

**PLANNING COMMISSION
CITY OF FORT ATKINSON
MINUTES
JANUARY 27, 2009
863rd MEETING**

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

Members present: Wilmet, Behrens, Brown, Rybicke, Vincent and Woods

Members absent: Camplin

Others present: Rudy Bushcott, Brian Juarez, Matt Trebatoski, John Dawson, Conor Nelan, Linde Jackson, Tim & Randi Connery, Rhonda Shore, Laurette & Greg Greenhalgh, Ramesh Shah, Jeff Firari, Rich Lepping, Todd Willkomm, Christopher Rogers, Tim Fenner, Erin Hynum and Audrey Fixmer

Item #1: Review and Approve Site Plan for Second Story Addition at Fat Boyz, 219 South Main Street.

Jeff Woods said this parcel is zoned C-5, Downtown Business, and a second story addition is proposed. The use would be a dining and terrace area. Access would be from the inside of the first floor to both areas. A second exit would be on the east side of the building and enter onto the alley. The existing canopy structure would have to be removed. The restaurant is a permitted use in the C-5 zone. There would be no additional parking required with this addition. The C-5 zone has no setback requirements and the 90% lot coverage would be met. The material on the addition would be a vinyl brick to match the existing material.

Conor Nelan, of Cold Spring Design, presented a sample of the vinyl brick, and said a contrasting color grout would be used. The dining area will be enclosed and the terrace area will be open.

When asked by Bob Vincent, Brian Juarez said there are no handicapped issues. The area is under the square foot limitation and there are equal services available on both levels of the structure.

Brian Juarez said there are a few Code issues that need to be addressed at the permit phase. Conor Nelan said that all of the issues would be addressed and that he would bring in all of the approved structural design plans.

Motion by Dean Brown, seconded by Bob Vincent, to approve the site plan for the second story addition at Fat Boyz, 219 South Main Street. The motion passed by a 6-0 voice vote.

Item #2: Review and Approve Conditional Use for Seniors' Apartments on Reena Avenue, South of Madison Avenue.

Jeff Woods said the parcel is currently zoned C-1, Highway Business, and multi-family apartments require a conditional use permit. The Code requires 3,000 square feet/unit for lot size. With 54 units proposed, the lot will need to contain 162,000 square feet. The conditional use permit has the following criteria to review:

- Proposed structure – two or three story elderly apartment complex.
- Architectural plans – the building style shown in the photo will fit with adjacent development.
- Neighboring uses – to the north and east are commercial uses, condominiums to the south and undeveloped commercial land to the west.
- Parking areas – the plans show either 69 or 66, and Code requires 81. The Code does allow for reduction with justification.
- Driveway location – the location of the driveway in the two-story plan is too close to Reena Avenue and would need to be moved.
- Traffic generation – with elderly clients, this would be a low volume traffic generator.
- Storm drainage – a stormwater management area is shown on the plans, the final design will need to be submitted.
- Water and sanitary access – utilities will be accessed off the new street to the north.
- Landscaping and lighting – plans will need to follow the Zoning Code.
- Lot coverage – the final plan will need to follow the requirements: building 40% maximum, impervious surface 80% maximum, and greenspace 20% minimum.
- Setbacks – all setbacks are met except for the front, which needs to be 30-feet not 25-feet.
- Building height – the two-story plan meets the C-1 height restriction of 25-feet.

Jeff Woods said that if the conditional use is approved, Linde Jackson, the developer, intends to request rezoning the parcel to R-3, multi-family. This would allow for a three-story development. The other issue related to the development of this property is the road on the north side. The dedication of the right-of-way needs to be resolved along with the cost and assessment of road and utility construction. These issues will need to be resolved by both the Planning Commission and City Council.

Christopher Rogers, City Attorney, asked if this project could go forward without the “frontage road”? Jeff Woods said the project could go forward if the Planning Commission and Council allow the street and utility access onto Reena Avenue.

