

**VILLAGE OF FONTANA ON GENEVA LAKE  
WALWORTH COUNTY, WISCONSIN  
(Official Minutes)**

MONTHLY & SPECIAL JOINT SESSION MEETING of the VILLAGE OF FONTANA PLAN  
COMMISSION with the JOINT EXTRATERRITORIAL ZONING COMMITTEE

**Tuesday, December 28, 2010**

Chairman Spadoni called the monthly meeting of the Village of Fontana Plan Commission to order and Chairman Derek D'Auria called the meeting of the Joint ETZ Committee meeting to order at 5:30 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

**Plan Commissioners present:** Roll call: Chairman George Spadoni, Derek D'Auria, Mike Poivey, Micki O'Connell, President Arvid Petersen, Sarah Lobdell

**Plan Commissioner absent:** Harry Nelson

**ETZ Committee Members present:** Roll Call vote: Chairman D'Auria and Village of Fontana representatives Mike Poivey and Sarah Lobdell; Town of Walworth representatives Tom Rohleder and Jim van Dreser; Town of Linn representatives Jerry Polek and John Zils

**ETZ Committee Members absent:** Town of Linn representative Larry Aasen, Town of Walworth representative Ken Magowan

**Also present:** Larry Austin, Bill Binn, Brandee Brown, Scott Burris, Administrator/Treasurer Kelly Hayden, Brandy Howe, Rob Ireland, John Karabas, Village Clerk Dennis Martin, Assistant Zoning Administrator Bridget McCarthy, Joseph McHugh, Building Inspector/Zoning Administrator Ron Nyman, Sharon O'Brien, Brian Pollard, Village Attorney Dale Thorpe, Dan Truttschel, Ernie Tuchscherer, Carol and James Whowell

**Visitors Heard**

None

**Announcements**

1. Village Hall & Public Library Closed for New Year's Holiday Weekend – **Friday, December 31, 2010 through Monday, January 3, 2011**
2. Deadline for Filing Nomination Papers for 2011 Spring Election – **Tuesday, January 4, 2011**
3. CDA Board Monthly Meeting – **Wednesday, January 5, 2011, 6:00 pm**
4. Village Hall Open for Customer Service – **Saturdays, January 8, 15, 22 & 29, 2011, 8:00 am to Noon**
5. Village Board Monthly Meeting & Joint Public Hearing with Plan Commission – **Monday, January 10, 2011, 6:00 pm**
6. Human Resources Committee Meeting – **Wednesday, January 12, 2011, 5:30 pm**
7. Protection Committee Meeting – **Monday, January 17, 2011, 5:45 pm**
8. Library Board Meeting – **Wednesday, January 19, 2011, 10:00 am**
9. Park Commission Meeting – **Wednesday, January 19, 2011, 6:00 pm**
10. Lakefront and Harbor Committee Meeting – **Wednesday, January 26, 2011, 4:30 pm**
11. Plan Commission Monthly Meeting – **Monday, January 31, 2011, 5:30 pm**

**Approve Minutes**

Commissioner O'Connell/Commissioner D'Auria 2<sup>nd</sup> made a MOTION to approve the minutes for the meeting held November 29, 2010, and the MOTION carried without negative vote.

ETZ Committee member Polek/ETZ Committee member Zils 2<sup>nd</sup> made a MOTION to approve the minutes for the meeting held November 29, 2010, and the MOTION carried without negative vote.

**Public Hearing**

**Petition to Amend the ETZ Zoning Ordinance Filed by James and Carol Whowell, Willow Bend Properties, W6267 Willow Bend Road, Walworth Township, from A-2 ETZ Agricultural Land District to C-2 ETZ Upland Resource Conservation District**

Chairmen Spadoni and D’Auria opened the public hearing at 5:31 pm. The petition was filed to authorize the splitting off of two separate lots for single-family home sites at W6267 Willow Bend Road. The Village staff report recommends approval of the petition as submitted. Carol Whowell stated that she is in favor of the proposal. There were no other comments made during the public hearing, which was closed by Chairmen Spadoni and D’Auria at 5:32 pm.

