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City of Ashland, Wisconsin

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City of Ashland – Plan Commission Meeting Minutes

A meeting of the Ashland Plan Commission was held on **Tuesday, June 21st, 2022 at 6:30 p.m.** via GoToMeeting.

Committee Members Present: David Mettillie, Mayor MacKenzie, Jeff Beirl, JoAnn Erickson, John Beirl, Ana Tochtermann

Committee Members Absent: Laurie Gregor (excused)

Staff Present: Brea Grace, Mandelyn Lyons

Mayor MacKenzie opened the meeting at 6:30 p.m.

Agenda

1) Approval of Agenda

Motion to approve the agenda by John Beirl, seconded by Jeff Beirl. Passed unanimously.

2) Consent Agenda

a) Approval of minutes from the February 15, 2022 Plan Commission meeting

Motion to approve the minutes from the February 15, 2022 Plan Commission meeting by John Beirl, seconded by David Mettillie. Passed unanimously.

3) Public Comment (non-agenda items)

None.

4) Action Items

- a) Public Hearing and vote on a request for a Conditional Use Permit (CUP) to operate a commercial composting facility at 1406 Cty. Hwy. A, parcels #201-04620-0000, #201-04614-0000, #201-04624-0000, zoned Heavy Industrial (H-I). Applicant: James Tucker o/b/o Big Lake Organics, LLC

Brea Grace introduced herself, explained the proposed facility, and summarized the staff report. She noted that she will be saving the conditions for the CUP until after the public hearing. Brea also explained the review standards for Conditional Use Permits.

John Beirl asked a clarifying question regarding the required notifications that went out for this public hearing.

Mayor MacKenzie agreed and asked staff to clarify.

Mandelyn Lyons explained that a Conditional Use Permit requires a class 2 public hearing notice, that the notice for the hearing was published twice in the paper on June 10th & June 17th. Discretionary letters were also sent to neighbors within 1,700 ft of the property.

Mayor MacKenzie reminded everyone to use their microphones during the meeting.

A motion to go into the public hearing by Jeff Beirl, seconded by John Beirl.

Mayor MacKenzie invited those who wish to comment to come forward.

John Doane of 317 15th Ave E commented that two neighbors to the proposed facility are present and received their letters but did not feel that they had enough information until they read the packet during the start of the meeting. He said that his daughter Brianna, of 1120 11th St. E, has a new home across from where this facility is proposed to be located and that he has a vested interest in getting their questions answered. He said that this proposal is an admirable venture but suggested that the commission table this matter until the neighbors can review the information in the packet, or that the commission review the permit after the end of the applicant's lease. He also commented that there are already animals in town and that this facility could attract more, especially since the facility isn't fenced in.

Mayor MacKenzie asked John Doane to clarify what he would like the commission to do after the applicant's two year lease is up.

John Doane answered that he would like the commission to review the permit and ask the neighborhood what occurred during that time, including if they followed conditions.

Tom Yankee of 1102 14th Ave E commented that he agreed with John Doane's comments, that the proposed facility is admirable, but he is concerned about who is the responsible party if there are issues. He noted that he would want someone coming to the facility monthly to assess security for animals and people, and to see their progress.

Jamie Tucker owner of Big Lake Organics commented that he would like to answer all of the questions addressed by the neighbors about the facility. He said that he can explain how the facility plans to reduce smells and vermin. He asked if that is appropriate at this time in the meeting.

Mayor MacKenzie said that him answering questions is allowed.

Jamie then explained the processes that would take place at the facility and how they would reduce smell and vermin. He also commented that he rarely sees vermin on the property.

Mayor MacKenzie asked Jamie to address the previous question about who is ultimately responsible.

Jamie answered that part of the composting application with the DNR is a Storm Water Protection/Mitigation Plan. Jamie mentioned that he is named in the document as the responsible party if there is any contamination. In regard to the lease, Big Lake Organics has a two-year

lease through Johnson Timber Corporation who owns the facility on the property. He also noted that he is planning to purchase the property. Jamie continued, saying that him and his business partner, Todd Rothe, have a love for the area and they want to do it right and have invested to make sure that there is little to no smell.

Mayor MacKenzie asked staff if there were any written comments provided before the meeting.

Mandelyn responded that there were none.