Randy Bruce, of Knothe & Bruce Architects, gave a presentation on the project. A photo of an existing complex was shown to illustrate the style of the building and the materials used. Linde Jackson said the preliminary estimate on the rent would be \$600/month for one-bedroom and \$750/month for two-bedrooms, including heat, water and sewer. Randy Bruce said the building will have heated underground parking, elevator access, community space, hair salon and car wash bay in the basement. The number of parking stalls shown on the plans is what is needed based on existing developments. The site plan submittal will include information for the reduction in the number. If needed, an area for future parking stalls could be designated on the plan. The existing developments have a need of 0.8 parking stalls per unit. Concerning access off of Reena Avenue, if that is the direction the Planning Commission wants, the site plan can be

revised. This is being presented for a conditional use for a two-story proposal to meet the time requirements for the WHEDA program. If successful, they would be coming back with a request to rezone the parcel to R-3 to allow for a three-story building.

Dean Brown asked for clarification on the 162,000 square foot requirement. Jeff Woods said the Code requires 3,000 square feet of lot area for each unit. The 54 units would require a lot size of 162,000 square feet. The proposed lot would be that area.

Cwmn. Behrens said that she would like to see the new “frontage road” be built now. John Wilmet asked Jeff Woods to brief the Commission on the road issues. Jeff Woods said the proposed road would be 37-foot back of curb to back of curb, along with an eight-inch water line and eight-inch sanitary sewer line. The estimated cost for the street and utilities is \$180,500.00, not including any design or inspection costs. As it is proposed now, half of the cost would be assessed to the north property owners and half to the south side property owner. There is also road right-of-way that would need to be dedicated. The current property owner is Ramesh Shah, who has indicated that he would donate the south half of the right-of-way. The value of the north half of the right-of-way would be assessed to the north side property owners and then reimbursed to Mr. Shah. In talking with the Department of Transportation, once the “frontage road” is constructed, the right-in/right-out access that the north side properties have on Madison Avenue (Highway 12) will be closed and all the access would come off of the new “frontage road”. Utilities would also come off of the “frontage road” for the north side properties.

John Wilmet said the road issue has been discussed at the Planning Commission before. This street was never on any plats or included in any development area of Mr. Shah’s. It was never included in any Developer’s Agreement. The City has included the street in their plans, but it was never platted. Now we are facing this issue, and how to get the road built and who pays for it. There are some fairly large assessments for the construction and land costs. The Planning Commission does not have any authority to levy any special assessments, that would be a City Council action.

John Wilmet asked if putting contingencies on the conditional use would effect the funding submittal. Randy Bruce asked if the contingencies could be attached to the site plan instead of the conditional use. Christopher Rogers said the conditional use permit would be the best place, but they could be put on the site plan, because no building permit would be given until the site plan requirements are met. Tim Fenner, Mr. Shah’s attorney, said the conditional use could have a delayed effective date. It could be granted, but would not become effective until the site plan is approved.

Bob Vincent asked what WHEDA and LIHTC stood for. Randy Bruce said WHEDA stands for Wisconsin Housing and Economic Development Agency, they administer low-income housing tax credit (LIHTC).

John Wilmet then opened up the meeting to comments from the audience.

Tim Connery, of CBF Investments and Lexington Center:

They own all the property to the west and would like to say they are against this rezoning from commercial to residential because they are already zoned commercial highway and intend to develop under that zoning and once we get a building full of 54 residents, they are going to come back and say “not in my back yard”. They are also going to follow the Master Plan that the ink

is just barely dry on and the City is going to change a commercial zoned area to residential and not even recognize all the hard work in the Master Plan. They do want the road built because that gives them access into their future property, so they are for that.

