

CITY OF DELAFIELD PLAN COMMISSION MINUTES

CALL TO ORDER

Mayor McAleer called the meeting to order at 7 p.m.

ROLL CALL

Present

Absent

Mayor Ed McAleer
Kent Attwell
Larry Chapman
Dirilee Curtis-Costa
Kevin Fitzgerald
Beth Leonard
Gina Gresch, Clerk-Treasurer
Roger Dupler, Planner
Tim Schuenke, City Administrator
Tom Maney, Building Inspector
Mike Court, City Engineer

Michael Frede

PUBLIC HEARING #1: DELC 0733.998.008. CONSIDERATION OF A MAJOR CHANGE TO THE EXISTING CONDITIONAL USE TO ALLOW A TEMPORARY GARDEN SALES CENTER AND TO UTILIZE MEMBRANE STRUCTURES TO WAREHOUSE STOCK PLANT AND DISPLAY PRODUCTS OUTDOORS. OWNER: DELAFIELD INVESTMENT, LLC. APPLICANT: GARDEN GATE NURSERY. AGENT: MATT SONNTAG. THIS PROPERTY IS CURRENTLY ZONED B-6.

Mayor McAleer stated that the Planning Commission had previously determined that this was a major change to the Conditional Use and that is why a public hearing is being held. He asked three times if there were any citizens who wished to speak on this item. There were none.

K. ATTWELL MOTIONED TO CLOSE THE PUBLIC HEARING. D. CURTIS-COSTA SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

PUBLIC HEARING #2: ZONING TEXT AMENDMENT. CONSIDERATION OF A ZONING TEXT AMENDMENT, AN ORDINANCE REPEALING AND RECREATING CHAPTER 20, FLOODPLAIN ZONING CODE, OF THE CITY OF DELAFIELD MUNICIPAL CODE. THE UPDATE TO THE CODE IS NECESSARY TO REMAIN IN THE NATIONAL FLOOD INSURANCE PROGRAM. THIS AMENDMENT MAY HAVE AN EFFECT ON ALL PROPERTY WITHIN THE CITY.

M. Court, City Engineer explained this was before the Plan Commission because FEMA has an initiative nation-wide to update all of the floodplain maps. The DNR has been hired to update the floodplain maps for the State of Wisconsin through the use of 2' contour maps. A model has been created through the City of Delafield but it was modeled so that the lake elevation was about 1.5 feet higher than the existing

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floodplain elevation. This creates a big impact on the City of Delafield. It was modeled assuming that the dam was inoperable. The City went through an appeal process but it was denied by the DNR. The City needs to adopt the FEMA maps to qualify for the flood insurance program. The main reason this is before the Plan Commission tonight is to reference the new panel maps (the floodplain insurance rates) within the ordinance. The current ordinance was looked at and reviewed. Staff recommended to Council to update current ordinance to the DNR's model ordinance in order to be more current. The deadline to have the ordinance adopted and submitted to the DNR and FEMA in order to stay within the floodplain program is November 19. The City is also in the process of doing a Letter of Map Revision (LOMR) to adjust the elevation back down and to correct some technical revisions on the map that he felt would reduce the floodplain elevations (a 12-18 month process). If this was approved, the LOMR study would be referenced within the ordinance through a text amendment.

M. Court stated that a floodplain has two main components; namely, the floodway – there is current and water and it is flowing through (mostly associated with a review) and a flood fringe on the outside where the water backs up but there is no water flow through.

The existing floodplain was plotted and compared to the plan that they were recommending for adoption. He explained the various areas depicted. The impacts are varying: the floodplain on a flat lot would be raised 1.5 feet and if it was a steep lot, it would go up the bank 1.5 feet and would have a minimal impact. For 95% of the homes it would only be impacting the lot, however it could impact future additions or building into the floodplains. The next level is if it increased enough floodplain that it encroaches or encompasses a structure. If this would happen, it would become a nonconforming use. Examples were given.

In terms of the need for flood insurance, M. Court stated that if you have a mortgage and it is federally backed and if the structure is within the floodplain, you would be required to have flood insurance. If your mortgage company requires it and upon the sale or refinancing or if the mortgage company or bank do their own type of review, it may trigger a request that there be flood insurance to be put on the home. He felt that the necessity for flood insurance would hinge on the structure being within the floodplain.

The website, www.Floodsmart.gov, is a good tool to calculate insurance premiums and find local insurance agents.

In response to a question as to what elevation the lake got to this spring with the storm events and how it compared with the elevations on the map, M. Court responded that it was close to the old floodplain elevation of 891. This argument is reflected in the LOMR.

D. Curtis-Costa asked if the maps were adopted the way they are and people's homes or other structures are currently in the floodplain on the maps, what happens in the 12-18 months between adopting the maps and making modifications to them. M. Court stated that the ordinance would need to be enforced. The intent of the program

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is to try to protect. The maps need to be adopted. He suggested that the affected properties hold off until the LOMR is finalized and approved with FEMA before starting any addition or remodeling projects. In terms of insurance, if the mortgage company requires it, it would be on an individual case.

B. Leonard stated that the biggest areas impacted were Sylvester Drive and Peninsula. She asked if in terms of having a property for 12-18 months that loses a huge share of its market value, is there something that the City would do in terms of giving these people a break on their assessments and taxes for 12-18 months. Mayor McAleer stated that this process is under State Statute (Open Book and Board of Review). He did not think that there was any other process that could be used.

