 51. No additional Village roadways shall be used for the delivery of road base. Similarly, the importation of aggregate must be limited strictly to roads capable of increased truck traffic which include Schofield Avenue (between County J and Camp Phillips Road) , STH 29, Weston Avenue (between County J and Camp Phillips Road) , and Camp Phillips Road. Any use of other Village roadways shall result in a fine of no less than \$500 per incident. The Village reserves the right to terminate this agreement if road use violations exceed three incidents.

3. ECR LLC shall strictly adhere to the hours of operation plan set forth by the Village Board (January 17, 2011 and amended May 12, 2011) which mandates the following hours of operation:
 - **Monday, Tuesday, Wednesday** **7:00 AM – 8:00 PM**
 - **Thursday, Friday** **7:00 AM – 6:00 PM**
 - **Saturday** **7:00 AM – 12:00 NOON**

Any violation of the hours set forth in the operational plan shall result in a fine of no less than \$500 per incident. The Village reserves the right to terminate this agreement if hours of operation violations exceed three incidents. **The ceasing of operation shall include** the mitigation of nuisance noise that results from pumps, generators or other construction / power supply sources.

4. ECR LLC shall control the operations of all subcontractors or temporary tenants of the Camp Phillips Road site to prevent the degradation of quality of life for surrounding neighbors, nuisance that prevents the quiet enjoyment of the property of the adjacent neighbors which shall include dust, noise, odor and heat, and the general roadway safety of local traffic. Control includes compliance with the hours of operation set forth in Article 3 of this agreement.

5. ECR LLC shall have no liability or responsibility in the nuisance created by the road contractor completing construction for Marathon County of Camp Phillips Road / County X (Merrill Sand & Gravel). The Village of Weston DPW's staff shall intercede on behalf of taxpayers with the Marathon County Highway Department on all road construction nuisance matters that materially affect adjacent taxpayers and their property.

Drafted by Dean Zuleger, Village Administrator
8-29-2011