**Joint Session General Business**

**Joint ETZ Committee Recommendation on Petition to Amend the ETZ Zoning Ordinance Filed by James and Carol Whowell, Willow Bend Properties, W6267 Willow Bend Road, Walworth Township**

ETZ Committee member van Dreser/ETZ Committee member Lobdell 2<sup>nd</sup> made a MOTION to recommend approval of the Petition to Amend the ETZ Zoning Ordinance as filed by James and Carol Whowell, Willow Bend Properties, W6267 Willow Bend Road, Walworth Township, and the MOTION carried without negative vote.

**Plan Commission Recommendation on Petition to Amend the ETZ Zoning Ordinance Filed by James and Carol Whowell, Willow Bend Properties, W6267 Willow Bend Road, Walworth Township**

President Petersen/Commissioner O’Connell 2<sup>nd</sup> made a MOTION to recommend approval of the Petition to Amend the ETZ Zoning Ordinance as filed by James and Carol Whowell, Willow Bend Properties, W6267 Willow Bend Road, Walworth Township, and the MOTION carried without negative vote.

**Adjournment Joint ETZ Committee**

ETZ Committee member Lobdell/ETZ Committee member Zils 2<sup>nd</sup> made a MOTION to adjourn the meeting of the ETZ Committee at 5:34 pm, and the MOTION carried without negative vote.

**Plan Commission General Business**

**Abbey Springs PIP Amendment Filed by Wyntree Construction for Condominium Unit Porch Renovation Proposal, 803A & 803C Country Club Drive**

Bill Binn of Wyntree Construction presented the proposal, which has received approval from the Abbey Springs homeowners association. The applicants purchased from the association some of the common ground area to make room for a porch renovation plan for both the upper unit and ground level unit. As well as an amendment to the PIP, Thorpe stated that the Abbey Springs condominium plat and declarations also will have to be amended to authorize the proposal.

Commissioner O’Connell/Commissioner D’Auria 2<sup>nd</sup> made a MOTION to recommend approval of the amendment to the Abbey Springs Planned Development Precise Implementation Plan, condominium plat and declarations as presented, and the MOTION carried without negative vote.

**PIP Amendment Filed by Mill Street Retail Center, LLC, 441 Mill Street – Outdoor Patio Addition & Signage Modification**

Brian Pollard filed the PIP amendment to authorize a reconfiguration of the approved signage for two new tenants in the building that initially was the site of Georgie B’s Restaurant. Pollard stated that there are still some potential issues with wetland setbacks that he has to check with the Wisconsin DNR and alcohol service ramifications that he wants to take care of prior to moving forward on the proposal to construct an outdoor patio. McCarthy stated that the village staff report recommends approval of the signage proposal as submitted. McCarthy stated that with the old signage removed and the new signs erected, the total signage still is below maximum size limitation

for the building. The staff report defines the exact locations of the new signs and states that the following four conditions shall also apply:

1. Tenant applications with regard to the above may be approved by the Department of Building and Zoning provided that signage conforms to the requirements listed above.
2. Any other temporary sign requests not listed shall fall under the terms of the Village of Fontana Municipal Code at time of application, and may be approved by the Department of Building and Zoning.
3. Any proposed modifications to the above described permanent signage with regard to number of signs, size and/or location, shall be proposed and approved through a PIP amendment.
4. All other PIP approvals previously entered and not modified by the foregoing terms, shall remain in full force and effect.

President Petersen/Commissioner D'Auria 2<sup>nd</sup> made a MOTION to recommend Village Board approval of the amendment to the Mill Street Retail Center Precise Implementation Plan for the new signage proposal as submitted, with the following four conditions:

1. Tenant applications in regards to the above may be approved by the Department of Building and Zoning provided that signage conforms to the requirements listed above.
2. Any other temporary sign requests not listed shall fall under the terms of the Village of Fontana Municipal Code at time of application, and may be approved by the Department of Building & Zoning.
3. Any proposed modifications to the above described permanent signage in regards to number of signs, size and/or location, shall be proposed and approved through a PIP Amendment.
4. All other PIP approvals previously entered and not modified by the foregoing terms, shall remain in full force and effect.

The MOTION carried without negative vote.