Rich Lepping, co-owner of Taco Bell:

They certainly had been made aware of a potential road issue, but it was explained at that time that it could be a number of years off. Since that time, they were fortunate just to get in under the wire under the banking fiascos to get their building built, although they changed the rules on them about a month before closing on their loan and they actually ended up putting another 20% down into the project. So this has really strapped them on cash. In looking at this project, he is asking for more input and more time to examine the possibilities and all of the issues associated with it. He was just made aware of it a couple of days ago. They were actually told at the time that the cost would likely be around the \$20,000 range, and that would be more in the line for hookups with laterals and sewers and so on, not actually building and paying for the road itself. He is certainly not opposed, and does not believe Jeff (Firari) is opposed to the use, but they simply are at a hardship position right now based on the timing of the industries being down and their cash is strapped. He would like to look at some way of negotiating long-term what effect this really is. They also do believe that closing down their access on Highway 12 is a hardship and that is probably more of a concern to him for long-term. He would like to see some more input and more time in discussing the options that are available to see if they can't help work through some of this thing. Under the current situation, they would certainly be opposed to any costs associated with the road at all.

Audrey Fixmer, 1604 Commonwealth Drive:

She is the owner of a unit facing the corn field right now and she is not real happy with the view of the Taco Bell and Colonel Sanders. The red and orange building doesn't thrill her when she looks out her front door, and she would really welcome seeing a senior apartment there. Her only question is if they will lower the level somehow because she had problems last spring with the floods from the terrible rain. Her patio faces the north, exactly where they are planning to build. The water was running down the incline and into her front door and her patio. She had a sopping wet carpet and had to get sandbags. She needs only to be reassured that somehow they are going to lower that level so she is not at the lowest point in the whole block. She would like to know what she will see when she looks out from her patio. She would like to be assured that she will see some greenspace and not a three-story brick wall in front of her. So she would like to look at the plan a little better.

John Wilmet then asked Jeff Woods if he was familiar with the run-off situation. Jeff Woods said when they do their stormwater plan, they will have to look at it to make sure their water stays on their property. He can't guarantee that Mrs. Fixmer's lot will be higher or lower, any water that is on her parcel they can't control. They will be controlling the water that lands on their property. John Wilmet said they will be required to put in a retention basin on their property to catch the water, which should help the situation.

Greg Greenhalgh, 424 South High Street:

He has no objections to this project in itself as it's been brought up. His objection relates to the what is being called the "frontage road"; or what he would call the "backage road" that will run along the north end of this property. Coincidentally, on the same day he got the notice for this meeting, he also got the City's assessment for this street that would basically cost him \$125,000.00. It is not funny, for example on his outlot, which has a value of about \$50,000.00,

