

VILLAGE OF EGG HARBOR PLAN COMMISSION MINUTES

TUESDAY AUGUST 24, 2021 – 6:00 P.M.

**THIS MEETING IS BEING 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. Absent: None.
 - d. Staff present: Tom Strong, Megan Sawyer, Jim Kalny, Village Council
 - e. Audience members: John Heller, Village President, Tyler Pluff, David Pollman, Peter Gentry, Paul Brophy, Mary Reilly, Mary Jo Kolb, Kaaren Northrop, Liz Heller, Luke Bentley, Lisa Van Laanen, Christy Bertschinger, Carey Bertschinger, Lauren Schar.

2. Approve Agenda
 - a. **Cambria Mueller moves to approve the agenda.**
 - b. **Lou Nyberg second.**
 - c. **Motion unanimously carried.**

3. Pledge of Allegiance

4. Approval of August 12, 2021, meeting minutes
 - a. Changes: Paula Cashin: 4 changes noted.
 - b. **Cambria Mueller moves to approve the August 12, 2021, minutes as amended.**
 - c. **Chris Roedl second.**
 - d. **Motion unanimously carried.**

5. Open Session
 - a. *Chairperson Mueller opened the floor for public comment.*
 - b. *Cambria Mueller: I wanted to mention that the role of the plan commission is to uphold our ordinances and zoning code. I provided a handout from our ordinances that highlight the role of the plan commission, that we are also tasked with following the comprehensive plan that is referenced in our ordinance as well. I needed a refresher on it as well, so it seemed appropriate to bring that to this meeting.*

- c. *Paul Brophy: I would like to speak again to the action you have tonight for the Shipwrecked project. I would like to make three points on process. First, I know how difficult it is to be a member of a plan commission. I want to thank you for your attention to this issue, your discipline, diligence and for your listening to comments on this and all matters. Your work is very much appreciated. Whatever action you take today, you have my respect for your thoroughness of your inquiry that we have all been through. Second, to take a step back, as I looked through the record, to my knowledge, there isn't anyone who has spoken in favor of this project. It appears to me that all people who spoke up about their concerns and worries about this project, whether that be parking or the scale of the project. There is usually another side that is arguing for a specific project. That is not the case for this project. I hope you would take that into consideration for this project. Like you, I think it is exceptional case that there has been virtually unanimous opposition to this project. Third, I know that these processes are difficult. I believe some of you might be a concerned that if you turn this project down, we will be sued. You have created a record that is based in fact and the expression of concern from the residents. If you approve this project, I hope it is not out of fear of being sued by the applicant. I think what has been presented is defensible. Thank you for hearing me again and for your service to the Village.*
- d. *Kaaren Northrop: That was very well said. We keep throwing around the term scale. I thought I would put a little context around the parking numbers we are talking about. There will be 64 additional spaces along Hwy 42 when that project is completed. Shipwrecked was already 71.5 spaces short but I don't recall if that included spaces at Cape Cod or Fat Louis. For an idea of what that means for parking spaces, the main parking lot at Main Street Market is 74 spaces. I hope that adds some context for you. Thank you.*
- e. *Mary Jo Kolb: Is there any provision in place that if the owners decide to sell Fat Louis and Cape Cod, would their parking requirement be reviewed? It was suggested that employees park at Cape Cod. We all know how suggestions work for parking enforcement. In regard to the dumpster, they were going to put up a sign. I would like to ask if those signs would actually work.*
- f. *David (Pete) Pollman: I want to speak to the project for a moment. I feel like some of the information presented has been cloudy. Prior to the fire, we had 270 seats and 8 hotel rooms with 9 parking spots. If you rented a room, you get a parking spot. We had to chase people out of those spots so our hotel guests could park there. Technically we had at that time only one parking spot for the restaurant. After the fire, we currently have 302 seats with 10 parking spots. Proposed, we would be at 394 seats with an additional 30 parking spots, a better than equal trade as that would cover an additional 120 seats. We are slowly trying to dig ourselves out of the hole that we have been in. That does not include any of the Cape Cod spots. We also have employees who live at Cape Cod and regularly walk to work already. I have heard a lot about precedent. I'm not sure what precedent they are referring to. Is it that a property owner can develop their property by following the local ordinances? We are trying to build a beautiful popular destination that visitors will enjoy and is complimentary to the Village of Egg Harbor. I fear for the precedence that would be set if we are denied, having submitted a plan that meets all the criteria and zoning ordinances, that would send a strong message to any future investors that Egg Harbor is a risky investment. The Village leaders ignore their own laws and ordinances when making decisions. The Village leaders plays favorites. The Village leaders engage in risky behavior that cost taxpayers unnecessary taxes. Who would want to purchase a property in Egg Harbor and have their dreams squashed, because the Plan Commission is subjectively against their project? When we bought Christines property, all laws and parking specifically said we could do this project without a problem. Since then, the laws have change and our project has changed to comply with the updated laws. When we bought the*

