

**PLANNING COMMISSION MINUTES
CITY OF FORT ATKINSON
JANUARY 10, 2017
974TH MEETING**

CALL TO ORDER.

The meeting was called to order by Chairman Trebatoski in the Council Chambers of the Municipal Building at 4:00 pm.

ROLL CALL.

Present: Commissioners Frame, Gehred, Greenhalgh, Highfield, Scherer, City Engineer Andy Selle and City Manager Matt Trebatoski. Also present: City Attorney Chris Rogers, Building Inspector Brian Juarez and City Clerk/Treasurer Michelle Ebbert.

Excused absence: None.

APPROVE MINUTES OF DECEMBER 13, 2016 PLANNING COMMISSION MEETING.

Cm. Frame motioned, seconded by Cm. Highfield to approve the minutes of the December 13, 2016 Planning Commission meeting. Motion carried.

REVIEW AND APPROVE MOBILE MERCHANT LICENSE FOR LOS AGAVES TO OPERATE A FOOD TRUCK IN CITY PARKING LOT 10 (SOUTH MAIN STREET/SOUTH THIRD STREET).

Clerk Ebbert reviewed the application submitted. This would be the third year for a license. Ebbert referenced a complaint received from a generator complaint. Inspector Juarez followed up and it was confirmed the generator was a temporary fix until their main unit would be fixed. No other concerns or complaints were filed.

Cm. Frame asked on the recent fire inspection of the vehicle. Ebbert confirmed the most recent inspection was from last fall. This being a vehicle versus a brick and mortar building, fire inspections could occur more frequent.

Attorney Rogers inquired on the location of the truck. Ebbert confirmed the parking stall is specifically striped for them as required by Ordinance. Los Agaves parks in that stall. When they are not on site, the stall can be used by patrons.

Cm. Greenhalgh moved to approve the mobile merchant license for Los Agaves to operate a food truck in the City parking lot 10. Cm. Frame seconded the motion and carried.

REVIEW AND APPROVE REQUEST FOR A CONDITIONAL USE PERMIT TO CREATE A ZERO LOT LINE DWELLING FOR THE PROPERTY LOCATED AT 1431-1433 LENA LANE.

Engineer Selle introduced the request for the zero lot line. The following comments were submitted from departments.

Zoning Department: a maintenance agreement was provided for the common wall between the houses which will be recorded with the deed on each property. It was reviewed and found sufficient.

Water Department: The existing lateral to serve these two properties has been brought from Highland Avenue indicating that the water lateral for Lot #2 as shown must traverse through Lot #1. This is not to code. The water lateral for Lot #2 must be brought in from Lena Lane. This concern was noted in

the memo to Mr. Hedrick in the rezoning request from October 2015. The building inspector noted to the plumber who installed the two laterals in summer 2016 that the second lateral would not be legal to service a property to the north (the current Lot #2) if that was the intent. This lateral will need to be abandoned at the main by removing the pavement at the road and shutting off the corporation stop.

Wastewater Department: the existing sanitary lateral along Lena Lane should be utilized for sanitary lateral connections. Having two homes on this lateral should alleviate concerns noted previously with potential low flow challenges. Each lateral should be plumbed through the individual property to avoid downstream issues with lateral backups to upstream customers. If sanitary laterals are to be shared from Highland Avenue, the configuration should result in a wye within the terrace width to service each home. The shared wye should be covered within the maintenance agreement, explicitly stating a shared financial responsibility between the two adjacent lots for the maintenance of this portion of the sanitary lateral.

Staff Recommendation: Staff recommends approval of the conditional use to split the parcel into two separate lots with zero lot lines pending the following submittals to the City Engineer:

1. A completed Certified Survey Map.
2. Confirmation of Registration of CSM and Maintenance Agreement with the Jefferson County Register of Deeds.
3. A site plan indicating location of laterals for water and sanitary. Based on this plan, an addition to the Maintenance Agreement may be required for the shared sanitary lateral.
4. Verification of abandonment of the second improperly placed water lateral as noted above.

Selle continued, the property was rezoned in 2015. The adjacent property constructed also received a zero lot line allowance. This structure will share a common wall. Two items of concern are the Maintenance Agreement for co-ownership of the wall. The Agreement is attached to the deed of sale. The second item of concern is the water lateral. PSC regulations require the water lateral for each home cannot pass through the property of another for service. The laterals that exist when it was constructed runs through the other property line. This is not allowed by PSC and was told to the property owner and plumber. If this property would remain a duplex, there would be no concerns for the water lateral. The concerns arise when creating a zero lot line, or two properties.