A motion to go out of Public Hearing by John Beirl, seconded by JoAnn Ericson. Passed unanimously.
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Jeff Beirl asked the applicant if he could explain the difference between the old facility at Northland College and the new proposed facility.

Jamie answered that the Northland College facility was running over capacity which resulted in smells, they also could not keep up with consumer demand. The facility at the new location processed roughly double the original.

Jeff Beirl commented that he is concerned about the smell and the neighbors, and asked what impact smell will have on the neighborhood.

Jamie answered that they process the food waste the same day it comes to the facility and that the only time you should be able to smell odors would be when the windrows are being turned.

Jeff Beirl asked about the potential increase of traffic.

Jamie answered that there will be a monthly delivery of woodchips and there would be a truck and trailer transporting compost bins. He said in terms of consumers on the property that traffic will be seasonal, but they will also offer delivery.

Jeff Beirl asked if there are established markets for the finished product.

Jamie answered yes, they have a list of customers already, many of them would be local. He does not anticipate being able to keep up with the demand even with this larger facility.

Brea asked if Jamie could describe the testing process that the finished compost will go through.

Jamie described the process and the lab certification that the finished compost will go through to be rated. He noted that the finished test comes back with a label description, similar to a nutrition label, of everything in the compost.

John Beirl asked staff if there is a way to measure odor and if we can add a condition related to odor controls. He asked, echoing Mr. Yankee's concerns, who is responsible for making sure that Big Lake Organics follows the conditions set forth for the CUP. He also asked if CUP's are rescindable.

Brea said she believes that CUPs are revokable if conditions are not met. She explained in 2017 a Wisconsin legislative Act 67 that limits local government powers regarding CUPs, so if an applicant meets conditions and ordinance requirements the City can not deny them the CUP. She continued to say that staff recommends approval based on ordinances with the conditions in the

report.

John Bierl asked if the DNR has mentioned an odor measure device.

Jamie responded that he has been working with the DNR on odor control and a specific measure has not been mentioned, but there is likely an odor meter that could measure the smell, but the best detectors are neighbors.

John Bierl commented that his concern is that if the CUP is granted, and there are any problems that the neighbors bring forward, that the applicant might may no longer be as open to fixing the problem as they have an approved CUP.

Jamie mentioned that is not Big Lake Organics intention and that he is willing to give neighbors contact information if there are any problems so that he can address any issues almost immediately.

Brea noted that we can add a condition that the applicant must comply with City nuisance ordinances.

Jamie also said that he is willing to work with the City and have oversight as long as they don't have to pay.

Ana Tochtermann commented that the City likely does not have the capacity to send someone out every month for assessments, but one option would be for the applicant to report on any issues.

Jamie agreed that Big Lake Organics would be willing to bring a report forward as long as they are made aware of what should be on it.

Mayor MacKenzie asked if there is anything specific that should be in these reports.

Ana responded that an annual report on complaints and solutions presented at a Council meeting would be sufficient.

JoAnn Ericson asked the applicant where they are located now?

Jamie answered that they are currently operating on the proposed site since they were unaware that Composting requires a Conditional Use Permit in Heavy Industrial zoning districts, and that Big Lake Organics did not want to interrupt the service that Northland had previously provided. He said that they have been operational for around seven months.

JoAnn noted that earlier Jamie mentioned that there were potential smell issues.

Jamie responded that overall compost has a smell, but they are going to do everything possible to prevent noxious odors. He also commented that the smells are also subjective, and it does bother him for the little time that they turn the compost piles but otherwise, from his own experience it is an earthy smell.

JoAnn asked the neighbors present if they have been able to smell anything so far.

The neighbors have not smelled anything.

Jamie commented that they are committed to low smell levels and that the property that they are on is conducive to composting. The existing power infrastructure allows them to continue composting and has enough power for their expansion plans – aerated static windrows. He then explained the aerated static windrow system.

JoAnn asked for clarification on how many animals they have seen and their plan for animals once they start expanding.

Jamie answered that the standard for vermin mitigation is capping, which is outlined from the DNR.

JoAnn mentioned that her other concerns stem from how staff inform the public about new proposals in their area. She asked what the letters to neighbors said.