property in October of 2019, it took over a year for us to submit any plans because we had renters. While everyone was talking about changing the FILOP ordinances, this project was looming in the background. The Village knew we were in the pipeline, they inadequately came up with a law that is causing these problems. Since we submitted our plans, there is yet another ordinance change limiting how many times an applicant can submit plans for a project. To be clear, this is only our second submission of this plan. The first was denied because of there was no shared driveway agreement in place. You asked us to make changes. We have made those changes you asked for. People want a quaint Village. I agree. Without the old Christines building in place, I completely agree the existing building looks monstrous. The new addition will make that side of the building look more appealing. We will be enhancing landscaping on Hwy G and on the corner. In addition, we are looking to put in high end land scaping that will be attractive on Hwy 42. We intend this property to be something that is beautiful and eye catching. I believe the idea of quaintness is subjective. There were many people opposed to the Kress Pavilion but now that it is completed, there are mostly positive comments in support of it. I believe when our project is completed, people will also change their opinions. Some members of the public have asked for a traffic study to be done on Hwy G. This one is especially frustrating for me because when the Hwy G project was being developed, we asked for was a traffic study at that time. We asked for it several times and I felt like we weren't being taken seriously. I find it ironic that there are so many comments how bad Hwy G is. I can't help but think that a Hwy G traffic study in 2019 might have resulted in a better plan for the area today. I see this as a missed opportunity. I think this area has a poor planning problem, not necessarily a safety problem. Finally, I have heard a lot of comment about the parking burden. Shipwrecked will have a 27-spot parking lot if this is approved. Fat Louis will have a 20-spot parking lot if that is approved. Instead of saying we are the burden on taxpayers, why not look at other businesses who have absolutely no parking spots at all, including some restaurants in the Village. To point the finger only at us is not fair. We should acknowledge that other businesses are also well short on parking. I hope this is approved tonight. We have tried to follow the laws and ordinances. We would like to move forward on the facts, not on fears and subjectivity. Thank you for your time and effort.

6. Deliberation, consideration, and possible action on Special Development District Relief Application filed by Tyler Pluff on behalf of Sojenhomer LLC for 7783 STH 42 and 7791 STH 42 (Parcel #s 118-0125302612N and 118-0125302612P)
 - a. *Cambria Mueller opened the floor for the discussion on this application and commission deliberation.*
 - b. *Chris Roedl recused himself from this deliberation.*
 - c. *Megan Sawyer presented an overview of the Special Development District Relief Application review as presented in the meeting packet as well as the Zoning administrators review against the Criterial under 152.044 (A). You can reflect on this review and the testimony from last night. I would suggest we take each of the criteria in order to deliberate each item.*
 - d. *Jon Kolb: Does it make sense to deliberate on the Special Development District relief item before deliberating on the Conditional Use Permit Application? Is that somehow setting a precedence for future applications that require both reviews?*
 - e. *Jim Kalny: I'm not worried about setting a precedence. I'm more concerned about the order. It doesn't make sense if you aren't going to move forward with the Conditional Use Permit application. Often times, Special Development District relief is added as a condition to that approval first. Here we are reviewing the Special Development District relief first. I know there is an interest in getting both of these done concurrently. You will be acting on both*

