

VILLAGE OF EGG HARBOR PLAN COMMISSION MINUTES

TUESDAY AUGUST 12, 2021 – 6:00 P.M.

**HELD IN PERSON AT
Paul J. Bertschinger Community Center
7860 STH 42, Egg Harbor, WI 54209**

Cambria Mueller, Chair
Kathy Navis, Commissioner
Emily Pitchford, Commissioner
Jon Kolb, Commissioner

Paula Cashin, Commissioner
Lou Nyberg, Commissioner
Chris Roedl, Commissioner

Agenda:

1. Call Meeting to Order
 - a. **Chair Cambria Mueller called the meeting to order at 6:00pm.**
 - b. Commission members present: Cambria Mueller, Kathy Navis, Emily Pitchford, Jon Kolb, Lou Nyberg, Chris Roedl, Paula Cashin
 - c. Staff present: James Kalny, Village Attorney, Megan Sawyer, Tom Strong
 - d. Audience members: John Heller, Dawn McGinnis, Mary Jo Kolb,
2. Approve Agenda
 - a. **Cambria Mueller moves to approve the agenda.**
 - b. **Paula Cashin second.**
 - c. **Motion unanimously carried.**
3. Pledge of Allegiance
4. Approval of July 27, 2021 Public Hearing Minutes
 - a. Changes: Paula Cashin: 6a Kim Jense CSM should be Kim Jensen CSM.
 - b. **Cambria Mueller moves to approve the July 27, 2021 minutes as amended.**
 - c. **Lou Nyberg second.**
 - d. **Motion unanimously carried.**
5. Open Session
 - a. *Chairperson Mueller opened the floor for public comment.*
 - b. *Dawn McGinnis: I was a registered Nurse and a landlord. I am here to emphasize something I said at the last board meeting in advanced of the Shipwrecked Parking Proposal, expressing concerns about the parking lot design. Since I live across the street from this property, I would ask you to take my concerns into consideration for the Shipwrecked public hearing as well as the audio recording of the Monday August 9th Trustee meeting. It is unfortunate to hear comments at that meeting that seem to dismiss my concerns. Please listen to my open session comments at the 4 minute, 44 second mark, and the 1 hour 8 minutes, and 1 hour 14-minute mark. The photo's I am referring to are on page 156 of the Trustee meeting packet. Delivery trucks parking in the sidewalk is ridiculous.*
 - c. *Cambria Mueller: Thank you for bringing this to our attention. Commissioners, please listen to those parts of the Monday August 9th trustee meeting prior to the August 23rd Public*

Hearing.