Brea responded that the letter generally has an overview of the proposal and invites the public to come to the public hearing for more information. She also said that staff contact information is on the letter so people can contact them for more information prior to the meeting.

JoAnn asked if it specifically says to contact staff if you have any questions because if it doesn't it might feel like the public is not supposed to ask. She continued to say that in the past people have not felt informed and that we should have specific language inviting the public to ask questions or get more information.

Mayor MacKenzie said that we will look at changing the letters.

JoAnn asked the applicant what would happen if the CUP was denied.

Jamie said that they would immediately stop operations, clean up the site, and try to find a new location. Nothing on the site is a permanent change or fixture. He continued saying that this site is ideal for the use, it is close to town but not too close, there is existing infrastructure, and the timber storage areas made for a great windrow location.

JoAnn then questioned why staff did not know that this facility was operating until now.

Jamie responded that he did not come forward until now because he did not know that he had to. When he approached the land owner for the lease he did not mention any zoning concerns either. Jamie also noted that once he found out that he needed to get zoning approval that he contacted the planning office.

Jeff Beirl asked Jamie about expansion plans.

Jamie predicted that they could at max, quadruple their capacity, but that is all the site could hold. The DNR permit also puts a max on what can be processed.

Brea commented that one of the proposed conditions is a CUP modification if the intensity of the use changes.

Jamie noted that the operation is now confined to the two-acre lease and his understanding is that any expansion out of that would require approval.

Jeff asked if there was a way to put a two-year sunset clause on this CUP, because no one knew

that they were even there and operational.

Brea responded that from her understanding we can not put a sunset clause on the CUP. The commission either has to approve or deny, and in the future go through the modification process or the revocation process.

Jeff asked what the revocation process would be.

Brea said that there would be a public hearing and that there is a City ordinance regarding noxious odors.

Ana asked how close the nearest residence is to the facility.

Mandelyn responded that the nearest residence is 1,500 ft. away from the windrows.

Ana continued asking if this distance was in the radius of notice.

Mandelyn responded that the neighbor letters were sent out to anyone with property 1,700 ft. away.

Ana thanked staff for going past the 1,500 ft. and commented that not only does this support the City's goal of sustainability, this also would be the establishment of a local business which supports a product that is in demand. She then asked Jamie if he has received any complaints in the past seven months of operation.

Jamie responded the only complaint he's ever received was his business partner's wife while it was located on their property.

John commented that we are not yet in the hottest months of the year.

Jamie responded that the last few days have been abnormally warm and there was no issue.

Ana commented that she feels good about the proposal and the conditions that were suggested.

Mayor MacKenzie called on Commissioner Metille to hear if he has any thoughts.

David said that his concerns have been addressed already and was happy that Ana brought up that this is a local small business. He also said that he agreed with Brea regarding the sunset clause, as in the past several City attorneys have said that a sunset clause is not permitted with CUPs. He also spoke in support of this CUP as he lives in the area and has not noticed any change in smell. David also said that he knows the applicants will do their best and have a good business.

Mayor MacKenzie noted that a composting permit can be revoked by the DNR as he has experience with this in his past career. He agreed that the condition regarding required DNR permits is necessary. The Mayor then presented his desired edits to the conditions in the staff report.

Mayor MacKenzie also explained that approval of the Conditional Use Permit from Planning Commission goes on to City Council for final approval.

John asked the Mayor to read the conditions with the new edits.

The Mayor read the conditions with edits.

John asked who would determine what expansions require a CUP modification, and what factors would it be based on.

Brea said that a zoning administrator would make that determination, and that the intensity of the use is a factor. The WDNR permit sets how much compost the applicant can process so if they apply for a permit to process more that would be a change in intensity. If the applicant goes beyond the geographical area identified in this packet that would also be an increase in intensity. If the applicant starts to sell materials onsite, leading to more traffic that could also be considered a change in intensity.

John asked to clarify if it would be the responsibility of the zoning administrator to monitor if the intensity has changed.

Ana asked if intensity is defined in our ordinances or is there information that relates to intensity in the ordinances.

Brea stated that intensity is not defined in the ordinance, however what is being approved is the information that we have, that this proposal is in a specific area and will process a specific amount of compost. If there is a change to either of these specifications that we approve today that would constitute a modification to the CUP.

The Mayor asked if the cubic yard requirement comes from the DNR.