- tonight. You can reopen the agenda approval and change the order of deliberation.
- f. Cambria Mueller: I open the floor to changing the order of the agenda.
 - g. **Emily Pitchford: Moves to change the order for agenda items 6 and 7.**
 - h. **Kathy Navis second.**
 - i. **Motion unanimously carried.**
 - j. The Commission moved to agenda item 7 at 6:25 PM.
 - k. The Commission tabled agenda item 6, recorded under item 7.
7. Deliberation, consideration, and possible action on Conditional Use Permit Application filed by David Pollman on behalf of Sojenhomer LLC for an addition at 7783 STH 42 and 7791 STH 42 (Parcel #s 118-0125302612N and 118-0125302612P)
- a. Megan Sawyer presented an overview of the Conditional Use Permit Application filed by David Pollman on behalf of Sojenhomer LLC. The minutes from the public hearing are completed and printed for you tonight. You can refer to the testimony recorded in the minutes in your deliberation. We will be working through the Findings of Fact and Conclusions of Law document as you deliberate each item. I would suggest we take each of the criteria in order for deliberation. We want to be sure to clearly articulate our findings and conclusions so we can connect the conclusions to those findings.
 - b. Chris Roedl: I recuse myself from this deliberation.
 - c. Cabria Mueller: Regarding the conditions, we need to state the obvious. If we want to condition screen of the dumpster, we need to say screening of the dumpster. That isn't just for this deliberation. That is for all conditional use permit applications going forward.
 - d. Jim Kalny: You have criteria in the ordinance, and you have some conditions. Each condition needs to be supported by something related to it. The first criteria asks if this project goes against population density. If you have objective facts you can use, then you have a problem. That is how you should go through these one at a time. The Village staff comments is a good starting point.
 - e. Criteria 152.044 (A) (a): Population density in the area proximate to the proposed area
 - f. Megan Sawyer presented in her Zoning Administrator's review.
 - g. The plan commissioners deliberated on the population density comments as represented in the Zoning Administrators review.
 - h. Jon Kolb: What would the increased amenities be that would benefit the area?
 - i. Kathy Navis: Increased restaurant capacity. I believe population density is referring to the residents in the area, living within a square block or square mile. I don't believe this project impacts population density.
 - j. Jon Kolb: I disagree. During the hours of operation, the number of people in that area is going to increase. The quantity of people in this area is going to increase significantly.
 - k. Cambria Mueller: For clarification, we are referencing the number of seats in that conclusion. Megan, what was your take on that point?
 - l. Megan Sawyer: I take that as the number of people in the area overall. Both people living in the area and people in the area.
 - m. Lou Nyberg: Is the Thursday music in the park or the Sunday Peg Egan concerts an increase in density? It is temporary, not permanent residence or density. I don't see how that impacts density. That depends on weather and tourism trends.
 - n. Jon Kolb: This is 92 additional seats. These seats will be used multiple times during the day. That isn't the same as the music in the park or concerts at the Peg Egan.
 - o. Emily Pitchford: If you look at paragraph A, I see this as adding an amenity for the increased density.