6. Discussion, consideration, and possible action on DRAFT ordinance 2021-07 Amendment to Chapter 152 § 152.030 Off Street Parking, Driveways
 - a. *Jim Kalny: Presented an overview of his concerns regarding Ordinance update 2021-07 to update Chapter § 152.030 Off Street Parking, Driveways as presented in the Memo provided in the packet. I moved the statements of intent into the Whereas statements to capture the intent of the ordinance in the record. I put in a maximum of 30 parking spots, as well as allowing for an increase in the cap but I wasn't sure where we landed on that. I also added making paying for parking as the last option if that is what you want. Those are the main things that I wanted to verify with you tonight. In my memo, we set a clear requirement for parking. The section regarding fulfillment includes the one clause for payment of a fee to meet the requirement which is a little unusual. The annual fee causes me some concern. In the few examples I have seen, it has always been a onetime payment. Zoning ordinances can be grandfathered in. We used to have the ability to increase that fee which could run someone out of business. I think this has come a long way with this since the June draft. The good thing about it is that we need to be sure we tie some rational basis for what we are regulating. \$250 per year seems reasonable as it would take about 20 years to pay for the useful life of a parking spot. That has sound rational and logic behind it. I have a problem with the annual payment, but I do think it is supportable as it is tied to fact behind it. I like the \$5,000 up front fee but coming up with that lump sum for a business can prohibitive for a business. I think either of those payment methods are tied to the cost of a parking spot is defensible. I have more of a problem with the graduated scale you are proposing. I understand you can say that is a business decision, but you need to present rationale basis for making that fee a graduated scale. I believe a fixed one-time fee is supportable. I think an annual fee is supportable as long as it is a fix rate per spot for all spots which is directly tied to the cost. This is basically the direction I want steer you as an ordinance that is legally supportable. We have discussed that you want grandfathering so people can rely on the law at the time they applied. The downside is that we will need to publish a notice and have a public hearing for it. If you have the fix cost per spot, a rational relationship between the cost and the fee, no one can claim that the fee is arbitrary. That is the direction I would hope you would go.*
 - b. *Cambria Mueller: Regarding grandfathering, we have always said you are grandfathered in unless you change your use or change your intensity. Are you saying we can't do that moving forward?*
 - c. *Jim Kalny: That is an exception to non-conforming uses in grandfathering. If you are doing something you are not permitted to do, that changes everything. In that situation, you can enforce with issue citations or renegotiate.*
 - d. *Cambria Mueller: At that point, does it become and administrative enforcement?*
 - e. *Jim Kalny: You are using it as an enforcement regulation but it still really a zoning code regulation.*
 - f. *Cambria Mueller: You mentioned a fixed cost is defensible. Is the work John Heller provided sufficient to make it defensible?*
 - g. *Jim Kalny: The more evidence you have the better. That work has merit as a basis for the \$5,000 onetime fee and \$250 per year fees.*
 - h. *Chris Roedl: Isn't the defense of the graduated scale that the cost per spot for fewer spots is lower? And the cost per spot goes up as you need more spots? Land is a limited resource. That is a part of my justification.*
 - i. *Jim Kalny: If you can justify that with factual numbers, then I can understand the graduated scale and it would be defensible. In most cases, the way you value those parking*

- spots is based on how many are actually built. That is the way it is normally done. That is the way we looked at the \$5,000 dollar amount or \$250 per year amount.
- j. Cambria Mueller: To Chris' point, if you have a larger parking lot, the costs for a larger parking lot is the greater than the cost of a smaller lot.
 - k. Chris Roedl: The greater the deficit, the greater the burden you will be putting on public resources in the village.
 - l. Jim Kalny: If you could tie that cost to show that when we build a parking lot, you would have to demonstrate that the more spots that are needed will drive up the cost (per spot). I'm not sure that there is a clean rational tie between graduated costs and fees.
 - m. Chris Roedl: I found multiple communities with a graduated scale in place already. It is out there.
 - n. Jim Kalny: I know I have seen that for utilities I have seen that. We could say we will give you 10 spots but not 20 because it is a limited asset. That is a different view.
 - o. Paula Cashin: Are you saying that if we put this graduated scale in, we could be sued and couldn't defend it?
 - p. Jim Kalny: If you are sued, here is a strong case in support of your position for a onetime payment. The support of a graduated scale is a weaker case to defend.
 - q. Jon Kolb: For change of use, two recent examples want us to go back a few years, only charging them for the additional parking requirements for seats added since then. Can we look at the entire business at that point or can we only go back say 10 years? One Barrel for example wants us to only charge them for the number of seats they have added since 2019.
 - r. Emily Pitchford: For One Barrel, there is a change of intensity. In that case, do you start over from scratch? If there is grandfathering, and you change the intensity, do you go back to square one? Or are we just looking at the change in intensity?
 - s. Chris Roedl: His argument is that the change in use happened on day 1 when he opened.
 - t. Jim Kalny: The way you have done it, is you go by the ordinance when they originally took out the original permit. You would be looking at if he complies still with the 500-foot rule.
 - u. Kathy Navis: Really? I thought that if someone has a change of use or intensity, they have to comply with the parking ordinance as it is written today.
 - v. Jim Kalny: You are right if that includes a non-conforming use. That is normally the way it is. Be sure you define what is a change of use. If you are going to make a condition that you only have a certain amount of parking, then say that. The fact is he could argue he has never had a change of use because he had the right to expand under the ordinance at that time. One Barrel was allowed to use parking spots within 500 feet at that time.
 - w. Megan Sawyer: We looked at that a number of times back in 2019 when he originally opened.
 - x. Chris Roedl: The flaw in that is that I can take that same defense. I could add 300 seats and say I added those seats, I just didn't set them out. I could then use the 500 feet of on street parking.
 - y. Jon Kolb: There is clearly a change of intensity for One Barrel. I would like to know if we can defend that now saying he would need to provide those parking spots under the current ordinance? What about the yearly maintenance that we have been discussing?
 - z. Jim Kalny: Yes if we can establish that he has changed his use. The maintenance is in the parking fee. I would like to see hard numbers to support the maintenance fee.
 - aa. Emily Pitchford: Is this fee the last option to be used or is it just one of many options?
 - bb. Jim Kalny: Do you want to change it to say that you have to exhaust the other options first? If so, we should put that in if that is your intent.
 - cc. Cambria Mueller: What is stopping multiple properties from having multiple shared use agreements? How do we get around that as one of the options for fulfillment?
 - dd. Jim Kalny: That is a different issue that I haven't given much thought to. The shared use agreements usually have a specific number of spots designated to the main property. If all

