

**CITY OF WAUPACA  
CITY PLAN COMMISSION**

**RESCHEDULED REGULAR MEETING  
COUNCIL CHAMBERS, CITY HALL**

**WEDNESDAY, JULY 10, 2019  
5:26 P.M.**

**1. ROLL CALL**

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**Present:** Mayor Brian Smith, Chairperson, Ald. Alan Kjelland, Pat Phair and Justin Berrens, Public Works Director

**Absent:** John Kneer, Ald. Eric Olson and Tracy Behrendt (all excused)

**Others Present:** Andrew Dane, Interim Development Director, Kathy Kasza, Finance Director/Treasurer, Peter Shau, Ton 80 Realty Services, Inc., Agent, Wilma Akright, Foundations for Living, Attorney Steven Sorenson, von Briesen & Roper, S.C. and Jeff Sanders, Community Planning & Consulting, LLC

**2. APPROVAL OF AGENDA**

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**MOVED** by Comm. Phair **SECONDED** by Ald. Kjelland to **APPROVE** the Agenda as amended with addendum. 4 ayes, 0 nays, 3 absent. **MOTION CARRIED** on a voice vote.

**3. APPROVAL OF PLAN COMMISSION MINUTES**

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**MOVED** by Ald. Kjelland, **SECONDED** by Comm. Phair to **APPROVE** the June 5, 2019 Public Hearing and Meeting Minutes. 4 ayes, 0 nays, 3 absent. **MOTION CARRIED** on a voice vote.

**4. SPECIAL USE PERMIT / PI TOWER DEVELOPMENT LLC, (GROUND LEASE AGREEMENT SECURED FROM NAIM, LLC, OWNER) PETER SHAU, TON 80 REALTY SERVICES, INC., AGENT, 902 CHURCHILL STREET**

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Andrew Dane, Interim Development Director stated that the Special Use Permit request is to construct a 125-foot tower for use by Verizon Wireless located at 902 Churchill Street. The tower will be built on a 70' x 70' ground lease area and will be secured with fencing. Mr. Dane added that the application meets the requirements as defined in Wisconsin State Statute 66.0404, Mobile Tower Siting Regulation. Mayor Smith asked if Verizon Wireless was okay with the stipulation of barbed wire being placed 7 feet above the ground around the tower, Mr. Shau replied that was acceptable. Mayor Smith asked if this tower would create interference with the local bus garage radio. Mr. Shau replied it would not. Mr. Shau also described how the tower was designed to bend while falling so it would be contained within the 70' square area if there was a failure event. Mr. Shau has also obtained approval letters from FAA and the FCC.

**MOVED** by Ald. Kjelland, **SECONDED** by Comm. Phair to **APPROVE AND RECOMMEND TO COUNCIL** the Special Use Permit for PI Tower Development, LLC, (Ground Lease Agreement Secured from NAIM, LLC, Owner) Peter Shau, Ton 80 Realty Services, Inc., agent, 902 Churchill Street. 4 ayes, 0 nays, 3 absent. **MOTION CARRIED** on a voice vote.

**5. SITE PLAN REVIEW / PI TOWER DEVELOPMENT LLC, (GROUND LEASE AGREEMENT SECURED FROM NAIM, LLC, OWNER) PETER SCHAU, TON 80 REALTY SERVICES, AGENT, 902 CHURCHILL STREET**

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Andrew Dane, Interim Development Director said after review of the Site Plan provided by Verizon Wireless the Economic Development Department has determined that they meet the standards and requirements of City Ordinances and recommends approval.

**MOVED** by Comm. Phair, **SECONDED** by Ald. Kjelland to **APPROVE** the Site Plan for PI Tower Development, LLC, (Ground Lease Agreement Secured from NAIM, LLC, Owner) Peter Shau, Ton 80 Realty Services, Inc., agent, 902 Churchill Street. 4 ayes, 0 nays, 3 absent. **MOTION CARRIED** on a voice vote.