It was asked what the consequences were of not adopting the Resolution of the new ordinance. M. Court stated that as far as the flood insurance program, the City and community could be suspended from that. Once the community is in the flood insurance program, you are allowed to buy flood insurance. If this was not adopted and the City did not have the program, the flood insurance would not be available potentially to some people who may need it. There would definitely be a risk if the Resolution was not adopted.

D. Curtis-Costa asked if individual property owners would be sent letters regarding how their property is affected so they could determine whether flood insurance is needed during the interim. M. Court responded by stating the requirement was a Class 2 notification which required publication two times in the local newspaper. Staff had discussed that further action take place in the form of a letter. If individuals have detailed questions, they should call.

B. Leonard explained that www.waukeshacounty.gov has mappings available to find your lot. Another resource is the land information GIS system for Waukesha County.

It was stated by M. Court that every avenue has been explored with the appeal. It was his recommendation to adopt this if the City wants to continue with the flood insurance program.

The following citizens commented:

- Lynn Morrison, 2366 Lakeview Court – She has talked to Building Inspector T. Maney regarding an improvement made to her home this year. The new maps include her in the floodplain designation. If she had asked for the building permit after this ordinance, would she have had difficulty getting? T. Maney responded that she would have had gone through a different bureaucratic process. In response to her question as to if there were any areas that are now in the floodplain that are in the floodway rather than the flood fringe, M. Court responded that there were. L. Morrison felt that many of the areas that are now included did not have water in their homes during the spring storm event. She understood the need to do the Ordinance in advance and then getting the LOMR. It was her thought that people like herself who are in that floodplain

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now and no water went in their home would be a good example when going to the LOMR to testify in that behalf.

- Hays Hatfield, 2374 Lakeview Court – He reiterated L. Morrison’s concerns. He asked if individual letters from homeowners about how they went through the recent flood would have an impact on the process with FEMA. M. Court stated that preliminary meetings have taken place with the DNR and indications are to file a LOMR. The City needs to submit this. If additional documentation is needed, it will be posted on the City website. However, if owners would like to submit letters, he will submit it with the LOMR. A closer look at this will take place later. Mayor McAleer felt that letters would be useful.
- Mike Neumann, 3007 Sylvester Drive – For clarification, he stated that the City wanted to accept the proposal in order to negotiate one that the City wants. It was clarified that this was correct. M. Court stated that the City was accepting the maps as they are so the City can stay within the flood insurance. In response to his question, it was stated that the City Attorney would need to be consulted to determine if there is private flood insurance instead of having to depend on the government. M. Neumann would like to know the answer and it was stated that the attorney could be consulted on October 16, 2008. Mayor McAleer stated that this ordinance needed to go to the Common Council for final approval and this question would be answered prior to it coming before the Common Council for vote. M. Neumann stated that his property is located in the middle of Sylvester Drive and is quite high. He would have to take several steps to get this done correctly and the burden would be upon him. Mayor McAleer confirmed that the surveying of his property to determine elevations would be his responsibility. M. Court stated that M. Neumann was referring to individual lots and would need a letter of map amendment. He would need to do an elevation certification to certify that he is above the new elevation.
- Andrea Shrednick, 3603 Ridge Drive – She was not sure how she is affected. She presented a FEMA report dated 2006 which showed the grandfathering rules for insurance from their website. It stated that flood insurance should be obtained before you are in the floodplain. Her second point was that FEMA’s maps have not changed since they printed them a year ago. The ones available on the website are exactly the same as the ones that FEMA presented to the City last year. She did not see any reduction in the floodplain from what was proposed. B. Leonard stated that hers changed a little on her lot. A. Shrednick was very cynical of the Federal government and took offense at FEMA coming in and stating that this must be done. The DNR has never agreed to anything ever. She questioned why the floodplains would be rolled back in one year. Mayor McAleer said that the City is doing everything it can to get it back to the original floodplain. T. Maney stated that this is statewide. A. Shrednick felt that this was a way to pay back Katrina. She asked if it was known how many insurance claims were made on individual properties within the City. Mayor McAleer stated that the City did not track this. B. Leonard stated that it was not just the flood insurance but also the market value that these properties are losing. A. Shrednick stated that the chances of another 100 year flood were

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slim to zero and felt that once the City pays into this, it will never be given back. She would rather spend the money on a lobbyist.