- p. *Kathy Navis: I would ask Jim Kalny to offer an opinion if this criteria regarding density. Is this referring to people living here or people standing on the sidewalk?*
- q. *Jim Kalny: My read on this section is that this criterion is for population density, for those who are living in the area. Some of these criteria are not going to directly apply. The Village View Condo project for example would be impacting density under this criterion. You can also look at this as providing an additional amenity for the increasing density in the area.*
- r. *Conclusion: The commission did not reach a consensus on the application of this criteria.*
- s. *Criteria 152.044 (A) (b): The effects of traffic control on abutting Village roads and streets and safety to Villagers, pedestrians, and motorists.*
- t. *Megan Sawyer provided her review as presented in her Zoning Administrator's review. Regarding parking, I recommend that at least 27 parking spots be constructed on site, the SDD relief to add parking at Shipwrecked, Fat Louis, and Cape Cod proposals all be approved prior to issuing a Village zoning permit. Should any of those not be approved, I recommend that this application would be subject to review regarding parking fulfillment. The County has indicated there is no permit required for the driveway on Hwy G.*
- u. *The plan commissioners deliberated on the traffic control and pedestrian safely as represented in the Zoning Administrators review. My parking requirements and fulfillment are included under this item. Attachment A provides those details.*
- v. *Cambria Mueller: I am in favor of Megan's recommended conditions for this project.*
- w. *Kathy Navis: This criterion refers to pedestrian safety. Would it make sense for a pedestrian through way to go through the south side of this parking lot instead of going to the corner of Hwy 42 without having to go through the corner of Hwy 42 and G? Would the applicant have any objection to putting up a sign directing pedestrians in that direction?*
- x. *Tyler Pluff: There is access as represented on page C200 showing a sidewalk that goes past the back side of the property that would allow people to walk from Hwy 42 to G on the south side of the building.*
- y. *David Pollman: We would be fine with having a sign directing pedestrians that way. I would like to point out there is already a walking path between Signature Pieces and Blacksmith. I believe she has plans to develop that walking path very soon.*
- z. *Kathy Navis: I would like to touch the suggestion in Chris Roedl's email about possibly adding 5 more parking spots on the northeast side of the parking lot. There must be some reason the application didn't extend the parking on that side. I'm talking about mirroring those last 5 parking spots. I would assume that is to leave space for outdoor seating there.*
- aa. *David Pollman: We came away from the last meeting that maintaining green space was the top priority for the Plan Commission. We are trying to keep a parking lot away from the patio area as well as maintaining green space. This change would not reduce the number of seats.*
- bb. *Jon Kolb: If this adds 4 to 5 more parking spaces in an area that needs it, I would be strongly in favor of making this a condition.*
- cc. *Tyler Pluff: This is why I wanted to take up the special development set back relief first. You are not talking about putting a condition on this project on something that hasn't been approved and is not in our control.*
- dd. *Cambria Mueller: Let's move forward with the Conditional Use Permit deliberation and conclusions at this time. We will make changes to the Special Development District application if needed.*
- ee. *Jim Kalny: The conclusion here specifies how the law applies. The condition specifies what they need to do to comply with the law. The first issue is does our code require this for pedestrian safely and traffic mitigation. You should be sure to record the basis for your conclusion.*