#### **Building, Site & Operational Plan Filed by Pie High Pizza, 441 Mill Street, Suite 101**

John J. Karabas, the operator of Pie High Pizza, stated that he would like to serve pizza, salad, beer, wine and soft drinks at 441 Mill Street, Suite 101. Karabas stated that he has been in the restaurant business for 30 years in the Chicago area and he plans on offering carryout and delivery service. The restaurant has seating for up to 42 diners and six tables in an outdoor seating area along the building. McCarthy stated that the staff report recommends approval with the following six conditions:

1. A complete submittal for building and zoning permits shall be applied for and issued prior to the commencement of construction of and/or installation of any and all of approved construction normally requiring a permit. BSOP approval shall not alleviate the applicant from securing all required permits.
2. No serving or consumption of alcohol shall be allowed in the outdoor dining area, per Chapter 6 of the Village of Fontana Municipal Code.
3. Outdoor music/noise shall not be allowed after 10:00 pm.
4. Outdoor service shall not be allowed after 10:00 pm.
5. Any future proposed modifications of this approved BSOP, including, but not limited to lighting, outdoor music, etc., shall require Village of Fontana approval in the form of an amendment to the approved Building, Site and Operational Plan and its conditions.
6. All outstanding cost recovery fees billed to date applicable to this project shall be paid prior to the issuance of any building and zoning permits. This condition does not alleviate the applicant from any cost recovery fees not yet billed.

Commissioner Lobdell/Commissioner D'Auria 2<sup>nd</sup> made a MOTION to recommend approval of the Building, Site and Operational Plan as submitted for Pie High Pizza, 441 Mill Street, Suite 101, with the following six conditions:

1. A complete submittal for building and zoning permits shall be applied for and issued prior to the commencement of construction of and/or installation of any and all of approved

- construction normally requiring a permit. BSOP approval shall not alleviate the applicant from securing all required permits.
2. No serving or consumption of alcohol shall be allowed in the outdoor dining area, per Chapter 6 of the Village of Fontana Municipal Code.
  3. Outdoor music/noise shall not be allowed after 10:00 pm.
  4. Outdoor service shall not be allowed after 10:00 pm.
  5. Any future proposed modifications of this approved BSOP, including, but not limited to lighting, outdoor music, etc., shall require Village of Fontana approval in the form of an amendment to the approved Building, Site and Operational Plan and its conditions.
  6. All outstanding cost recovery fees billed to date applicable to this project shall be paid prior to the issuance of any building and zoning permits. This condition does not alleviate the applicant from any cost recovery fees not yet billed.

The MOTION carried without negative vote.

**Building, Site & Operational Plan Filed by Scotty’s Eatery & Spirits, 441 Mill Street, Suite 102**

Scott Burris, the operator of Scotty’s Eatery & Spirits, stated that he would like to serve typical American restaurant fare including steaks, fish and chicken. Burris stated that he would also like to offer breakfast on Fridays, Saturdays and Sundays and open at 7:00 am. Opening time for Monday through Thursday would be 11:00 am. Burris stated that he would also like to feature live entertainment in the establishment. The staff report recommends approval of the BSOP as submitted with the following 10 conditions:

1. A complete submittal for building and zoning permits shall be applied for and issued prior to the commencement of construction of and/or installation of any and all of approved construction normally requiring a permit. BSOP approval shall not alleviate the applicant from securing all required permits.
2. All construction (i.e., fencing) shall conform to the Village of Fontana Municipal Code.
3. The approved fencing shall be for a total of 39 feet running parallel to the north wall of the building and shall be of the same materials, color and style of the existing fencing.
4. Fencing along the west portion of the proposed outdoor dining area shall not be allowed.
5. No serving or consumption of alcohol shall be allowed in the outdoor dining area, per Chapter 6 of the Village of Fontana Municipal Code.
6. Outdoor music/noise shall not be allowed after 10:00 pm.
7. Outdoor service shall not be allowed after 10:00 pm.
8. No additional lighting shall be allowed.
9. Any future proposed modifications of this approved BSOP, including, but not limited to lighting, outdoor music, signage, etc., shall require Village of Fontana approval in the form of an amendment to the approved Building, Site and Operational Plan and its conditions.
10. All outstanding cost recovery fees billed to date applicable to this project shall be paid prior to the issuance of any building and zoning permits. This condition does not alleviate the applicant from any cost recovery fees not yet billed.

O’Connell stated that she is concerned about the proposal for speakers on the outdoor patio and outdoor music as noise travels. McCarthy stated that the proposal for the outdoor speaker is included the BSOP filed for Pie High Pizza, and the conditions suggested by staff are similar to those for the outdoor tent and live entertainment at the Abbey Resort property located across the road.