the assessment is over \$88,000.00. He has a lot of history on this road; it goes way back since the development began. He has a lot to say on it because he wants to get his \$125,000.00 worth. He would be perfectly willing, if we want to reschedule this for a time; it would be more convenient for it, he would have about 20 minutes worth of comments to make on the road. A lot of it has been stated before, he has tried to make his position as clear as possible about his responsibility on this road, but yet this nightmare keeps coming back. If you would like to hear him now and hear it out and go through some hand-outs he has, he would be willing to continue. Or if you want to postpone this to a different meeting or do it in another forum, he can't guarantee that he is not going to get upset as he starts talking, but that's just the way it's going to be. Again, this is a nightmare position before him; he guesses we love to hear the sound of his voice because he has to keep coming back and explaining this. He's hoping this will become as distasteful to the Commission as it is for him so that at some point in time we will say let's not bother him anymore, but he's perfectly willing to go ahead and discuss it. He then handed out some hand-outs and asked the Commission to keep them in the order that they are. He is going to go through them in that order. He started out by saying his wife and he are not developers; their children are not developers and they don't know any developers; they don't try to associate with developers; if a developer comes down the street they walk to the other side. That is not what their business is. Although he is not sure what a developer is, he thinks they buy large tracts of undeveloped rural land and subdivide it up. They get their money, they have to pay for all the roads and stuff, but they have all these lots they sell, and in an urban setting, he thinks they take undeveloped property and old properties and redevelop them. That he can assure the Commission he doesn't do. His wife and he run their own business. They sell and repair printing equipment. They started a business in their house in 1986 to get the business going. As the business grew, they needed a place to go, there weren't any business condos in town and he hooked up with Doug Erdman at that time who renovated the barn Cloute Window Washing is in now and that worked out good for them for a few years, but they outgrew that. By March of 1996, Clayton Long, who had an antique restoration business on the end of town, had just passed away and the land was up for sale. It was a nice area with a metal building and was out of town. There was nothing around it; farm fields in the back including the Schultz, Schimming and Hetts farms were back there. It was a nice area for them to do business in. Their intent was that they would do their business there and retire out of that property, then sell the business and land and be done with it. That was in 1996 when they moved out there. Around the same period of time, development started out there. Mr. Shah had bought most of the Schultz and Schimming property behind them. He believed those properties were about 80 acres. A little bit down the road, as Mr. Shah's development grew, he was required by the City or by the State to have another road of access out. He had access coming in from Commonwealth, it came through West Park and into the subdivision. Mr. Shah came to Mr. Greenhalgh because he owned a triangle piece of land that was right where the City or State wanted him to have the outlet road there. They talked about a price. Mr. Shah was interested in a land swap and not a money deal, which in looking back on it, Mr. Greenhalgh doesn't think it was the right choice, but he was told at the time that he needed to cooperate with Mr. Shah by all the Council members when he called them because the City said they had rights to condemn that property, so they cautioned that he should try to work with Mr. Shah. There were several proposals that went on. He had a triangular piece of land which was shown in a real estate agreement as Exhibit 1, which is a legal document. He had a triangular piece of land that Mr. Shah needed to use. His original offer was he would take the triangle piece and get Mr. Greenhalgh a piece that would go on the back of his land to kind of square it up. Mr. Greenhalgh felt he was giving Mr. Shah a frontage road that was necessary for his road. That piece didn't even square off Mr. Greenhalgh's property. So he came back with a counter-proposal of more. They went back and forth and finally came to an

agreement as is outlined in the real estate agreement. His largest concern at that time, knowing he wanted to put a road in there, when you look at the Agreement on the second page as highlighted #5, he specifically brought up street improvements. He put “and that the parties realize that in the development plan of Shah, there will be a street coming from the south and join Madison Avenue/Highway 12, which borders the east line of Lot A. As this street is developed, Shah agrees that he will pay for the installation of utilities, the grading, graveling, curb, gutter and surfacing of the road on the portion of the street that abuts the Greenhalgh property. In the event Greenhalgh wishes to have any laterals stubbed in beyond the curb line of the road in the time utilities would be placed in the street so that eventually their property, if they desire, could hook up to the municipal water and sewer, Shah allows this to be done at Greenhalgh’s expense”. That was no problem and worked out fine for the Greenhalghs. This document, which is Exhibit C was given to them at the time. It came from an original of a large drawing of the area to kind of legally highlight what was going on and showing on the back page the 80-foot wide road coming up here to be what Mr. Shah would get. It shows the triangular piece of land that he finally agreed to so there was at least a straight lot line across the back. Behind this is it showing what looks like “hotel/convention center”. It looked like it was a little crowded, but Mr. Greenhalgh’s assumption was they would move this back out of the way, save some nice pretty trees. He had no objections to this; the legal document was fine with him and they signed it. It was a done deal with no real bother to him. His business had nothing to do with this. The interesting point that came next was that after the closing on this property, he started to see drawings in the paper and in the City Master Plan that were showing a road coming behind him; a frontage road, which was never on any of the original drawings. He had seen it when the Hetts/Connerys annexed their area to the west of them. They had kind of shown a road looping there and connecting it through. He said he believed the City Master Plan had a drawing showing Commonwealth being connected through. He said it was interesting to him that all of a sudden this road was showing up. He tried to find out where this road came from. Why is it there? He believes that when he talked to Jeff Woods he thinks he was surprised when he sprung it on him, but he knew that there was some history. He said he doesn’t think Jeff Woods knew exactly where it came from. Mr. Greenhalgh said Mr. Hetts refused the road; he said he didn’t want the road; he didn’t need the road; there was nothing about the road that he wanted. He had to keep digging on this to find out where this road came from. He had to start doing some research because he knew this was going to be a problem when all of a sudden a road shows up. He went to the newspaper; he started looking through old Minutes of the Planning Commission and the second document presented was from the Planning Commission. Mr. Woods provided him with a couple of pages which he read through. It made reference to a development plan that they were apparently looking at and trying to make decisions on. But at that time there didn’t appear to be any drawing with this, so he had no way of really telling what they were talking about, although there was verbal reference to a road that was going to run, in essence this road that he had seen on the other maps. So he had to keep doing more research. He looked through old newspapers. He went to some of the architects that were involved in the project, and lo and behold after reading through many, many dusty files and vaults, he came up with a fold-up drawing which was on the back of a document he handed out. He said some interesting things to note on it were the date of February 2, 1999. This was in the months preceding the closing on their property swap deal. Mr. Greenhalgh noted that down in the corner, in what he believes is Jeff Woods’ handwriting, it says “presented at 2-9-99 meeting”. So in his mind, this was the document that went with the Minutes and if someone could prove him wrong and say “no you’re wrong”, it seems pretty logical. The points that stand out in his mind, and he has drawn up in the top corner, which was not on the original drawing, he drew the triangular section of land that represented his property at this time, just to show that it was kind of away from most of this