- ff. *Kathy Navis: The condition on the pedestrian walkway would be that it needs to be built per the plan at a minimum width of five feet, kept unobstructed and include proper signage on both Hwy 42 and on County G.*
- gg. *Jim Kalny: The reason for that is it is keeping some people away from the Hwy 42 and Hwy G corner which is directly tied to the pedestrian safety criteria and is supported by facts. I think that is fairly objective.*
- hh. *The Commissioners agreed they are in favor of conditions on the pedestrian walkway and requiring four additional parking spots. Megan Sawyer recorded the conclusion and proposed conditions.*
- ii. *Jim Kalny: It would be appropriate to write these conclusions and conditions up in draft form for the commission to review at a future meeting. That is how we handled the Village View project.*
- jj. *Kathy Navis: Is Cape Cod within the Special Development District?*
- kk. *Megan Sawyer: Yes, it is in the Special Development District area.*
- ll. *Jon Kolb: Dawn McGinnis has said there is a process for asking the DOT for an exemption. Have we asked for an exemption from the Wisconsin DOT?*
- mm. *David Pollman: We have not asked, and we feel that would be even more of a safety problem. I feel like we would be creating a bypass between Hwy G and Hwy 42 and an even bigger safety problem.*
- nn. *Kathy Navis: Read the DOT letter indicating they would not approve a driveway on Hwy 42 at this location.*
- oo. *Jon Kolb: But people ask the village for exemptions regularly. Has anyone asked for this exception? No one here feels that a right turn only exit on Hwy 42 would help minimize the impact on Hwy G traffic? That parking lot may flow better with that option. Without it we are going to have people trying to get in and out of this parking lot in an already congested area across from Dock Road. My thinking is that the right turn only exit would help alleviate some of that problem.*
- pp. *Cambria Mueller: I agree with that in a way, but I would rather have people trying to get in and out of the parking lot on Hwy G. That intersection is already a bad intersection. With the parking that the Village is putting on Hwy 42, I don't think that would be a good place to make a safe right-hand turn exit. I would also expect people are going to try to turn left out of that exit anyhow. I can't get behind an exit on Hwy 42.*
- qq. *Paula Cashin: Based on the email response from the DOT, it is evident they are going to say no anyhow. We shouldn't waste time on submitting a request for it.*
- rr. *Jon Kolb: We say no all the time then make exceptions. I want you to focus on Dock Road, Hwy G, Hwy 42 and traffic going in and out of this parking lot. There is going to be a tremendous amount of congestion around it.*
- ss. *Cambria Mueller: Are you proposing something other than the exit on Hwy 42? I don't think the exit there is the answer.*
- tt. *Jon Kolb: I believe the exit on Hwy 42 is the answer. I don't have another proposal. We are going to make it much worse than it is right now. If you are voting not to have another exit there, I want you to assume the responsibility when people come back saying the area is just too congested.*
- uu. *Kathy Navis: I don't think it's going to be that much worse. These cars are not going to move all at the same time. They will park there and have a beer, then they will go shopping.*
- vv. *Jon Kolb: There is a sign right now that says if you are not a Shipwrecked customer and you are parking lot in their lot, you will be towed away. There are similar signs at Fat Louis. We have been talking about this as a park once and walk village. These signs are saying park once, just not in my parking lot. That is a separate matter. The congestion this would cause at that driveway is going to be bad.*

- ww. Kathy Navis: *It is already harder to exit on Hwy 42 than it is to exit on Hwy G. It isn't going to be any easier to exit on Hwy 42 than it is to exit on Hwy G. You can wait a long, long time to exit on 42 when it is busy.*
- xx. Jon Kolb: *I want it on the record on the official record that I disagree whole heartedly with that. It is two-way traffic on Hwy G, and it is going to be a mess.*
- yy. Kathy Navis: *Is the proposed fence over the height requirement for the Vision Triangle? Is the proposed fence over that height limit?*
- zz. Megan Sawyer: *The height requirement is 30" for the vision triangle. The proposed fence height is 36". Land scaping in the vision triangle also will have to meet this height requirement.*
- aaa. Kathy Navis: *Is the delivery driveway as represented, should that be paved? It is going to be really hard for someone to back in there and pull out. I think there needs to be more room at that location.*
- bbb. David Pollman: *We have asked the delivery companies to use smaller trucks. When you get the longer trucks, they don't seem to use that driveway.*
- ccc. Megan Sawyer recorded the conclusion and proposed conditions.
- ddd. Kathy Navis: *I think we have delivery trucks on the roadway all over town. You want to design the delivery area to minimize the impact on the traffic lanes. My question here is if a semi could actually back into that space.*
- eee. Jon Kolb: *I would like to ask to make that delivery driveway wider, so it goes right up to the dumpsters. That would add one to three feet for the delivery drivers.*
- fff. David Pollman: *Harbor View doesn't have a driveway. Their delivery trucks frequently park in the middle of the road. At times they even park in our parking lot and walk the deliveries across the street. We have deliveries before 8 AM whenever possible, so they can maneuver safely, and they are not an obstruction to others during heavier traffic times.*
- ggg. Kathy Navis: *Are they going to have to come back with a modified Special Development District relief application for impervious surface?*
- hhh. Cambria Mueller: *Can we put a condition on that delivery driveway that it is configured sufficiently so that it can actually be used?*
- iii. Lou Nyberg: *I think we are spending way too much time deliberating on this item. There are a lot of businesses in the village that don't even have a driveway for deliveries. I don't see this discussion as significant.*
- jjj. Cambria Mueller: *I get that the theory is trying to make sure there is a place for trucks to make deliveries, but my fear is that it isn't going to be usable. We could still end up with more trucks on G in the lane of traffic.*
- kkk. David Pollman: *We based it in part on watching semi-trucks parking at Casey's. There isn't much more room there and it is right up against a fence.*
- lll. Kaaren Northrop: *When the Parks and Public Works Committee was designing Church Street and Hwy 42, McMahon indicated that they have a turning radius standard for semi-trucks. We could ask them what that is. You could also ask semi-drivers directly.*
- mmm. Cambria Mueller: *I think we need to confirm that this driveway is accessible for trucks. I feel the condition should be that trucks need to use either the delivery driveway or the parking lot. I think they also need to decide if this driveway is for delivery or for employee parking. It is possible deliveries will come during busier times. If so, they need a place to make that delivery. That might not be available if employees are parked there.*
- nnn. Cambria Mueller: *The dumpster on the new plans did get moved. I would ask that we also make it a requirement to have it properly screened.*
- ooo. Kathy Navis: *I think we need to include a condition that the downspout on the back of the building needs to be tied into the storm water mitigation system and approved by the Village Engineer.*