Commissioner D’Auria/Commissioner Lobdell 2<sup>nd</sup> made a MOTION to recommend Village Board approval of the Building, Site and Operational Plan as filed for Scotty’s Eatery & Spirits, 441 Mill Street, Suite 102, with the following 10 conditions:

1. A complete submittal for building and zoning permits shall be applied for and issued prior to the commencement of construction of and/or installation of any and all of approved construction normally requiring a permit. BSOP approval shall not alleviate the applicant from securing all required permits.
2. All construction (i.e., fencing) shall conform to the Village of Fontana Municipal Code.

3. The approved fencing shall be for a total of 39 feet running parallel to the north wall of the building and shall be of the same materials, color and style of the existing fencing.
4. Fencing along the west portion of the proposed outdoor dining area shall not be allowed.
5. No serving or consumption of alcohol shall be allowed in the outdoor dining area, per Chapter 6 of the Village of Fontana Municipal Code.
6. Outdoor music/noise shall not be allowed after 10:00 pm.
7. Outdoor service shall not be allowed after 10:00 pm.
8. No additional lighting shall be allowed.
9. Any future proposed modifications of this approved BSOP, including, but not limited to lighting, outdoor music, signage, etc., shall require Village of Fontana approval in the form of an amendment to the approved Building, Site and Operational Plan and its conditions.
10. All outstanding cost recovery fees billed to date applicable to this project shall be paid prior to the issuance of any building and zoning permits. This condition does not alleviate the applicant from any cost recovery fees not yet billed.

The MOTION carried without negative vote.

### **Recommendation on Sewer Easement for Porter Property at 557 North Lakeshore Drive**

Thorpe stated that the existing sewer easement on the property is located about 20 feet northwest of the actual sewer line and the proposal would correct the situation. Thorpe stated that a recommendation is required from the Plan Commission on easements. Director of Public Works Craig Workman stated in a December 17, 2010 email that there is a sale pending on the property and the potential buyer would like to expand the house to the northwest, which would be precluded by the location of the existing easement. Workman stated that the new easement correctly identifies the location of the sewer line, which is not in the area of the proposed house expansion. Following discussion, it was determined that Hayden and Thorpe will review the easement submitted by Attorney David Rasmussen prior to the January 10, 2011 Village Board meeting.

Commissioner D’Auria/President Petersen 2<sup>nd</sup> made a MOTION to recommend Village Board approval of the abandonment of the existing sewer easement on the property located at 557 North Lakeshore Drive, and the approval of a new sewer easement on the property as presented. The MOTION carried without negative vote.

### **Moratorium Proposal for Chapters 17 and 18 Rewriting Project – January 10, 2011 Joint Public Hearing at 6:00 pm**

A joint public hearing before the Village Board and Plan Commission has been scheduled for Monday, January 10, 2011 beginning at 6:00 pm. Thorpe stated that he distributed the previously prepared research materials and paperwork to authorize a moratorium. Thorpe stated that the draft documents exempt the TIF District and the Cliffs of Fontana Planned Development, but would place a moratorium on the filing of rezone petitions and plats or land divisions. Thorpe stated that other exemptions can be added if desired. D’Auria asked Thorpe what the downside of a moratorium would be and if it would impact routine building permit issues. Thorpe stated that as preliminarily drafted, the moratorium would feature a mechanism for appeals, but it would prohibit the filing of land plats, condominium plats and rezone petitions. Spadoni stated that he was concerned that exemptions proposed for the moratorium do not include the Highlands of Fontana and the Cobalt Farms developments. Thorpe stated that the two developments that Spadoni inquired about and any other developments that have already received approval but have not yet been constructed would not be impacted. Thorpe stated that the Cliffs of Fontana development has been approved, but the plat is amended annually as individual lots are sold, so it was added as a suggested exemption. Petersen stated that he is concerned that area developers will have the wrong perception that all construction in Fontana will be prohibited by the moratorium and there is nothing that can be done to prevent the contractors from having this incorrect perception. Spadoni stated that the Village will have to get the message out to the contractors and developers on exactly what the moratorium will include and maybe the Village should not use the word “moratorium” and instead use the word “stay.” Thorpe