- Bob Grosch, 2711 Zastrow Road – He was not sure if he was impacted by this. He has over 20 years of insurance and real estate experience. As an insurance agent, if someone contacts him to purchase a home and then finds out that it is in a floodplain, he assumes that the mortgage company does not want anything to do with it. It does not matter if the house is not in the floodplain, but if any part of the land is, it is a big struggle. If flood insurance is purchased, it is not very good coverage at all. As far as real estate, if it is in a floodplain, it is very difficult to sell. He asked what could be done on land once the DNR considers it wetlands. M. Court stated that wetlands and floodplains are two different. As far as a floodplain, if this Ordinance was adopted, there would be regulations in terms of what could be built, but there were no restrictions in terms of mowing, etc. R. Dupler stated that the restrictions had to do with soil disruption. T. Maney did not think there were restrictions in terms of plantings.
- Lisa Voss, 2819 Burries Road – The way the map is currently defined, her property is on the fringe of an area that would be in the floodplain. It took her six years to find her house – she was looking for a home that was not in the floodplain and was in the Arrowhead School District. She was very, very disappointed about this dilemma. When looking at the properties on the fringe, she did not think the homes were at 892.5. The City of Delafield owes the citizens an accurate map. For the taxes that these properties pay, she felt that the City should consider helping them out. Additionally, she asked what the chances were to have a flood between November 19 and March. Why can't time be bought? She suggested talking to lobbyist and attorneys who have won some cases and not trying to re-invent the wheel. M. Court stated that the letters have stated that they will suspend the community as far as the flood insurance program if the ordinance is not adopted. He did not know if this would be immediate. He questioned if the City could live without the flood insurance program. Mayor McAleer asked if this was adopted and six months later the City found out that it could live without the flood insurance program, could the ordinance be changed back to the way it was. M. Court thought that the ordinance could be appealed. Whether to adopt or not adopt the ordinance is under the City's control. L. Voss wanted to find out what would happen if an extension was asked for and what would happen if the City let this go – could the City have a 6 month stay? If so, could the City reinstate later? What does it take to do that? She thought that the City needed to buy time. She did not want to sign something and regret it later. FEMA doesn't have enough money to pay for what has happened. She felt that it is troublesome that they are looking for a lot of money from people who can potentially afford to pay for areas that maybe can't. This needs to be investigated further. In regards to private insurance, she would like this to be considered versus the cost of doing this and everyone being required to go out and do this on their own. This may buy the City some time. She was not sure if the insurance available through FEMA was great or not. She asked if the City would be getting the right to buy

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insurance through an organization that would not give anything anyways – what would the City get. Additionally, she questioned if it would be better if the City said “no”, get private insurance and try to fight this. Her sump pump never runs and during the month of June she did not have any water standing in their yard at all. To go through this flood and not have any problems and say that you are in the floodplain... there is a problem with that. It should be determined if the lines are legit or not. If the laws of November 19th are passed, her assessment should go down as of November 19th because her property would not be able to be sold. The City owes the people approximately one-half the amount of taxes that were paid last year if they did this to the people because their property would be worth about one-half. Mayor McAleer stated that spot assessment could not take place; if an assessment is done, the whole City would need to be done. L. Voss disagreed. Mayor McAleer responded that this could be checked out. L. Voss addressed the issue of the dam. In response to a question as to how long the City was inactive over the issue of the dam after they were told to do something with it, Mayor McAleer responded that due to budget constraints, it was approximately ten years. L. Voss thought that the City needs to take some blame and think about the people that that mistake is affecting and help them out. She requested that someone find out how many flood claims were filed in a particular area on the map. This would help determine if it is really needed. Data collection needs to take place. This could be included in a letter as to why they should reconsider. It was her opinion that the City was being “strong-armed”. Several people volunteered to help gather data in specific areas to find out if flood claims had been filed. Additionally, she requested the City to investigate whether there ever has been an expert that actually fought a case like this and won and if so, hire them. Finally, the City was required to fix the dam. If the City wouldn’t have fixed the dam, the money could have been used for the private insurance that is being discussed. She felt that the City reduced the risk for them, and then they came back and classified areas in the floodplain. She asked what would be done next. The City needed to understand what it would lose and what the other option was. She felt that if the City did the ordinance, they would win. She did not think that the agency would change their mind in 12-18 months.

M. Court stated that the process with the maps was that the City went through the appeal process. Because of the timing issue, the appeal was denied. The LOMR will be gone through. It is a process that can be done at any time with the floodplain where a LOMR can be filed. L. Voss asked if it was known how many times this had been tried in the past and how many times it had worked. In response, M. Court stated that there was a very good chance because it was based on the maps and models. L. Voss asked if the LOMR doesn’t change the 892.5, it just changes the elevations as to where the yellow lines are, or if the yellow change was actually. M. Court stated that it would change the elevation. He hoped it would be close to what it was originally, 891.

Mayor McAleer asked if the City did not do this and was not allowed to be in the floodplain insurance program, what it would do in relationship to mortgage companies. D. Curtis-Costa asked if the companies would check during this 18

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month period. M. Court stated that the three triggers were a sale, refinancing, or there was some kind of internal audit/bank buy-out. D. Curtis-Costa asked if there was a possibility that the City could tell them that it was going to hold off adopting this ordinance and maps until they are corrected. M. Court stated that it would be up to the City. There is a risk to that. L. Voss thought getting the Legislature involved in something like this and putting pressure on may help. She asked if the level of your first floor is two feet above 892.5 (894.5 or higher) if you would need flood insurance. Is your land then listed floodplain and your house not needing flood insurance? M. Court stated that it was the lowest opening of your house. If you were above the 892.5 you are out of the floodplain and would not need flood insurance. If you are looking at refinancing or selling your house you should get your lot surveyed to show that you are out of the floodplain. L. Voss encouraged the City to postpone and buy itself some time; she strongly recommended to wait until after November 19th. She did not think there was a rush. Mayor McAleer stated that he felt that clarification was needed, but if the clarification was that there was a timeline, the City may need to adopt. L. Voss stated that the City needed to understand what it would get and what it would lose. The Mayor thought the City needed to get as many answers as it could and it needed to protect the citizens. L. Voss stated that she and many others would be happy to volunteer their time on this issue.