**6. SPECIAL USE PERMIT / HOME & AWAY MINISTRIES, INC., 705 W. FULTON STREET**

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Attorney Steve Sorenson explained that the city's zoning ordinance that exists on the property for Home & Away Ministries (Ruby's Pantry) clearly does not allow for this project to proceed. There is no special use that would be allowed in this district. The city's zoning ordinance only permits this type of warehouse distribution facility to be located in the Industrial (I-2) District, which is zoned Heavy Industrial. Attorney Sorenson said that the city could rezone this property to I-2 and then it would be a permitted use, however under the city's zoning code as it currently exists there is no category that would allow this as a conditional use, it would only be a permitted use under I-2 zoning. If the use were going to be as was presented by Home & Away Ministries, Inc., the city would be violating their own zoning code if this were to be allowed. Attorney Sorenson added that if the city does rezone this property it would become "spot" zoning and the neighboring property owners could contest the rezone. When Churny Cheese was at that location it was zoned B-2 and was considered a non-conforming permitted use because it was there before zoning was placed on that property, adding that if the use had been continual then the city could continue to use B-2 zoning. (CLERK'S NOTE: The correct zoning for Churny Cheese was I-1 Light Industrial). After discussing various options, Attorney Sorenson added that the city could change the ordinance to create a category for "storage commercial buildings" so that they would be allowed in a B-4 district, however a public hearing would be required. Attorney Sorenson said that when the city changed the zoning from B-2 to a B-4 district it was with the understanding that the property would attract hotels, motels, convenience stores as an entryway into the city to pull people off Highway 10 and into the downtown area. Public Works Director Justin Berrens said that the Department of Transportation (DOT) would have an interest in this property because of the traffic counts, the location next to Hillcrest Drive, determining how wide the driveway is and the amount of semi-trailer traffic in and out of the property. He thought the DOT may require a traffic study of the area.

Chuck Schwetzer, Minnesota Attorney for Home & Away Ministries, Inc., asked about Chapter 17.440(4)(c) titled 'Modification of Regulations'. He said it was a unique property and Home and Away Ministries is coming with a unique use for the property that is terribly underused and an eyesore. He asked if the referenced modification of regulations section of the Municipal Code could give the city some room to not rezone and not change the ordinance and acknowledge the unique situation that is before the commission. Attorney Sorenson

replied that it has to be a special use that is permitted within the district and if there is a condition that would normally be applied that does not fit in the situation you are allowed to modify because you are granting under the permission to give a special use. It does not allow the city to fundamentally change the permitted uses because that authority is not given by that ordinance. Mayor Smith asked what Ruby's Pantry plans were to make the building not an eyesore. Mr. Schwetzler said that having that building occupied is going to cut down on the risk of vandalizing happening on that property.

Lynn Sahr explained he is the founder of Ruby's Pantry that is named after his grandmother and they are in their seventeenth year. They opened the Waupaca Ruby's Pantry 8 years ago and provide food to approximately 80,000 families in the area each year. In 2018, Ruby's Pantry handled approximately 20 million pounds of food; they have 66 employees and are on track for providing food to 200,000 families. Ruby's Pantry also has 12,000 volunteers within the organization that produce about 200,000 volunteer hours each year. His plans for the Fulton Street building include new wiring, inside and outside painting, blacktop and stripe the parking lot. He intends to install a \$700,000 freezer in the back by the loading docks and expects to spend one million dollars remodeling the entire building.

Comm. Phair asked where do we go from here. Mayor Smith replied our options are to change the zoning but that would mean that all B-4 zoning would be allowed in the area, or if the city changes the zoning to I-2 the city would have spot zoning to deal with and all I-2 properties would have to allow warehouses. Attorney Sorenson said if you start spot zoning within the city you are opening the city up to future lawsuits and the city would also need to revisit their Comprehensive Plan because this would be in violation of the city's current plan.

**MOVED** by Comm. Phair, **SECONDED** by Ald. Kjelland to **DENY** the request by Home & Away Ministries, Inc. for a Special Use Permit located at 705 W. Fulton Street for Ruby's Pantry. 4 ayes, 0 nays, 3 absent.  
**MOTION CARRIED** on a voice vote.

## **7. SUBSTANTIAL ALTERATION OF SPECIAL USE PERMIT DETERMINATION AND SPECIAL USE PERMIT ANNUAL REVIEW – WILMA AKRIGHT, FOUNDATIONS FOR LIVING, 1421 CHURCHILL STREET**

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Andrew Dane, Interim Development Director explained that Foundations for Living has asked for some minor changes to their current Special Use Permit, it is their intention to install an ADA-compliant shower and laundry facility in their Warming Center. Staff recommends approving the alteration of Foundations for Living's Special Use Permit to install an ADA – compliant shower and laundry facility and also recommends extending the annual review to a 3-year renewal period. Wilma Akright, Foundations for Living described the process involved with their request and explained they have a drawing prepared by an Architect, which they will provide to the city building inspector for issuance of the building permit. She said that when people who are living on the street come to Foundations for Living they will first be required to take a shower, they then would be provided with a sweat suit, which they are required to sleep in, and their clothes will be washed for when they leave in the morning. Ms. Akright felt it is a health and safety issue and will help with security issues since

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it will make it more difficult to hide drugs or other forbidden substances and help keep the facility free of disease and infestations, such as lice and bedbugs. Mayor Smith asked for a more detailed list from Foundations for Living for future reporting.