Brea said yes, so if the permit changes the intensity of the use has changed.

The Mayor commented that while a sunset clause is not allowed a condition could be added stating that if the DNR permit changes or they request a change, the applicant should come back for a CUP review.

John agreed with the additional condition. He then asked the applicant if they have any objections to the conditions that are suggested.

Jamie said no.

Motion for approval of the Conditional Use Permit with conditions by John Beirl, seconded by JoAnn Ericson. Passed unanimously.

- b) Public Hearing and vote on a request for a Conditional Use Permit (CUP) to operate a pizza restaurant at 915 Lake Shore Dr. W, parcel #201-00722-0000, zoned Waterfront Commercial (W-C) with Waterfront Overlay & Gateway Overlay. Applicant: Dale Brooks o/b/o Little Caesars Pizza

Mandelyn summarize the applicant's request, summarized the staff report, and the criteria for review.

Motion to go into the public hearing by John Beirl, seconded by JoAnn Ericson. Passed unanimously.
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Mayor MacKenzie invited anyone with a comment to come forward.

Tony Jennings of 6424 Summit Ave in Washburn commented that he is the realtor for this applicant and that this is a great use for the property. Dale runs a nice establishment on the east side and this new site will give them space to grow. Jim, Wendy, and John have ran the gas station for over 38 years and with the expenses of state upgrades this is the perfect time for them to exit this chapter of their lives. I think this is a great idea, I'm obviously biased, but I support it.

Dale Brooks of Little Caesars Pizza introduced himself and commented that he has owned the restaurant for 20 years and they are looking to expand and have outgrown the old space.

Mayor MacKenzie asked if the applicant has seen the conditions set in the staff report and if Dale has any objections.

Dale answered that he has seen the conditions and has no objections.

The Mayor asked if there are any additional comments or if any were submitted prior to the meeting.

Mandelyn responded that there are no comments submitted prior to the meeting.

Motion to go out of public hearing by Jeff Beirl, seconded by John Beirl. Passed unanimously
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Mayor MacKenzie asked if staff has anything else to add.

Staff had no additions.

Jeff asked what the new use would be for the car wash building.

Dale answered that the worst case it would be a storage building, best case it would be another business, which would have to go through this same process. If nothing happens after awhile take it down.

Jeff asked what will happen with the existing site.

Dale said that he has a lease so someone else will likely move in.

Jeff commented that he is supportive of this proposal especially since this is a business that has been around.

JoAnn Ericson echoed Jeff's comments and commended Dale for keeping the existing location clean and neat. She asked if the car wash was to be made into another business would there be room for it?

Brea answered that would be part of the future review. If it is a conditional use it would have to come back through this same public hearing process. Staff would have to review parking standards and a thorough review would be done.

The Mayor asked if David or Ana have any comments.

David said he does not.

Ana echoed the other commissioners with support. She then asked staff if staff could ask the applicant if they are open to having native plants in their landscaping plans.

Dale said that they would be open to any recommendations.

Brea clarified the nonconformities on this site, the plan review process, and signage permits.

Jeff commented that this use fits and that keeping this building a local small business is great.

Mayor MacKenzie asked for staff to read the conditions.

Brea read the conditions from the staff report. She then continued to say that herself and Mandelyn had a conversation with the applicant previous to the meeting relating to conditions and brand design standards. She noted that this seems to be a compatible use.

Motion to approve the Conditional Use Permit with conditions by John Beirl, seconded Jeff Beirl. Passed unanimously.

5) Announcements/Reports/Comments/Questions

Mayor MacKenzie thanked everyone for attending the meeting and announced that the City is still trying to hire a new Planning Director and has contracted with a company to help with that search. Until the City hires someone Brea will be on staff.

Mayor MacKenzie asked staff if they have any comments.

Brea said the staff have none, but have a staff report to go over with the Commission.

a. Staff Report – Planning Commission Resources

Brea summarized her staff report which includes multiple resources for the Planning Commissioners to review. She also noted that there are many training opportunities for Commissioners including topic oriented sessions.

Brea continued to say that staff will refine the neighbor letters for future proposals.

Jeff asked if it would be possible to put the packet or more information on the website.