construction. You can see that Reena Avenue does in fact come through the corner piece and that is the piece that was in question at that time as was drawn up in this document. It became aware to him that he had now been involved in a chess game that he didn't realize he had been in, and that there was really no way he could win this game because he didn't know what the rules were. He's sure everyone knows about chess, it's a game you have to be thinking moves and moves ahead not only your moves, but your partner's moves. You also have to understand that all these pieces have different ways they can go, so it is a very complicated issue. It struck him as pretty strange that the document that he signed for the selling of his property showed a hotel area behind it, but on this document that was presented during the time that they were in discussion to this Committee, not the members on the Committee, that shows a different picture with a gas station and low and behold here's this road that was drawn in by the architect he presumes under someone's direction to do this. So it shows to him, okay here is the origin to this road, and this is where he has seen it now from this time forward and to him, it was presented to this Committee although no action was taken on it at that time, it represents to him that there was certainly a difference of what was being said to him and his sales agreement, and what was being said to this body at the same time; they were obviously two different things going on. Had there been a drawing on his that represented that this was a road going behind it, you can be sure that his language on someone else paying for the road would have included that road. That was not existent on Exhibit 1 of his document. This is where he sat and this is where it began. It has always been his opinion this road was brought before this body as a part of the subdivision and although it says no action was taken, that is where it all began. Again, he realizes that regardless of how he would have bargained and moved land or how little or much land he would have gotten, this road apparently was going to end up against his property with the idea that he would be the guy that would be asked to pay for it and that is the part that he resents and the part that he always has felt is not his responsibility. His research has been easier because this has been going on for years. He actually found, as shown on the last page of his handouts, is a City document which is still current that he found in his work, entitled "Utility and Street Annexation Policy", which is about annexed land. Under #1 it says "the developer shall pay 100% of costs of extending these facilities from their present location to the boundary of the land to be annexed." That has all happened. The next part of it says "the cost of installing this utility and street facilities within the development area shall be covered by the developer". Mr. Greenhalgh called Jeff Woods and asked to see a copy of that developer's agreement and he was informed there were quite a few for the subdivision back there, but there was not one for this specific spot. He said that Mr. Rogers had sent out some scenarios to him, and he sent him a letter back, and that none of them are appropriate to him. He said his scenario to this lot would be that the City and Mr. Shah enter into a developer's agreement for this construction that is now going to be taking place and decide where this road is supposed to be, how it is going to be paid for, and that sort of thing. If, at this meeting, the City decides this road still has to go exactly where it is, he would also ask that we continue discussions. He would like to be able to have some kind of a deed restriction put on his properties that would say if this road goes through where it is, that they would have a deed restriction that they would not be allowed to use that road for any purpose whatsoever, and not be charged for any of the road. If at some point he sold his property and the buyer would decide that this was a good idea and he wanted to use this road in the back, they would remove that deed restriction either by himself or a buyer, and at that point would pay whatever fees were appropriate to the City for whatever stretch of land that it was and they could go forward. He is not opposed to the road necessarily, but he is opposed to his having to pay more money than the property is worth, and certainly more money than he has that he could give the City.