- Matt Brewer, 2831 Sylvester Drive – He researched the National Flood Insurance Program. If the City decided not to participate in the National Flood Insurance Program, it would be forgoing the right to get federally subsidized floodplain insurance. This was M. Court's understanding. M. Brewer asked if the City currently has anyone participating in federally assisted floodplain insurance. He thought if the City was rushing to participate in a program that no one participates in it seemed like a silly action. He did not feel uncomfortable not having flood insurance. He asked if the City knew of anyone who has actually purchased floodplain insurance. A member in the audience stated they had. M. Brewer asked about the first federal insurance rate map for the City of Delafield. If someone knew their dwelling was constructed before that map and if it was known that it was actually conforming property when it was constructed and federally subsidized insurance is purchased before the official map change, would they get grandfathered in at a lower rate? This information should be put on the website with the initial maps before they were changed in order to show the insurance companies. He asked what the official date would be for accepting these maps. M. Court responded that the last maps were adopted in 1983. It was his understanding that everything would now be adopted November 19. M. Brewer asked for copies of the maps preceding these. M. Court has copies in their office. They could be scanned and put on the website, however there was some outdated information on the maps and he suggested whether there was a better place for these maps other than the website. M. Brewer was concerned that the City was rushing to make sure that they could participate in the National Floodplain Insurance Program. If no one participated in it, it was like rushing for a place in line to buy something that they didn't need.

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- Gayle Gaborsky, 364 Bark River Court – Although her home is not affected with this, she does own property in the Village of Lake Delton. She tried to get flood insurance after this happened, but you cannot buy any insurance up there. She recommended that the City Attorney talk to someone in the Village of Lake Delton since they have gone through all of these scenarios.
- Ruth Mitchell, 3318 Bay View Court – She addressed an area that had very little floodplain on it until the remapping. She questioned when the determination of the original height by the people making the map went on. There has been a lot of fill on many yards. She didn't know of anyone who has had any problem with the last flood. M. Court stated that everyone who was impacted with a change in the floodplain was notified by letter – it was not distinguished whether the amount was great or not. R. Mitchell requested that the City ask for a 30 day delay so homeowner associations could gather the data needed.
- Mike Neumann, 3007 Sylvester Drive – He asked if those who have federal insurance would be canceled. M. Court responded that for the community to have the Federal Insurance Program, they would have to adopt the maps. If they did not adopt the maps, the insurance community would be suspended and he assumed that if you had the insurance that it would be canceled.

B. LEONARD MOTIONED TO CLOSE THE PUBLIC HEARING. K. ATTWELL SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

Mayor McAleer stated that the curfew for the meeting would be 11:00 p.m.

1. APPROVE PLAN COMMISSION MEETING MINUTES OF SEPTEMBER 17 AND 24, 2008.

K. ATTWELL MOTIONED TO APPROVE THE MINUTES OF SEPTEMBER 17 AND 24, 2008. K. FITZGERALD SECONDED. D. CURTIS-COSTA STATED THAT FOR THE MEETING ON SEPTEMBER 17, 2008, PAGE 6, SHE WANTED TO ADD TO THE PARAGRAPH ON CONSIDERATION OF THE WATER TRAILS ASKED FOR BY PARK & REC THAT AFTER THAT R. DUPLER INDICATED THAT THERE WAS SEA PLANE LANE ON THE LAKE. SHE ASKED FOR APPROVAL OF THE MINUTES WITH THAT AMENDMENT. K. ATTWELL AND K. FITZGERALD ACCEPTED THE FRIENDLY AMENDMENT. ON THE SEPTEMBER 24, 2008 MINUTES, PAGE 16, THERE IS A REFERENCE TO A "MR. JOHNSON." SHE DID NOT KNOW IF THIS WAS CORRECT. G. GRESCH STATED THAT THIS WOULD BE CHECKED. ADDITIONALLY, ON PAGE 21 E SHE QUESTIONED WHETHER THE PLAN COMMISSION WANTED TO BE SPECIFIC AS TO WHICH TWO CRITERIA THE PLAN COMMISSION WANTED TO

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ADD. MAYOR MC ALEER STATED THAT IT WAS IN THE ATTORNEY'S LETTER AND COULD BE ADDED TO THE MINUTES. K. ATTWELL AND K. FITZGERALD ACCEPTED THE AMENDMENT. ALL WERE IN FAVOR. MOTION CARRIED.

2. DELAFIELD CITIZEN'S COMMENTS PERTAINING TO SUBJECTS ON THIS AGENDA.

There were no citizens who wished to comment.

3. FINAL CONSIDERATION, APPROVALS, PREVIOUS APPROVAL.

- a. **TAX KEY 0733.998.008, VILLAGE SQUARE DRIVE, HARTLAND.** OWNER: DELAFIELD INVESTMENTS, LLC. APPLICANT: GARDEN GATE NURSERY. APPLICANT SEEKS APPROVAL OF A MAJOR CHANGE TO THE CONDITIONAL USE AND A BUSINESS PLAN OF OPERATION FOR A TEMPORARY RETAIL GARDEN CENTER, GARDEN GATE NURSERY, AND RECOMMENDATION TO THE COMMON COUNCIL OF THE SAME. HOURS OF OPERATION ARE WEEKDAYS 10:00 A.M. TO 7:00 P.M., SATURDAYS 10:00 A.M. TO 7:00 P.M., AND SUNDAYS FROM 10:00 A.M. TO 5:00 P.M., WITH 2 PART-TIME EMPLOYEES.