- the parking spots are already spoken for, then additional agreements would be denied if there are no shared spots available.*
- ee. *Kathy Navis: What if Casey's made a shared use agreement with Nicolet. This is a situation where the bank is opened during the day, but Casey's is opened mainly at night. The bank closes before Casey's really needs those spaces for parking.*
- ff. *Jim Kalny: We haven't addressed that in the code, but it would be reasonable to allow that.*
- gg. *Chris Roedl: The Plan Commission already has latitude to make an exception in a rare case like that.*
- hh. *Cambria Mueller: I want to be sure this is solid. I like the fact that this is becoming clear and straight forward. I had to put the thoughts I had down on the spread sheet that staff sent to you this morning. When I started to add it all up, the dollar amounts became a lot more through the years than I realized. I was concerned that we aren't over charging them in the long term. This wasn't beneficial to them.*
- ii. *Chris Roedl: Let's say we cap it for 20 years and you stop paying your fee at 20 years. If a business is operation for 60 years, shouldn't that business continue to pay for parking?*
- jj. *John Heller: To Chris's point, why can't you have a cost to construct and a cost to maintain? In my mind, the \$5,000 fee covers the cost of construction and maintenance for 20 years. After that you have maintenance for things like snow plowing. Why can't you have a continuous maintenance fee that persists after the 20 years is up?*
- kk. *Chris Roedl: After the 20 years, I could see something like \$25 per year per spot.*
- ll. *John Heller: That is something we can track, looking at the cost of maintenance and define what that fee is over a period of time.*
- mm. *Chris Roedl: My 45 parking spaces costs \$2,000 to \$4,000 per year for snow removal alone. That is roughly \$44 to \$88 dollars per year per parking space.*
- nn. *Cambria Mueller: What are the thoughts about a graduated fee schedule vs a flat fee? And where are we on the price per spot.*
- oo. *Chris Roedl: I would argue for our original schedule, capped at 20 years, with a maintenance fee of \$25 per year per space after that. This fee can be used towards walkability and other solutions for the parking problems. The \$25 maintenance is included in the \$250 per spot for the first 20 years. It isn't perfect math, but it is close and equitable.*
- pp. *Cambria Mueller: Signage would go a long way to help with parking. I don't want it to get hung up to only pay for a parking structure. There is something along those lines in the draft ordinance. Signs for example would help guide people to parking spaces, and also helps to minimize the parking issues.*
- qq. *Jim Kalny: Yes, we are in good shape for that. Public parking refers not only to actual parking spaces, but the fees can be used for other broader uses. This is on the second page, under section II, 1&2.*
- rr. *Cambria Mueller: Is it ok if different businesses would potentially be paying a different amount?*
- ss. *Jim Kalny: Yes, because they would be getting a different benefit based on the number of spots they are paying for.*
- tt. *Jon Kolb: Would you be able to defend the different dollar amounts? As last proposed, Spots 21-30 are double the amount per spots 1-10.*
- uu. *Lou Nyberg: If you are using these funds to build a parking structure, then the costs are pretty straight forward and easy to justify. That is the difficulty we have here is that, to Kathy's point, it is more difficult to tie costs to the fee. I think some people are going to feel like this graduated scale is unfair. In different communities, it was a clear designated parking facility that everyone shared in.*
- vv. *Jim Kalny: Here is our rank, it costs us 5 million to build, supported by this group of people for twenty years.*
- ww. *Chris Roedl: But that isn't perfect either. If business A is 5 blocks away and business B is 2 blocks away, then the benefit for those businesses isn't the same. I feel we are as fair as*