Jeff Woods did want to make a correction to the pull-out map where it shows the approximate street right-of-way, he put that on the drawing after it was submitted to the City by the architect. The architect never put that on there. Mr. Greenhalgh said the drawing does say that it was presented at the meeting. Mr. Woods said that was correct, but the architect didn't put that note on there. He said the architect presented it to the City and he wrote it on there before it went to the Planning Commission. Mr. Greenhalgh said that the Planning Commission did see the note on there and Mr. Woods said that was correct. Mr. Greenhalgh said he believes Mr. Shah and his architect were at the meeting. Mr. Greenhalgh said unfortunately he wasn't at the meeting and would have said some things back then.

Laurette Greenhalgh, 424 South High Street:

She said she would like to reiterate that they are not developers. They own less than two acres of land in the area. They cooperated with the trade when it was necessary for the developer to put in Reena. They did not pay for any part of that road. They have cooperated with the City by attending every meeting called about this subject, and the developer's have not always been at those meetings. They came up with a compromise based on the amount of land owned when the City asked all parties to bring compromises to the meeting. Theirs was the only one that was handed out at the meeting. They lost the first sale of their land when the City held up the process because of this road issue. They lost a second chance of trying to sell half of the property when the City held up the land survey because of this road issue. One of the Council people admitted at the meeting that they were "holding the Greenhalghs hostage". She feels they were ambushed at the December 23, 2008 meeting with proposals that they had not seen before. They suggested that the Greenhalghs pay \$125,390.00 for the road. The costs assigned to their outlot were higher than the value of the land. When asked at this meeting who usually paid for roads in a development, John Wilmet stated that the developer paid. The road proposed would be a detriment to them. They would lose their Highway 12 access. They would be forced to build a new driveway and pay to reorient their building to the new entrance. If the City tries to continue to make them pay for the developer's project, they will need to see the subdivision development agreement for this subdivision. They will also need to see a copy of the subdivision process for the City of Fort Atkinson. She has seen flow charts of the process for other cities and would like to see Fort Atkinson's. They will also need to see copies of every subdivision development agreement for the City to verify who has paid for roads in all of these sub-development agreements. They see no difference between this road request and the request for Reena. They cooperated then with the land trade and the developer paid for the road. They are willing to cooperate with a land trade if that's the necessary thing and let the developer pay for their road again. The City can't give them their money from the lost sales; the City can't give them the hours that they have consumed in preparing for and attending meetings; the City can't give them the sleep they've lost or the time they have spent away from their business; the City can recommend that the City Council do what is usually done and have the developers, who will make the profits on their subdivisions, pay for these roads and other necessary improvements. The City can make sure that they never have to go through this process again.

Erin Hynum, 916 Whitewater Avenue:

He said he has handled the financial matters for the Greenhalgh's business for quite a long time. He is shocked by the way they are being treated. He thinks that anybody could look at this and say that it is completely outrageous that the City is asking them to pay \$125,000.00 and they are not the developer. If you look at the amount of land and prorate it, it is just ridiculous the amount of money that is the City is asking them to pay. He said the City is also making a mistake because the City is taking some really good citizens and are causing them some severe

hardship. He thinks the City is making a big mistake. He said this needs to be looked at again and figure out who really needs to pay for this road. It is also being done at a really bad time for them.