An option would be to require a legal water lateral off of Lena Lane. They would have to abandon the lateral to Lot #1 and install a new water lateral to that lot. They would need to install a hydrant also on Lena Lane. There is a proposed easement that could exist which would allow access. If not corrected, lateral repair and maintenance for Lot #1 would face an issue as they do not own the property where their lateral exists. The sanitary laterals do not have the same requirement. The PSC will allow an easement to be in place for this lateral as an exception to their policy. Selle spoke to Surveyor Mark Anderson about an easement to cover this lateral. Selle suggests from an engineering and City Staff stand point, to move forward with an easement as a condition to granting the zero lot line request, this would avoid Mr. Hedrick from removing the lateral, installing a new lateral and installing a hydrant.

Cm. Frame questioned if Mr. Hedrick originally owned this parcel and the adjacent parcel that was approved for a zero lot line previously. Selle confirmed Hedrick owned all of the land. Frame suggests Mr. Hedrick should have known of the requirement especially after the adjacent property was granted a zero lot line. Selle spoke with all parties involved and feels a miscommunication occurred between the property owners, contractors and land surveyors. A memo was distributed in 2015 that focused on the

water lateral issue and noted this should be remembered for future construction. Mr. Hedrick has not been at the Planning Commission meetings.

Mark Anderson and Selle confirmed there is a water main on Lena Lane. To make it live, they would have to turn a valve and install a hydrant. Frame asked who would bear the cost.

Cm. Greenhalgh pointed out the different requirements for duplexes and separate properties/zero lot lines. She asked for clarification on the water laterals. Selle discussed the two lines that come from Highland Avenue, split and one goes to the south Lot #2 and the other to the north Lot #1. The line for the north lot runs through the backyard of the south lot. Greenhalgh remembered the discussion on the requirement of separate laterals that took place in prior years for the adjacent property which happens to be the same owner for this property, indicating the owner should have known of the requirement and installed the laterals correctly.

Joel Oman stated that at time of the sketch and easement, discussions occurred with Water Supervisor Terry Siglinsky. Siglinsky discouraged the service off of Lena Lane because of a single use by one property. Oman stated he was not aware of requirements that exist beyond that. He added he is willing to comply with what needs to be done. Selle confirmed a miscommunication between the terms of duplex and condominiums. If Siglinsky was under the impression that this property would be a duplex, he may have recommended this direction as it would be legal under a single owner situation. Had Siglinsky known this was going to be zero lot lines/condo units, he would not have recommended the placement of the laterals where they were constructed. It is unknown the intent of the conversation.

Selle does not want to be seen as creating work where work should not be created. The intent of the PSC regulation is to preserve access to a water lateral for an owner to do maintenance on it. If an easement can be recorded with the deed to provide the northern land owner access through this corridor for perpetuity to get in and do work on that lateral, then the intent of the regulation is maintained. In that situation, we can avoid extra work. It is an option presented based on discussions this past week.

Cm. Gehred asked the future plans for Lena Lane. Selle replied that there are still at least two lots available depending on configurations. The other two lots could come off of Highland Avenue for water and sanitary. They could also come off of Lena. If approved today and leave as is off of Highland, we may have a situation in the future where only one lot would access that main which we would discourage at that point. The continued development north of Lena would probably solve water quality issues as more properties would be drawing from the main. Water quality issues could exist with fewer laterals connected to it.

Cm. Gehred asked if an ownership possibility exists for making it a duplex. If this would be a duplex, then no easement or lateral correction would exist? Anderson replied that Mr. Hedrick wants to split the property and sell lots as separate housing.

Cm. Greenhalgh stated she understands on old parts of the city that have easements where buildings sit and there is not much the city can do about that. She cannot see purposely going in when we have an existing code with an apparent solution and the property owner knows of the requirement as they experienced the same issue with the property adjacent. She does not want to make problems for people down the road that they can take care of right now.