K. ATTWELL MOTIONED TO APPROVE. K. FITZGERALD SECONDED THE MOTION. D. CURTIS-COSTA STATED THAT SHE READ THROUGH THE DEVELOPMENT AGREEMENT WITH VILLAGE SQUARE AND THOUGHT THAT THE AGREEMENT WAS FOR STRUCTURES. PART OF THIS IS THAT STRUCTURES ADD TO THE TAX ROLLS FOR THE CITY. THIS PAYS FOR SERVICES THAT THEY MAY REQUIRE. SHE ASKED IF THERE WOULD BE SERVICES REQUIRED FOR THESE STRUCTURES AND WHERE WATER WOULD COME FROM ON AN UNDEVELOPED PARCEL. SHE ADDRESSED GUIDELINES FOR THE STRUCTURES AND WASTE MATERIAL IN THIS DEVELOPMENT. MAYOR MC ALEER THOUGHT THAT THE CITY NEEDED TO DETERMINE WHETHER THIS WAS A MAJOR OR MINOR CHANGE TO THE CONDITIONAL USE. THERE WERE NO COMMENTS ON THIS DURING THE PUBLIC HEARING SAYING THAT THIS WAS NOT AN APPROPRIATE USE. D. CURTIS-COSTA STATED THAT SHE PERSONALLY RECEIVED A LETTER. MAYOR MC ALEER STATED THAT HE WAS IN FAVOR OF THE MOTION. THIS HAS GONE THROUGH THE PROCESS AND AFTER GOING THROUGH THE PROCESS HE FELT THAT THE APPLICANT WAS OWED A POSITIVE VOTE AFTER HE ANSWERED THE QUESTIONS BEING ANSWERED. IT WAS STATED THAT ANY WATER THAT THEY USED WOULD BE PAID FOR. THE CLOSEST WATER SERVICE IS IN THE SPRINKLER ROOM OF THE SOUTH BUILDING (ONE DOOR OVER FROM THE END CAP) - 75-100 FEET. B. LEONARD ASKED IF THERE WAS A TIME LIMIT ON THIS. R. DUPLER RESPONDED THERE WAS AS PART OF THEIR ORIGINAL PETITION. THEY HAD IDENTIFIED A DURATION FROM OCTOBER - MAY WITH THE UNDERSTANDING THAT DURING THE MONTHS OF JANUARY AND FEBRUARY AFTER THE

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HOLIDAY SEASON IS OVER THAT THERE WOULD NOT BE ANY ACTIVITY. THE APPLICATION FOR THE TEMPORARY BUSINESS PLAN OF OPERATION IS A FINITE LEASE WORKED OUT FOR THEM FOR TIME. IT WAS STATED THAT THE WATER WOULD BE FROM THE HOSE BIB FROM THE SOUTH RETAIL BUILDING. SINCE IT WAS A TEMPORARY USE, THE TAXES CURRENTLY BEING PAID AS AN OUTLOT WITH NO BUILDING ON IT WOULD CONTINUE UNTIL THERE IS A SALE THAT CAUSES THE ASSESSOR TO CHANGE ASSESSMENT OF THAT VALUE. THE REPRESENTATIVE STATED THAT HE FELT THAT IT DID ADD VALUE TO THE SHOPPING CENTER. THEY WOULD LIKE A PERMANENT USE ON THIS OUTLOT. B. LEONARD STATED THAT IT DID NOT COME CLOSE TO MEETING THE ARCHITECTURAL REQUIREMENTS OF THIS CENTER AND DID NOT SEE HOW THIS COULD BE ALLOWED AS PROPOSED. D. CURTIS-COSTA WAS CONCERNED THAT IF THIS WAS APPROVED, WHAT WOULD COME NEXT. MAYOR MC ALEER STATED THAT WHATEVER CAME NEXT IT WOULD GO THROUGH THE SAME PROCESS. HE STATED THAT IT WAS DEPENDENT UPON WHAT THE PUBLIC HEARING PRODUCES; THIS IS WHAT THE PROCESS IS BASED ON – CITIZEN'S INPUT FROM A PUBLIC HEARING. D. CURTIS-COSTA FELT THAT THE GUIDELINES FROM THE SETTLEMENT AGREEMENT NEEDED TO BE KEPT. MAYOR MC ALEER THOUGHT THAT IF COMPLAINTS CAME IN DURING THE YEAR, IT WOULD HAVE A DIFFICULT TIME GETTING APPROVED AGAIN NEXT YEAR. A REPRESENTATIVE FROM GARDEN GATE STATED THAT THEY HAVE NOT HAD ANY PROBLEMS AT THE LOCATION IN PEWAUKEE. SHE EXPLAINED THAT THEY WOULD BE THERE FOR THE HOLIDAYS AND RE-OPEN SOMETIME IN APRIL THROUGH THE SUMMER AND THEN POSSIBLY INTO THE FALL SEASON. R. DUPLER STATED THAT THE TEMPORARY BUSINESS PLAN OF OPERATION WAS INTENDED TO RUN THROUGH JULY 1. **K. ATTWELL AND K. FITZGERALD AGREED WITH THE DATES OF OPERATION FROM NOW – JULY 1, 2009. BOTH THE WINTER AND THE SPRING SEASON WERE APPROVED.** THE STRUCTURE WOULD BE TAKEN DOWN DURING PERIODS OF INACTIVITY. **IT WAS CLARIFIED THAT THE MOTION WAS TO RECOMMEND TO COUNCIL CONSIDERATION AS A MAJOR CHANGE TO THE CONDITIONAL USE FOR GARDEN GATE NURSERY. D. CURTIS-COSTA MADE A FRIENDLY AMENDMENT TO THE MOTION THAT THE STRUCTURE WOULD BE TAKEN DOWN BY JANUARY 5, 2009. THREE WERE IN FAVOR. B. LEONARD AND D. CURTIS-COSTA OPPOSED. MOTION CARRIED.**

4. ZONING AND ORDINANCE REVISION.

- a. DISCUSSION AND ACTION TO RECOMMEND TO THE COMMON COUNCIL TO REPEAL AND RECREATE CHAPTER 20, FLOODPLAIN ZONING CODE, OF THE CITY OF DELAFIELD MUNICIPAL CODE.