- ppp. Megan Sawyer recorded the conclusion and conditions as requested.
- qqq. Jon Kolb: Can we require that businesses do not place any customer only parking signs? That seems contrary to the concept of parking once and walking to other businesses in the Village.
- rrr. Kathy Navis: I have similar signs up. Mine however say cars parked here who aren't customers are going to get egged.
- sss. Cambria Mueller: I think it is appropriate for a business to post those signs if they wish on their private property. That would not be appropriate for public owned parking.
- ttt. Emily Pitchford: The water feature/sign/artwork was a controversial item in the original submission. I would like to confirm that item is in fact removed from the project.
- uuu. Tyler Pluff: That item is removed from the plans.
- vvv. Megan Sawyer: Provided an overview of the parking requirements and fulfillment as presented in Attachment A. Total parking spots required is 104.5. With the modified parking lot, there will be 31 spots on site, credit for 6 spots for employee parking spots at Cape Cod, and 13 at Fat Louis, pending the SDD approval for all 3 parking lot updates. That would leave a deficit of 54.5 spots that would need to be covered by the FILOP fee at \$50 per parking spot per year, or \$2,725 per year.
- www. Lou Nyberg: From the prior parking audit in the village, before this update took place, the shortage of parking for this property was 72.5 parking spots short. With this proposal they would now be 54.5 spots short.
- xxx. Paula Cashin: If the trustees increase the fee to greater than \$50, do they then have to pay the updated fee?
- yyy. Jim Kalny: Statues indicate that once an application is filed, the zoning codes at that time apply. This application would remain at \$50 per spot.
- zzz. Jon Kolb: Would intent apply also? The intent of the plan commission was for this fee to be set at \$250 per spot initially but the trustee's changed it to \$50 per spot.
- aaaa. Jim Kalny: That is a different question about what the intent was. You would have to have a really solid argument to support that. If you are going to say the intent of the ordinance was something specific to that.
- bbbb. Kathy Navis: It was our intent to set the fee at \$250 per spot per year. It was however the trustee's intent to set that amount at \$50 per spot per year. I don't think we have a case on this one. There is nothing on the record to support the idea that this was never intended to cover a large number of parking spaces.
- cccc. Jon Kolb: Doesn't fulfillment option G in the parking fulfillment section give us authority to make additional parking requirement as a condition for the project approval? Reducing the number of seats seems worth exploring.
- dddd. Jim Kalny: That is what we are deliberating right now. If the applicant can suggest another alternative that is acceptable to the commission.
- eeee. Cambria Mueller: I really like the idea of reducing the number of outdoor seats for this project.
- ffff. Megan Sawyer: Let's keep that in mind. I think the size of the project comes up in other factors.
- gggg. Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.
- hhhh. Criteria 152.044 (A) (c): The general health and well-being of the Village residents;
- iiii. Megan Sawyer provided her recommendations as presented in her Zoning Administrator's review. The dumpster screening is included in this section, including no parking signs before 12:00 P.M. in front of the dumpster.
- jjjj. Commission members agreed with the recommendations by consensus.
- kkkk. Megan Sawyer captured the conclusions and proposed conditions in the DRAFT