Manager Trebatoski spoke on his reservations. If we required them to follow the code and come off of

Lena Lane, what is required for abandonment of the existing water lateral, a new hydrant, placing laterals into the street. How does it affect the roads? If we need to install a hydrant for flushing, what kind of long term maintenance are we looking at? Selle replied if they abandon the existing lateral, it would have to be done at the main. Selle discussed the steps to take. The street would have to be dug up at a cost to Mr. Hedrick. The Lena Lane water main could be activated with a flushing device, a hydrant is common for this. Dead end mains require more frequent flushing to clear out sediment. An automatic flushing device can be installed and timed to reduce man hours and maintenance. Selle continued, another concern is for the sanitary lateral in that same area which is not governed by the PSC. Selle spoke with Inspector Juarez; they agreed it may be time for the City to create a policy to take care of sanitary laterals to have similar requirements like the water laterals. If we ask Mr. Hedrick to move the water lateral, he is not sure if we would want the sanitary lateral moved also. If an easement is granted it would be approximately 20 feet it would include 2 water laterals and 2 sanitary laterals. Both owners would have to agree to split the cost of any repairs to the laterals.

Mr. Anderson stated they could extend the water lateral to the west of the south lot around the terrace and around the south unit. Selle did not fully support this option as future development could be trees or utility easements for connections.

Cm. Greenhalgh confirmed the lateral location is not a problem for a duplex. The conditional use permit would need an easement or adjustment. Selle confirmed as a single owner of the parcel it would be fine. If they split and have multiple owners, it would not be fine.

Cm. Gehred asked if such a thing as a temporary easement for example 50 years. She does not want to award a miscommunication. Attorney Rogers said an easement could expire however it is not recommended. It would be problems for future owners and could require varying interpretations.

Cm. Scherer asked how far into the building process this property is. Anderson said the foundation and laterals exist.

Cm. Frame asked what the plumber said to Inspector Juarez. Juarez told the plumber two times when inspecting the property of the PSC requirements. The plumber replied that he would mention it but this was the way he was told to set it up. Juarez confirmed the plumber was told by Mr. Oman that this was the way to install the laterals.

Cm. Frame pointed out that with plumber comments, it seems inferred that the property was going to be a duplex. Juarez stated that he has seen this happen before. Based on construction of adjacent property, it makes sense they would both be this way. Juarez shared his concerns with easements. They often get ignored or not paid attention to, property owners build fences, sheds, garages. If he informs the owner they cannot do that because of an easement, the City gets blamed for taking the use of their property away from them. Selle feels this was a miscommunication between the owner, contractor and surveyor.

Attorney Rogers stated that easement can set a precedent for future Planning Commissions.

Cm. Greenhalgh pointed out the recommendations from Staff and if the Commission approves that and they later decide they do not want to do a zero lot line and leave it a duplex because it is too expensive, are we doing anything by granting the change? Can they decide not to go for it after? Trebatoski confirmed they can leave it as a duplex if the Commission approved a conditional use permit. Greenhalgh continued, do we put it back to the builders' decision and let them decide. If we decide we

are going to put easements in here, then she questions the duty of the Commission.

Cm. Greenhalgh moved to approve the conditional use permit to create a zero lot line dwelling for the property located at 1431-1433 Lena Lane with the following requirements: a completed Certified Survey Map, Confirmation of Registration of CSM and Maintenance Agreement with the Jefferson County Register of Deeds, a site plan indicating location of laterals for water and sanitary. Based on this plan an addition to the maintenance agreement may be required for the shared sanitary lateral and verification of abandonment of the second improperly placed water lateral as noted above. A site plan would have to be submitted and approved by City Staff with the proper placement of the laterals. Motion seconded by Cm. Highfield.

Manager Trebatoski questioned the need for a fire hydrant. Selle confirmed it would be needed. Anderson asked if they can add the lateral around the terrace in front of the south unit. Selle stated a site plan would need approval by City Staff if they want to go that route.

Cm. Gehred wanted to point out that this is a State regulation and the City is in situation where we have obligations. What kind of costs of ongoing maintenance for flushing the line will we experience? What will be our ongoing maintenance? Selle stated that we have several dead end mains that are flushed once a month depending on water quality issues.

Cm. Frame asked on installation cost. It was confirmed the cost would be the responsibility of the developer.

Manager Trebatoski stated it would not be a perfect solution as an easement would exist for the sanitary laterals that run through the south property to access the north property. Ideally both laterals would be abandoned to the north property.

Clerk Ebbert read the motion back. On a unanimous roll call vote, motion passed 5-2, Cm. Gehred and Cm. Scherer opposed.

ADJOURNMENT

Cm. Greenhalgh moved, Cm. Highfield seconded the motion to adjourn the Planning Commission meeting at 4:43 pm. Motion carried.

Respectfully submitted,

Michelle Ebbert
City Clerk/Treasurer