- we can be.
- xx. Cambria Mueller: *I think this is in part about controlling growth. Thinking about current businesses in the Village, say a big company was coming in and they need 300 spots, is that the size of business we want in the Village? Maybe that would keep future restaurants in the 150 to 200 seat range for example.*
- yy. Kathy Navis: *If you build a parking spot with 10 spaces, the cost per parking spot is going to be much higher than if you build one with 100 spaces. It wouldn't cost you more per spot for the smaller parking lot. This feels punitive to me. We're saying we prefer businesses remain smaller with smaller public parking needs.*
- zz. Chris Roedl: *We talked through this already to come up with the graduated scale. The reasoning was that the higher number of spots does cost more because you are putting more of a burden on your neighbors and on the Village public parking facilities. It would also cost more per spot because you would run out of land to put those spots on. The comprehensive plan keys on the concept of the Village remaining quaint. A 40-space parking deficit just doesn't fit that definition.*
- aaa. Cambria Mueller: *The costs to buy a lot is already high. Then you have to add the cost to build the parking lot. As far as space goes, we are already maxed out in the Village. If you can expand your space for seating, you have the ability to find spaces for parking on your parcel. If you can add 100 more seats, you can probably add more parking spots.*
- bbb. Chris Roedl: *The Village can attain a 100-space parking lot at a much lower cost than it could attain a 400 space parking lot.*
- ccc. Jim Kalny: *If someone looks at this as a reasonable argument, then we are in a position to defend this argument. The numbers however are a little arbitrary. I don't know how we get around that.*
- ddd. Lou Nyberg: *If you want to limit businesses, do it another way. Trying to do it by limiting parking isn't the way to do it.*
- eee. Chris Roedl: *My argument is that it is based on cost and availability.*
- fff. Jim Kalny: *I can see the rationale there, but that argument might break down a bit. What difference is it if one business is short 30 spots or 3 business are each 10 spots short.*
- ggg. Cambria Mueller: *Going back to limiting the fee structure for 20 years. What do people think about that?*
- hhh. Kathy Navis: *It still doesn't seem right that someone who is 21-30 short is paying \$10,000 per spot for those spots.*
- iii. Lou Nyberg: *We had an initial number of \$5,000, I think it is easier on the businesses if we allow them to pay over 20 years. If the maintenance costs go up, you could adjust that accordingly*
- jjj. Cambria Mueller: *In John's original proposal, that was \$5,000 as a single payment or payable as \$250 per year over 20 years.*
- kkk. Jon Kolb: *Today the cost per spot is \$5,000. In 10 years, it might be \$7,000 to construct that parking spot. Will that put us in a deficit in the future? Or can we revisit that dollar amount?*
- lll. Cambria Mueller: *Can we plan to increase it by a percentage per year?*
- mmm. Kathy Navis: *We aren't really building a specific parking space.*
- nnn. Jon Kolb: *I hope we have intent to build more parking spots*
- ooo. Chris Roedl: *They are adding parking spots in the current projects, including at the Bertschinger Center.*
- ppp. Emily Pitchford: *We have to build more actual parking spots.*
- qqq. Lou Nyberg: *In my opinion, we should recommend a fee amount of \$5,000 per spot with the option to pay it at \$250 per year for 20 years, 25 maintenances.*
- rrr. Paula Cashin: *Isn't that what we recommended to the Trustees several years ago?*
- sss. Jim Kalny: *You have justification for that. That research provides that rationale that is needed.*