- Findings of Facts document.*
- llll. Criteria 152.044 (A) (d): The increase in area noise;
 mmmm. *Megan Sawyer provided her recommendations as presented in her Zoning Administrator's review.*
- nenn. *Jon Kolb: Should we look at our noise ordinance to restrict the number of bands playing. I would like to add this to the agenda for the next meeting.*
- oooo. *Jim Kalny: This would be addressed through permit request as a police matter. Grandfathering would not apply.*
- pppp. *Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.*
- qqqq. Criteria 152.044 (A) (e): The increase in potential public or private nuisance;
 rrrr. *Megan Sawyer provided her recommendations as presented in her Zoning Administrator's review.*
- ssss. *Jon Kolb: I would just reiterate my strong concerns about traffic congestion on Hwy G.*
- tttt. *Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.*
- uuuu. Criteria 152.044 (A) (f): The availability of municipal services such as fire protection, waste disposal, and sewage.
- vvvv. *Megan Sawyer provided her recommendations as presented in her Zoning Administrator's review. The existing grease trap meets the Wisconsin State requirements to support this expansion. An REU reassessment for the sewer accounts will be required at the completion of the project.*
- wwww. *Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.*
- xxxx. Criteria 152.044 (A) (g): The adverse effects on the environment
- yyyy. *Megan Sawyer provided her recommendations as presented in her Zoning Administrator's review.*
- zzzz. *No additional discussions.*
- aaaaa. *Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.*
- bbbbbb. Criteria 152.044 (A) (h): The protection of lake shore, lake, and ground waters
- cccc. *Megan Sawyer provided her recommendations as presented in her Zoning Administrator's review.*
- dddd. *No additional discussions.*
- eeee. *Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.*
- ffff. Criteria 152.044 (A) (i): Effects on surrounding plant foliage and vegetation
- ggggg. *Megan Sawyer provided her recommendations as presented in her Zoning Administrator's review.*
- hhhhh. *No additional discussions.*
- iiii. *Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.*
- jjjj. Criteria 152.044 (A) (j): The kind and quality of amusements or entertainment
- kkkkk. *Megan Sawyer provided her recommendations as presented in her Zoning Administrator's review.*
- llll. *No additional discussions.*
- mmmmm. *Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.*
- nnnnn. Criteria 152.044 (A) (k): General growth and dynamics of the Village
- ooooo. *Megan Sawyer provided her recommendations as presented in her Zoning*