Tim Connery:

Mr. Connery said he began working with the City, representing his Mother-in-Law, when the School Board bought the land from the original family farm to build the High School. That was before the reconstruction of Highway 26 and Highway 12. Everyone that was involved with those projects knew that the accesses off of Highway 12 to the south would be closed. Reena Avenue and the entrance into Lexington Center were planned by the State and all of the entrances to the north were specifically designed to meet up with the accesses to the south, which would be Commonwealth and Reena. He is the majority owner of the Holiday Inn, and they built a frontage road on north side of the road all the way down to the Holiday Inn. It has always been somewhat temporary until it gets developed. There was a matching road that was supposed to be put to the south, and in the original maps and agreements with the Department of Transportation and the City of Fort Atkinson, everyone was aware there was going to be a frontage road to the south and the accesses off of Highway 12 were going to be closed. He has been here since day one, and if anyone has any questions, he can go back and research some of his files to find the original documents from the Department of Transportation telling them this. Jeff Woods worked with them on this all the way along. They have always anticipated this road being built. It is not new. They also paid for all of the sewer and water extensions down to Highway 26, and the City reimbursed them over a period of years, and they had to carry that financially to develop their land to the north. So this is a policy and it's things that the City has always expected; they are brand new. With their 43 lot subdivision to the south, they built all the roads and they paid every penny of the road improvements. When they have to connect onto the existing road, they will have to pay for that and everyone knows that and they have to dedicate the land free. This is not new. It has been the policy for as long as he has been around here, and he started working here in probably 1975.

Bob Vincent said he thinks he understands what Mr. Connery is saying that this "limbo" road is supposed to be a frontage road in his opinion. Mr. Connery said this is not his opinion, it has always been planned to be there and to match the roads that were on the north side. The south side of Highway 12 is supposed to be developed the same way. When they put the entrance into the Piggly Wiggly, that was matched up from across. When they put the entrance into the Holiday Inn and where the Sherwin Williams building is, it was specially designed to be matched on the other side. The road that comes all the way along the property on the north and the road on the south were intended to match. They also owned the land on the south all the way along Highway 26 and they have to take and connect onto what is there. They have already done it to the south. This is not new. It has always, always been intended and it's always been the City policy. Somehow, somebody just played a shell game and this went away, but the sewer and water was actually stubbed for the future road. He said the Greenhalghs did not know this in their land swap and some of their other things. But they had nothing to do with it. They have always, always paid for their roads and given the land free under the roads as part of the agreement. He said they will continue to pay for their roads. If he has to hook onto any of these roads his their future development, they will have to pay for it. Not new.

Tim Fenner, attorney for Ramesh Shah:

On the issue of the conditional use permit related to the project, they would support the request that the permit be issued and the permit may be conditioned on approval of the site plan as well

as any other conditions that may be imposed relative to the road. On the issue of the roadway, that is the Commission's decision. On behalf of the property owner, if you don't want a road – fine. If the City does want a road – fine, they will cooperate and do their dedications and so on. The issues that he heard at this meeting being talked about by others are basically who pays for the road? How are we going to pay for that road? He doesn't think that is an issue that is directly before this Committee. That is an issue for the Common Council in determining what portion, if any, comes out of the General Fund, and what portion is going to be charged against properties by special assessments. That is what he heard, basically complaints about “if I have to pay for it, I don't want to pay for it”. The issue of the roadway fundamentally is a planning issue. The City has to decide whether or not it is appropriate to have a road in that location. Frontage roads are common in developments of this sort. He listened to what Mr. Connery said and he is absolutely right on the kind of development you have. So if there is going to be a road in this area – fine, they will cooperate. If there is not going to be a road – fine. But the decision is the City's, and on the issue of payment, again that is from another authority. So he said he would request that the Commission act favorably on the request of Mr. Jackson and impose the condition of a site plan and/or road resolution, and let the parties that be who have authority deal with those issues.