**MOVED** by Ald. Kjelland, **SECONDED** by Comm. Phair to **APPROVE AND RECOMMEND TO COUNCIL** the Request by Foundations for Living to Alter their existing Special Use Permit by adding an ADA-compliant Shower and Laundry Facility in their Warming Center. 4 ayes, 0 nays, 3 absent. **MOTION CARRIED** on a voice vote.

**MOVED** by Comm. Phair **SECONDED** by Ald. Kjelland to **APPROVE AND RECOMMEND TO COUNCIL** changing Foundations for Living Special Use requirements by providing a Biennial Review in October of every other year instead of an annual review. 4 ayes, 0 nays, 3 absent. **MOTION CARRIED** on a voice vote.

## **8. PRESENTATION AND CONSIDERATION OF GUSMER ENTERPRISES EXPANSION**

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Mayor Smith confirmed that Ald. Alan Kjelland is related to an employee at Gusmer Enterprises and would need to recuse himself from a vote so with only 4 members present at the meeting they would not have a quorum of voting members present to take action on the Gusmer Enterprises expansion project. He suggested this item be voted on at the Council level.

Justin Berrens, Public Works Director explained that Gusmer Enterprises approached the city and requested an expansion project at their current location on Ware Street. They plan to build a 33,000 sq. ft. expansion to the east and in order to accomplish this the city needs to vacate Shambeau Road and realign the road and the water main.

Chris Gusmer, Executive Vice President, Gusmer Enterprises, provided a background on Gusmer Enterprises saying they are fortunate to be going through great growth aligned with great markets and customers, which are requiring them to invest further in their Waupaca facility. The expansion project will include some additional production space with new equipment that will add job creation, a new warehouse and expanding employee facilities. Mr. Gusmer said that in 2015, they had 125 employees, they are now at 170 employees and he anticipated another 20-30 employees with this expansion.

When asked, Attorney Steven Sorenson provided the timeline to vacate Shambeau Road saying that the Plan Commission will have this item before them anytime between now and September 3, 2019 when Council will hold a Public Hearing according to Wisconsin State Statutes.

## **9. ZONING CODE AUDIT – JEFF SANDERS, COMMUNITY PLANNING & CONSULTING, LLC**

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Interim Development Director Andrew Dane said that Jeff Sanders, Community Planning & Consulting, LLC was hired to review, audit and update the city’s Zoning Code and Comprehensive Plan. Mr. Sanders described his report by saying there are five specific sections; (1) Consistency and Compliance with State and Federal Statutes, (2) Specific Updates, (3) General Updates, (4) Zoning Methodologies and (5) Applications, Forms and Guides. He highlighted specific parts of each section referring to 2017 Wisconsin Act 67, which changed the way in which conditional uses (special uses) are administered within zoning ordinances. Act 67 took the decision making process regarding the types of conditions you can place on a conditional use permit or a special use permit and through legislation codified the criteria. There are three specific criteria for the conditions placed on conditional use permits 1) those conditions are to be based on substantial evidence 2) the conditions had to be measurable and practicable and 3) the conditions had to be consistent with the purpose of the ordinance. Mr. Sanders provided a summary of his recommended changes to the city’s zoning code spelling out the city’s compliant uses that are likely consistent with Act 67, the potentially compliant uses that may be compliant and the noncompliant uses, which are no longer legally defensible.

Mr. Sanders said that the law states that the city have an attorney review his recommendations prior to implementing any changes since he does not have his law degree.

## **10. COMPREHENSIVE PLAN UPDATE AND ZONING CODE REWRITE UPDATE AND DISCUSSION**

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No additional discussion.

### **11. REPORTS:**

- a. **June 2019 Building Permits** - informational
- b. **June 2019 Code Enforcement Status Report** - informational
- c. **Development Update** – informational

## **12. ADJOURNMENT**

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**MOVED** by Comm. Phair, **SECONDED** by Ald. Kjelland, to **ADJOURN** the July 10, 2019 Regular City Plan Commission Meeting. 4 ayes, 0 nays, 3 absent. **MOTION CARRIED** on a voice vote.

The meeting adjourned at 7:48 p.m.

Mayor Brian Smith, Chairperson

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