stated that the word “moratorium” and the draft ordinance presented were drafted from other ordinances that have been successfully defended in the courts. Spadoni stated that the Village has to make sure it communicates to the public the exact scope of the moratorium. O’Connell stated that the Village just has to make sure that it attempts to educate people about the moratorium through telephone calls and in articles in the newsletter, the village website and the local newspapers. Poivey stated that people in the construction business have the perception that it is tough to build in Fontana. Hayden stated that the materials were distributed for information only that night and the public hearing will be held January 10, 2011. Spadoni stated that village staff should draft internal communications to outline what can be done during the moratorium or stay on the acceptance, review and approval of rezone, land division and subdivision applications and condominium plat applications.

### **Chapters 17 and 18 Rewriting Project Schedule**

Brandy Howe, an assistant planner at Vandewalle and Associates, presented the preliminary schedule for the Chapters 17 and 18 rewriting project. Howe stated that the schedule has been broken down into four phases, with the project kickoff meeting set for Monday, January 31, 2011. After the initial research, learning and outreach phase of the project, the ordinance text preparation phase will follow. The final two phases are public review of the draft ordinances and adoption, and then preparation and adoption of the new zoning map. Howe stated that the preliminary timeline can be adjusted as the project moves forward. A typo was pointed out in the preliminary timeline work element phase three section, and D’Auria suggested that an open house on the zoning map preparation be scheduled for August 2011 instead of September 2011, if possible.

### **138 Fontana Avenue Proposed CSM for Access and Utility Easement**

Ernie Tuchscherer submitted conceptual plans to provide access and utility easements through Lot 1 at 138 Fontana Avenue to access two buildable lots on the back of the property. Dag Svarc previously submitted a preliminary site plan for a proposed condominium development on the property. Although a preliminary Certified Survey Map has been submitted by Tuchscherer, Thorpe stated that a CSM would not be required to authorize the proposal to create three lots for single-family home sites. McCarthy stated that there are currently three existing, vacant, buildable lots located on the property, which is in the RM-1 multi-family zoning district. McCarthy stated that each of the three lots meets the size requirements for the zoning district and would be allowed one single-family dwelling per lot as a use by right, except that the two lots located on the north side of the property do not run adjacent to a road right-of-way. McCarthy stated that although the property is currently zoned multi-family, the applicant would like to build one single-family dwelling unit on each of the three lots and the Municipal Code requires adequate access to those lots. McCarthy stated that the applicant has proposed to provide access to the two back lots through an access and utility easement that would run the length of Lot 1. McCarthy stated that land located within an easement cannot be used toward calculating the overall buildable area of a lot; therefore calculations are required which depict the total size of the property, the proposed easement area and the remaining lot sizes in order to determine the buildable areas. Also the village emergency service departments will be required to review the proposed easement to determine if there would be adequate access. Thorpe stated that additional concerns include storm water, environmental and street frontage issues. Tuchscherer stated that the proposal for three single-family home sites would keep the integrity of the neighborhood in tact and it would create three affordable family homes that could attract young families to the village and potential new students for the Fontana Elementary School District. Tuchscherer stated that the proposal would improve the area without adding a lot more congestion. Spadoni stated that the lots are already created and the current zoning allows for the proposal. Spadoni stated that an initial proposal for multi-family buildings is no longer being pursued and the proposal for single-family home sites is a good alternative. Tuchscherer stated he needs the three home sites to make the project financially solvent. Spadoni stated that Tuchscherer should work with staff on the easement and street frontage issues to determine if the proposal adheres to the

regulations of the Zoning Code. Hayden stated that Tuchscherer's objective in presenting the preliminary proposal for an easement is to determine if there are any concerns from the Plan Commission members regarding the easement proposal and the three single-family home sites versus the initial proposal for a multi-unit condominium development. The applicant was directed to meet with staff to determine what approvals will have to be considered.

**Adjournment Plan Commission**

Commission D'Auria/Commissioner Poivey 2<sup>nd</sup> made a MOTION to adjourn the Plan Commission meeting at 6:33 pm, and the MOTION carried without negative vote.

Minutes prepared by: Dennis L. Martin, Village Clerk

Note: These minutes are subject to further editing. Once approved by the Plan Commission and Joint ETZ Committee, the official minutes will be on file at the Village Hall.

APPROVED: 1/31/11