- ttt. Chris Roedl: *I'm still on the graduated scale.*
- uuu. Emily Pitchford: *Except now we are getting legal advice on this specific point.*
- vvv. Kathy Navis: *But then we were at \$5,000 up front.*
- www. Lou Nyberg: *To pay that in full up front is hard for a small business owner. Payment over 20 years is more practical.*
- xxx. Chris Roedl: *So we are suggesting a \$5,000 per spot, payable as \$250 per year for 20 years, followed by a \$25 per year maintenance fee? I'm ok with that.*
- yyy. Kathy Navis: *So if we want to recommend \$250 per year for 20 years, \$25 maintenance would then be assessed indefinitely.*
- zzz. Paula Cashin: *We would need to revisit that amount for maintenance as those costs will change.*
- aaaa. Cambria Mueller: *Is everyone in agreement with \$250 per space, per year for up to 30 spaces for 20 years, followed by a \$25 maintenance, with an annual review of the actual maintenance costs.*
- bbbb. Kathy Navis: *Let's take a look at possible circumstances that we might not have thought of to this point.*
- cccc. Chris Roedl: *By setting the cap, are we then limiting the number of seats for a new restaurant?*
- dddd. Emily Pitchford: *There was the option about being able to go over the 30-parking spot limit.*
- eeee. Chris Roedl: *The Plan Commission can already do that for a proposal in the Special Development District.*
- ffff. Jim Kalny: *Regarding grandfathering, are you fixed with the ordinance that was in effect when you originally applied for a permit? Some are still allowed to use on street parking. That is all I'm getting at.*
- gggg. Kathy Navis: *That is unless they change use or intensity?*
- hhhh. Jim Kalny: *Correct, but also if they discontinue use for 12 months.*
- iiii. Cambria Mueller: *In that case, do we go back to 0 or do we only consider the change of intensity?*
- jjjj. Jim Kalny: *It should take place at the time that the change of intensity takes place. They technically are losing their status and they should go back to square one.*
- kkkk. Kathy Navis: *For Shipwrecked, they would only have to pay for their new parking requirements, and they wouldn't have to comply with the current parking requirement.*
- llll. Lou Nyberg: *I agree with change of use should go back to square one. If someone buys a retail store and it turns it into a restaurant, that should go back to square one. If is remaining the way it is but add additional capacity, then they have to negotiate the parking situation.*
- mmmm. Cambria Mueller: *To Lou's point, how does it work if we are giving a business 20 years to pay. What if they change their use before the 20 years is up? If they change in year 15, do they have to pay for the remaining five years?*
- nnnn. Chris Roedl: *Do we make them pay for those spots they paid for all over again? That doesn't seem fair.*
- oooo. Jim Kalny: *There is a good argument that in that case, you should credit a business for those payments already made.*
- pppp. Cambria Mueller: *Say a restaurant becomes a boutique, they would need far fewer parking spots. If they paid for the larger number of spots for a long time, what happens at the end if their count goes down? If we would have asked for the fees up front, we would be covered. By being accommodating to the businesses, are we leaving the Village on the hook in that situation? Technically they would still owe the Village for the last few years of the 20-year period.*
- qqqq. Lou Nyberg: *Let's say you have an existing business with 20 seats, and they want to add more. If you continue to pay the initial ones, then you could start paying for those*

additional spots.

rrrr. Emily Pitchford: Why would you pay \$5,000 up front if you have the option to pay \$250 per year?

ssss. Jon Kolb: The parking spot would remain even if that business is no longer paying for it.

tttt. Kathy Navis: If I am paying for parking spaces, then those are my parking spaces. That is going to get really confusing when a business changes use.

uuuu. Jim Kalny: If there is an increase, they should get credit for what they are already paying for.

vvvv. Kathy Navis: I think we need to look forward and what the potential problems could be.

wwww. Cambria Mueller: Regarding grandfathering, if there is a change of intensity, you would go back to square one, correct?

xxxx. Jim Kalny: If you go back to square one, you are not giving them credit for what they already paid. Do we think that is fair?

yyyy. Kathy Navis: You are talking about grandfathering only for fee in lieu of parking – correct?

zzzz. Jim Kalny: Yes – just for the fee in lieu of parking.

aaaa. Kathy Navis: If they have already paid for 15 years, they would have to get credit.