Bob Vincent said he had a little problem with what Mr. Connery and Mr. Fenner are saying that there is supposed to be a frontage road and he doesn't see this mystique road as a frontage road. He sees a frontage road as running parallel to the highway. Mr. Fenner said he wanted to use the road that is being contemplated, because it is an extension of Commonwealth. He understands the plan is to make sure that Commonwealth doesn't dead-end into a cul-de-sac and we can complete the looping of the utilities and they're all good reasons for doing that.

Dean Brown said the agenda item is to approve a conditional use permit for the apartment complex, that is really not part of what is being discussed. John Wilmet said the condition will be important because there is not a decision on who will be paying for the road. Chris Rogers said the approval could be conditioned on the approval of the site plan and agreement on what will be done with the road. This will allow the developer to submit for the funding.

Rhonda Shore, member of CBF Investments and Lexington Center:

She wanted to state that she is for keeping the Master Plan the way it is, and not to change the zoning. There is a reason why it was drawn up in the first place and to have to change this commercial land into residential when we have more than enough residential land in this area that can be looked at, she feels it is just not the right thing to do.

John Wilmet said if the owner does request the rezoning, there will be a separate hearing held on that issue.

Jeff Woods said the request here is for a conditional use on a C-1 lot, which only allows for a two-story or 25-foot maximum. If they want to build a three-story building, they would have to request the property be rezoned to R-3, which gives them a 40-foot height limitation and would allow three-stories.

Dean Brown asked if the Commission were to approve the conditional use, what would happen to the issue of determination of payment for the road? John Wilmet said that would be determined by the City Council.

Tim Connery:

Asked if what was being approved is a two-story building that does not have access off of Reena Avenue? Brian Juarez said the Commission is approving a conditional use; we are not approving any site plan. Mr. Connery said it is a two-story building with no site plan and no access off of Reena Avenue. Brian Juarez said yes at this point. Mr. Connery said he thinks the City is backing themselves into a corner if we don't have access off of Reena Avenue, how do you get to the property? Mr. Connery said we always get into these confusing left-open issues and something falls between the cracks and it never happens. He has been talking about this road for 15 years. Brian Juarez said they still have to come back with the site plan which would show adequate access. Jeff Woods said if the road issue falls through, the developer would have to come back and request access and utilities off of Reena.

Cwmn. Behrens asked what the conditions on the conditional use would be. Chris Rogers said it would be subject to the approval of a building site plan and/or the agreement on the road.

Randy Bruce, project architect:

He said the drawing that they have shows a two-story building and shows access off of the proposed new road. The site plan and the site area allow for multiple configurations. If it is necessary that we need access off of Reena, they could get that. They thought this was what the City wanted. If they are given direction to go off of Reena, they will do that. He said it is important that they get the conditional use approval at this time so they can move forward with the application for funding for this project. They think it is a valuable project for Fort Atkinson. The condition that is necessary should be that they get site plan approval, which is the normal process. At that time, they will have to work out access, if the road is going in, funding for the road will have to be worked out. Chris Rogers said the ultimate approval for the conditional use would be subject to approval of site plan. John Wilmet said the staff recommendation on this project, is that access not be onto Reena Avenue.

Motion by Cwmn. Behrens, seconded by Dean Brown, to approve the conditional use permit for the seniors' apartment complex on Reena Avenue, south of Madison Avenue subject to the building site approval and a resolution on the road issue. The motion passed by a 6-0 voice vote.

Item #3: Approval of Minutes and Adjournment.

A motion to approve the Minutes of the January 13, 2009 meeting was made by Cwmn. Behrens, seconded by Dennis Rybicke, and passed by a 6-0 voice vote. A motion to adjourn was made by Dennis Rybicke, seconded by Dean Brown, and passed by a 6-0 voice vote. The meeting adjourned at 5:17 p.m.

Respectfully submitted,

Jeffrey L. Woods, P.E.
Secretary