Mayor McAleer stated that he would request the City Attorney to be present at the Common Council meeting. Questions from the public hearing

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included: Who is participating in the Federal Flood Insurance Program? These people could be adversely affected if the City does not do anything. Is private insurance available? If it is and it is more affordable than the Federal program, then opting out of the Federal program may not be disadvantageous to anyone. Does it really matter? Whether the City says this is the flood map or not, FEMA says it is. This means that every mortgage company, real estate company, and insurance company will be looking at the FEMA map, not the City of Delafield map. If the ordinance is not adopted, everybody will still be in the floodplain. The question was if you had a better chance with the LOMR if you did this by November 19th or if you don't adopt it. B. Leonard did not feel that the issue for the owners that are most affected (Sylvester Drive and Peninsula) was that they would lose their right to use their property the way everyone else does. They are now a legal nonconforming use – they can't rebuild over 50%, if they want to sell the property it is not worth as much – it is the market value of their land that is affected. It was stated that if the ordinance was not adopted, while national people might still view areas as being in the floodplain, from a building standpoint they would not have a nonconforming use because the ordinance would not say they were in a floodplain. In other words, if the City did not adopt the ordinance they could still tear down and rebuild although they would still have the other issues (mortgage, insurance, etc.). B. Leonard listed items that should be listed as a condition: worst case scenario for not being in FEMA, how often LOMRs work, the number of FEMA claims that were filed in the last flood occurrence with the 100 year flood, getting a legal opinion about the adoption of this Ordinance and whether or not there could be an extension pending the City's own LOMA that the City is trying to do, the reassessment issue (change of procedures, what criteria will need to be provided, how this would be approached to review or evaluate these kinds of appeals, to be up front with the public regarding the history of the dam repair and why it took so long to repair), and to get a clear answer as to what was filed last summer (how many owners participated in it and whether or not they had surveyor reports attached to their letters). Additionally, it was asked how the City would go about getting the last flood certified as a 100 year flood or a 200 year flood. M. Court explained that this impact is not only for Delafield but also the Village of Hartland, Town of Summit, and Waukesha County. The City has been working with these municipal entities to come up with a proposal to do the whole Bark River Watershed as a regional LOMR. There is a USGS gauging station at the inlet of the lake that had the peak flow for the June storms of 250-300 cfs. The model that created these maps was at 1500 cfs (a factor of 5 too much). A preliminary discussion has taken place with SEWRPC, the DNR, and Waukesha County to review this data; it has been agreed to use this data in the LOMR not only with opening the gates of the dam but the adjusted flows. M. Nicholson from Yaggy-Colby is the floodplain expert and will be meeting with SEWRPC on Monday to give them additional data, rainfall data, and elevation data that had been collected through the storm so SEWRPC can have the official designation to classify the type of storm event this was. SEWRPC has done preliminary work and

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stated that it is a 1% chance, which is the 100 storm event. However, the DNR has also stated lesser numbers that Yaggy Colby does not agree with. SEWRPC will designate what the early June storm was. The flow will then be calibrated appropriately to reflect a realistic flow going through the lake. The FEMA flood levels were supposed to be based on the 100 year flood. It was asked if the City wrote a letter regarding this 100 year flood to FEMA and that the levels FEMA imposed on the lake were wrong and were proven wrong because the City has hard evidence and that the City was not ready to sign on immediately until the maps were corrected to reflect the levels that they should be and that were just proven. M. Court responded that FEMA has a process for filing the LOMR: the conversations have taken place, letters that were sent with the appeal, etc. B. Leonard stated that the City's appeal was filed on July 6 and the June occurrence was mentioned as proof; this resulted in a reduction of .5 feet and was basically ignored. She was concerned that if the City proceeds to do this, she did not have a lot of confidence that people would not be put in limbo for longer than 12-18 months. Mayor McAleer stated that it needed to be determined if you could get insurance or not. B. Leonard questioned what good flood insurance would do if you could not rebuild. T. Maney stated that Delafield had floodplains in for many years. Just because the new FEMA map shows those properties in floodplain does not necessarily mean that those structures are in the floodplain. You will always have the existing floodplain that the City has versus the new floodplain – it would be handled the same by M. Court and T. Maney. If someone came in to the City and presented a survey showing a floodplain on their property, but the entire structure was out of the floodplain, they would not need flood insurance – this is important to understand. B. Leonard stated that the issue they would have would be expansion and setback. T. Maney stated that surveyors would show the lot per scale, where the floodplain is, and even though more of the land may be included in the floodplain, if the structure is out of the floodplain it would show not just your structure out of the floodplain, but would show contours for a building pad. He felt there would be numerous properties that are shown on the map as floodplains where the structures are not in floodplain. T. Maney questioned if the people for the last 20 years have met the old floodplain at 891 and their floors were legal at 891.1, with the new 18" added, their surveys will come through showing the floodplain on the land but their houses are out of the floodplain but they don't meet the two foot rule. M. Court stated that if it was verified that it was 892.55 it would be out of the floodplain then the zoning ordinance would not apply to them. T. Maney stated that it would be different with a new addition – it would have to be two feet higher than the floodplain; even though the existing home is not in the floodplain, would not meet the two foot rule is still not nonconforming. It would open a bureaucratic process where the survey would come in and prove to the City Engineer that fill could be brought in that would not add watering off to the neighboring property and you would still be able to build. M. Court agreed with this with for the flood fringe, but the floodway would be different. T. Maney thought the whole FEMA issue was about mortgage and insurance. As a homeowner, B. Leonard would be