Mandelyn commented that the neighbor letters sent out for CUPs are actually optional, but the department sends them out anyways because we want public opinions and voices to be heard in regards to proposals. Mandelyn then said that the letters will be changed and putting things on the website are possible.

Jeff said that he appreciates that we send letters out to let people know.

Mayor MacKenzie noted that we could look to see what other communities do for notices or put this as a discussion item on the next agenda.

John commented that a one size fits all notification process might not be a good fit. He also asked if there are any updates on past approved projects including the coffee shop, the Mexican restaurant, and the apartment buildings.

Mayor MacKenzie responded that the coffee shop was slowed down based on property line disputes and adverse possession which has now reached a settlement.

Mandelyn followed up that she has been in contact with the property owner and that they are working on permits.

Mayor MacKenzie continued to say that some of the delays came from a Certified Survey Map and miscommunication. The housing construction would like to begin on the first of July, and while there are rumors going around the City has not heard anything about the project not being done. The Mexican restaurant is getting their construction schedule in order.

Mandelyn followed up saying that the housing complex has asked the Planning department what they need to provide for building permits.

Brea also noted that the housing project just got conditional state approval as well.

Mayor MacKenzie commented that in some of these cases there is a certain level of confidentiality that the City has to maintain, but maps have been recorded as well as deeds on the Timeless Timber sites.

JoAnn asked about how long permits last in regards to the coffee shop and if they will need to re-apply.

Mandelyn responded that we are working with the City Attorney on extensions so they will not have to go back to Planning Commission.

JoAnn asked if they changed anything or went longer would they have to go back.

Mandelyn said that if there are dramatic changes or they don't develop for another year we would likely need another review.

Mayor MacKenzie said one thing the commission should discuss is how we follow up with permits that have been issued. He said we essentially have one employee running the office upstairs, so being short-handed we need to prioritize certain things. This is a discussion for another time. He also noted that Brea's links in the staff report are helpful and he appreciates it.

Mayor MacKenzie also explained the powers of the Planning Commission compared to the City Council and how changes are made to ordinances or the UDO.

John asked what position Brea has on the planning department.

Brea explained that she likely will be here for another three to six months before someone is hired in the planning position. She said that Mandy (Mandelyn) is also working on planning projects and running things through her for budgeting purposes.

Brea also commented that ordinance changes are a topic that staff is going to be starting on, as a new director is several months out.

JoAnn Ericson followed up asking about the frequency of meetings and how there hasn't been a meeting since February.

Mandelyn answered that without a Planning Director there was not anyone on staff qualified to make zoning recommendations of this caliber, so nothing could be brought forward to Planning Commission. Now that Brea is with staff we are able to work on these requests that require more sophisticated zoning knowledge.

Mayor MacKenzie mentioned that there is a meeting calendar and historically the Planning Commission might even have two meetings a month if things are busy.

John said that we also have to be sensitive about what is going on in the community when it comes to these requests. Not having staff to complete requests on time means some businesses take risks, for example the tanks being pulled out of the new Little Caesars. He continued to say that in the future we should address cross training so that these things can be handled even when there isn't a planning director.

Mayor MacKenzie followed up saying that sometimes when people have requests they don't come forward on time for noticing requirements. He said on behalf of staff that there was a lot they had to do to make things happen.

Mandelyn commented that there was an issue with the class two public hearing notice and the timing.

Jeff then asked if Brea did not accept this position who would bring forward these requests.

Mayor MacKenzie said that if Brea was not here this would be the responsibility of the City Administrator.

Jeff then asked what happens if the Administrator is unable to bring these requests forward.

Ana asked to clarify what this discussion is about, and noted that the City has been extremely responsible in taking requests in a timely way. She is concerned that we are talking about hypotheticals when a solution has been found by contracting Brea.

Jeff said that he was just trying to understand the process and that we are doing the job we need to do.

Mayor MacKenzie said that staff has been responsive, which is why Brea is hired. He echoed Ana's point that staff have been working hard and keeping up.

Brea said that we do have July meeting and there will be a CUP on the agenda.

Mandelyn followed up with the date of July 19th.

6) Adjournment

Motion to adjourn by Jeff Beirl. Seconded by John Beirl. Passed unanimously.
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Meeting was adjourned at 8:34 pm. Minutes done by Mandelyn Lyons.