bbbb. Jim Kalny: Yes, I think that makes sense.

cccc. Kathy Navis: Under section II 1, on page 21 of 21 of the packet, we only say that the Village is going to establish an account for these fees to go into. Is that sufficient? We don't say anything about signage. Is related facilities ok as is?

dddd. Chris Roedl: I would think the wording 'related facilities' would cover the possible use for signage or other traffic mitigation efforts. That sounds sufficient to me. I would argue that signage is directly related to parking.

eeee. Jim Kalny: We could update it to be more specific. I will broaden that to include directional signage.

ffff. Emily Pitchford: To confirm is this intended to be the last alternative? Do we need to address that the other options need to be used first?

ggggg. Megan Sawyer: Provided a summary of the fulfillment options as it exists today in 152.030. There are 6 options today. The question is do you want to add to the fee in lieu, that all other options for fulfillment are to be exhausted first?

hhhhh. Commission members agree this doesn't have to be the final option for an applicant.

iiii. Jim Kalny: I will remove that from the draft version in front of you tonight.

jjjj. Chris Roedl Moves to approve for presentation to the Village board, DRAFT ordinance 2021-07 Amendment to Chapter 152 § 152.030 Off Street Parking, Driveways, changing the fee to \$250 per spot per year for 20 years for spots 1-30, \$25 per spot per year per after 20 years, changing the language under II 1 to be more broad about signage, walkability and access routes, also removing the wording requiring this fee to be the final option for fulfillment.

kkkkk. Cambria Mueller Second

llll. Motion unanimously carried.

mmmmm. Jon Kolb: Is this going to go to the board as we presented? I expect this to go to the board as we agreed on it.

nnnnn. Kathy Navis: That is how it was proposed to the board last time. Last time the board changed it after it was presented. The proposal to change it came from the audience.

oooo. Jon Kolb: Shouldn't they have brought it back to the plan commission at that time?

ppppp. Cambria Mueller: I will say that if there are any changes like that this time around, I will bring it back to this commission.

qqqqq. Megan Sawyer: That is why we are here today. We knew this change was coming so we brought it back to you the Plan Commission first. We will also need to have a public

hearing for this ordinance change.

rrrrr. Cambria Mueller: President Heller has stated that by the time it gets to the Village board, it is the commission's recommendation. We have spent a lot of time hashing this out. I will represent it as is at the trustee meeting. I think we have a very good plan for this ordinance moving forward now. That stands for something in my book. I will represent it that was at the Trustee meeting. John has been involved all along.

sssss. Jim Kalny: You have rationale now to support your fee of \$250 per spot per year.

ttttt. Cambria Mueller: Would you recommend that we move forward with this at a special meeting? Should we write out exactly how we came to this conclusion?

uuuuu. Jim Kalny: Typically, we don't. The Whereas clauses already cover that for the intent statement. The whole grandfathering thing will come up again soon.

vvvvv. Megan Sawyer: For next steps, the village board will have to hold a public meeting. We will schedule a special trustee meeting to schedule the public hearing. This has to be published as a class II notice. The earliest it could be is a week before the next regular trustee meeting. We don't have anything in our code to default who has the authority to call a public hearing for a zoning ordinance change.

wwwww. Jim Kalny: You could designate the Plan Commission to do that but as it stands now, as your ordinance is silent, this defaults to the Board of Trustees.

7. Open Session

- a. Cambria Mueller opened the floor for public comment.*
- b. No public comments.*

8. Next Meeting

- a. Public Hearings for Shipwrecked Conditional Use and Special Development District Applications: August 23, 4:00 PM at the Kress Pavilion and also on Zoom.*
- b. Regular Meeting: August 24, 2021, 6:00 PM IN PERSON ONLY at the Paul Bertschinger Community Center. Large Meeting Room.*

9. Adjourn

- a. Cambria Mueller moved to adjourn.**
- b. Emily Pitchford second.**
- c. Motion unanimously carried.**
- d. Meeting adjourned at 7:21 PM.**

Minutes completed by Tom Strong on August 13, 2021. Submitted for approval on August 24, 2021.

Bold – Commission Action

Italics – Summarized Comments