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concerned if another Building Inspector or City Engineer would interpret this differently. T. Maney stated that everyone who has met or exceeded the floodplain ordinance that the City currently has are the ones that are in limbo; their land may be more in floodplain but their structure is not in the floodplain – he did not feel they were nonconforming. M. Court felt that this would come to the building inspector with building permits and a list could be created; this would reveal the value at that time and the improvements. He did not know if private insurance to the federal insurance would be the same. According to the website www.Floodsmart.gov, properties classified as low to moderate risk for a home valued at \$250,000 and \$100,000 on personal property would cost approximately \$400/year (structure not in the floodplain); high risk for a home valued at \$250,000 and \$100,000 on personal property would cost \$4,000 - \$5,000. A member of the Commission questioned how the land could even flood. M. Court stated that it was modeled with the dam gates being closed, the dam being inoperable, and the water overtopping. T. Maney clarified that most of the flooding that occurred this spring took place along the river downstream. Discussion took place on the lake level during the storm and during normal conditions. B. Leonard felt that the City needed to make the State representatives aware of the City's efforts. M. Court could ask the contact he has been working with for documentation for an extension. Mayor McAleer stated that he would like this on the Common Council agenda for Monday, would like to have a recommendation from the Plan Commission to the Council even if the recommendation is to study it further, and would like the Council to talk about it Monday night to see how many answers have been received. He felt that work needed to continue on this. Discussion took place on the deadline. A Plan Commission member stated that the Insurance Commissioner's website had three different press releases on flood insurance – all stated that it was just a federal flood program.

K. ATTWELL MOTIONED TO RECOMMEND TO COMMON COUNCIL TO POSTPONE ACTION UNTIL FURTHER INFORMATION COULD BE GATHERED AND THE PLAN COMMISSION'S QUESTIONS ARE ANSWERED.

L. CHAPMAN SECONDED THE MOTION. MAYOR MC ALEER STATED THAT HE WOULD LIKE A RECOMMENDATION TO COUNCIL. HE WOULD NOT EXPECT THE COUNCIL TO MAKE A FINAL DECISION ON MONDAY, BUT WOULD LIKE THE PLAN COMMISSION TO MOTION TO APPROVE, HAVE IT GO TO COUNCIL FOR DISCUSSION WITH AS MANY ANSWERS AS THEY COULD GET. HOWEVER, MANY OF THE PLAN COMMISSIONERS WANTED TO GET SOME OF THE ANSWERS PRIOR TO VOTING TO APPROVE OR DISAPPROVE. MAYOR MC ALEER ASKED IF THERE WAS ANY OTHER DISCUSSION ON THE MOTION TO POSTPONE. ALL WERE IN FAVOR. MOTION CARRIED.

Although the Mayor first stated that this would not be put on Monday's Council agenda, he later stated that it would be put on the Council agenda for discussion. Discussion took place regarding the Plan Commission making a recommendation.

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5. DISCUSSION AND ACTION OF SMART GROWTH RESIDENTS SURVEY.

R. Dupler reviewed. He had received comments on the survey as follows:

Question 17 regarding housing and asking for opinions of residents in regards to consideration by the Plan Commission – in all instances they were trying to ascertain opinions regarding future development in the City, should the City encourage more single family development, two family development, condominium development, etc. It was asked to substitute the word “encourage” with the word “support”. R. Dupler was indifferent to that comment; however as a Plan Commission he felt that it should be proactive in terms of having a plan of action and to encourage those types of development as a preferred strategy to control the City’s growth. He did not feel it was inappropriate to say “encourage”. K. Fitzgerald thought it could be read to say you are encouraging development as opposed to if development is going to occur which one you are most supportive or receptive to. It was a passive concept versus active concept. General discussion took place on the meanings of the various wordings. Mayor McAleer stated that historically the City has never gone out and solicited development. B. Leonard and others would like to use the word “support”. This change will be made on this item and Question 20.

Question 16F had a value on it. R. Dupler felt that it was valuable to have such a question in the survey and without giving a dollar amount, there would be no idea how to respond to it.

The timeframe for the survey was discussed. If this was authorized tonight, the postcards were ready to mail out on October 16.

Question 28 – the difference between preserving agricultural land versus preserving existing farmsteads. R. Dupler stated that if there was a misinterpretation he needed better definitions. A farmstead was considered to be a house, etc. Preserving farmland is all of the agricultural production fields. R. Dupler suggested that the question reflect preserving existing farm buildings. The Plan Commission was agreeable.

The survey will be sent to approximately 1,100. Viable statistics would be available if 334 survey responses were received. Postcards will be sent tomorrow. The survey will be sent out in approximately one week. The surveys could be returned at the voting location.

K. FITZGERALD MOTIONED TO APPROVE WITH THE ABOVE CHANGES. D. CURTIS-COSTA SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

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6. DISCUSSION OF SMART GROWTH CHAPTER 8 – TRANSPORTATION.

This has been narrowed down to the recommendations from Park & Rec Commission and the Public Works Committee that were reviewed at the last meeting. The realization of the modifications to date was in yellow print. These recommendations were reviewed:

Page 88, Section E, SEWRPC – 2035 Transportation Plan Recommendations – It involves the recommendations of SEWRPC that could affect the City of Delafield: 1) to expand I94 from 4 lanes to 6 lanes and provide a messaging system along with closed circuit cameras and 2) expansion of State Highway 83 to 4 lanes in areas not already improved. The City of Delafield understands the Wisconsin Department of Transportation and SEWRPC's intentions regarding the expansion of Highway 83, but does not feel the City is generating the increased traffic levels along Highway 83. R. Dupler suggested adding more language to reflect *“Furthermore, the potential for expansion of 4 lanes is not conducive to the adopted land use plan in near proximity to the state route.”* The Commissioners concurred.

Under “Jurisdictional Recommendations” states “Currently Highway C is in the jurisdiction of the County, but the County has asked the City of Delafield to take over jurisdiction for a portion that exists within the City. The City’s Public Works Committee does not foresee a problem with this as long as the requesting improvements are made to Highway C.” R. Dupler suggested adding *“and bridges over the Bark River before transference of jurisdiction occurs.”*

The maps were provided in color to clearly depict all of the routes.

Page 93, Section C, the last paragraph on the bottom of the page. “Of SEWRPC’s recommendations the following could affect the City of Delafield. In general, the public transit services plans propose public transit would increase along Highway 16, hwy 67, and I94, as well as provide walk access service area in Delafield, Hartland, and Pabst Farms area (see page 276 or 368 of the SEWRPC 2035 Transportation Plan). The City of Delafield acknowledges SEWRPC’s identification of the areas potential for public transit.” No other statements will be made.

Page 98, SEWRPC Section 2035 – The sentence will be struck suggesting that the City will change its development pattern to accomplish this. Striking of the sentence in regards to sidewalks will also take place.

Page 96 – The need to add a policy statement regarding bike trails throughout the City was discussed. R. Dupler asked if a policy statement needed to be made, should it be something in terms that it is the City’s intent to realize recreational trail systems for the citizens either by identification of route and procuring property as it becomes available either through subdivision or donation/dedication versus identifying the route and actually going out and purchasing property. He felt that the latter did not make too much sense, but rather wait for development and dedication during that development process to obtain the property. It was

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stated that perhaps a statement should be made addressing the fact that a modal study needed to be done. It was suggested that a recommendation be made for undeveloped plans to have bike trails separate from the roads and that when roads were resurfaced that a discussion take place about putting on a safe way for people to travel along that road either on bike or by foot. R. Dupler asked if the City wanted to pursue a policy of actually negotiating with existing property owners to make the connections possible to actually garnering the easements to make some of the connections happen. He did not think that easements could be had through existing farm fields, but perhaps through some of the subdivisions on private property where it could be presented to the property owners if it was in the City's interest. Mayor McAleer and Commission expressed interest in seeing this language. R. Dupler will bring back a policy statement to the Plan Commission that captures the essence of this conversation.

Page 98 – Specific recommendations from SEWRPC in regards to commuter rail and planning. R. Dupler stated that the last sentence of the paragraph was important which stated: “The City elects not to plan for it at this time.” It was explained how the City could plan for it. The Commissioners agreed with the statement not to plan for it.

Page 100 – Air Transportation Facilities – The City of Delafield does have a sea plane route. R. Dupler suggested that it should be added “to facilitate air access to Lake Nagawicka.” He will provide a map depicting where the sea plane route was.

Page 102 – Resident Input – It was explained that this is a place holder for the City's own survey.

Page 103 – Goals & Objectives –

Goal 1, Objective B – this was changed to “discourage” the improvement of Highway 83 as a four lane arterial.

Item D – “Encourage the design of a network that limits or eliminates cut-through traffic.” This is standard procedure with the planning that the City has been doing. “Road patterns in new subdivisions should selectively use cul de sacs in response to an environment or a necessity of traffic control and all cul de sacs are subject to the Department of Public Works for approval.” – This statement was from a request from Public Works. Discussion took place on the statement. The consensus was to take out the last sentence.

Goal #2 – Actions & Implementations – Create a Trail/Pedestrian Route to Map – this was discussed at the last meeting. Establish a future study to determine the feasibility of the lake circle route – This will be part of the bimodal study that will take place.

Page 104 – Highlight the use of mass transit options such as bus, light rail, and commuter rail and park and ride lots. It was stated that this was one of the original objectives, but contradicts what the Plan Commission has been discussing. It was suggested to take out “light rail and commuter rail”. The Commission was in favor of this suggestion.

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Consider the expansion of the existing equestrian trail system. – There were no comments

Identify location of portage stops and water trail – R. Dupler suggested adding “pedestrian and trail system plan”. This is the idea of getting on the State’s water trail map and in doing so the City could provide portages across the dams and around the bridges and it would be mapped on the state trail system.

B. LEONARD MOTIONED TO ADOPT SMART GROWTH CHAPTER 8 – TRANSPORTATION, WITH FUTURE MODIFICATIONS TO COME IN REGARDS TO TRAIL RECOMMENDATIONS. K. ATTWELL SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

7. DISCUSSION OF SMART GROWTH CHAPTER 5 – HOUSING.

No discussion took place.

8. ADJOURNMENT.

B. LEONARD MOTIONED TO ADJOURN FROM THE MEETING. D. CURTIS-COSTA SECONDED THE MOTION. ALL WERE IN FAVOR. MOTION CARRIED. THE MEETING ADJOURNED AT 10:45 P.M.

Minutes prepared by:

Accurate Business Communications, Inc.