- Administrator's review. The primary concern expressed here is for the construction schedule to be compatible with the Hwy 42 project to ensure the development of Hwy 42.*
- ppppp. Jim Kalny: I think that is a defensible condition. The Village wants to see the Hwy 42 project moving ahead smoothly. This is about cooperation that goes both ways.*
- qqqqq. Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.*
- rrrrr. Criteria 152.044 (A) (1): Consistency with the Village master plan;*
- sssss. Cambria Mueller: As it stands today, it is our responsibility to act as the Architectural Review Board. David made the comment that this addition softens that side of the building. I agree that this project enhances the look of the building that is already there. We did also hear a lot of testimony yesterday as it pertains to the Master Plan's definition of the word quaint.*
- ttttt. Kathy Navis: I think that ship has sailed. The building that is there is not quaint already. I agree that this addition will soften it. We already have several buildings in the Village that don't meet the definition of quaint in my opinion. I think this addition will help this particular structure. If we want to get serious about an architectural review board, we need some guidelines to define what is and is not quaint.*
- uuuuu. Cambria Mueller: Looking at the size of the establishment, does a 394-seat restaurant fit in with comprehensive plan? Does this fit within the Village?*
- vvvvv. Jon Kolb: I would be ok with a 394-seat restaurant on a larger parcel. I don't think it fits into our master plan with it at this location. That corner is not a well-managed corner, and we are going to make it worse.*
- wwwww. Emily Pitchford: We also have Village View Condos right across the street. That is already done.*
- xxxxx. Cambria Mueller: I struggle with this one. I think this is why we have arrived at this by allowing the on-street parking in the past. I think it is ok for this Commission to not do the same thing we have done in the past. I think to just throw quaint out the window isn't correct. I think that subject still need to be discussed.*
- yyyyy. Kathy Navis: I like that idea of quaint, but we don't have any parameters around what is and is not quaint. It is very much up to personal preference. We have some very modern looking buildings already in the Village. We have already set a precedent in that respect. It would be difficult now to tell someone they need to have a cedar sided building.*
- zzzzz. Cambria Mueller: I was using quaint as an example. I believe it is ok for us to say that this building is simply too big. We could say we shouldn't allow a 394-seat restaurant on that corner.*
- aaaaaa. Emily Pitchford: We have size restrictions. This restaurant is already over 300 seats on half the size of the joined parcel.*
- bbbbbb. Lou Nyberg: You have to have a definition of what quaint is that everyone can agree on. A large lawn with 300 people sitting outside drinking beer is not quaint in my opinion. Parking on both sides of the street right there isn't quaint either in my opinion. It is a real tough question. I think we passed that already.*
- ccccc. Kathy Navis: We have 18,000 sq feet and 35 feet high. That is all we have to work with. We don't have any parameters. It is a matter of personal opinion. We already have several modern looking buildings in the village.*
- dddddd. Cambria Mueller: Do we then ignore the idea of quaintness because some of the other buildings meet that definition in some people's opinion?*
- eeeeee. Jon Kolb: Can we legal have an arch review committee?*
- ffffff. Jim Kalny: Absolutely. You had better set up some good parameters for it. Sturgeon Bay has one. It acts as its own committee. It has only been around for six or seven years.*
- gggggg. Cambria Mueller: Since we don't have one today, we have to fill that role and*

- consider that against the comprehensive plan. It is our job description that focuses a lot on the comprehensive master plan. That is the road map for what people want the Village to look like. A lot of people don't feel this project fits in with the master plan.
- hhhhhh. Kathy Navis: The master plan needs to reflect the ordinances. Let's say that someone comes along that submits a plan for an 18,000 sq foot plan and it meets ordinances, they just get a permit. We don't even get to look at it. If we feel our ordinances don't reflect the master plan, then we need to change the ordinances.
- iiiiii. Jon Kolb: I agree with that, but we have the authority today in our existing ordinances that we may accept alternative parking fulfillment.
- jjjjjj. Jim Kalny: One of the things that is difficult is our parking fulfillment is so open and have a relatively low cost per spot. That is already being addressed.
- kkkkkk. Cambria Mueller: In regard to the master plan, would saying that this project is too large for that corner, so they need to reduce their seat count?
- llllll. Jim Kalny: If you can in good faith give facts that support the notion that the expansion is contrary to the plan because of some of those factors, you could have something there.
- mmmmmm. Emily Pitchford: I like the idea that we all know what the intent is for the fee for parking. However, it isn't specifically stated in the ordinance. The intent was never to use the fee to fulfil that many parking spot deficit.
- nnnnnn. Cambria Mueller: If we just go by seat count and not talk about the parking requirement, based off of the master plan, with the additional congestion, is that causing a safety issue?
- oooooo. Emily Pitchford: It is already a safety concern today.
- pppppp. Jim Kalny: That is a something you would have to consider. You already have those safety issues. What is the result of increasing the capacity at this location increase related to the safety concern?
- qqqqqq. Kathy Navis: If you go from 302 to 394 seats, does those additional seats make it any more of a pedestrian safety issue?
- rrrrrr. Jon Kolb: Isn't it negligent for us to approve this and add to an existing problem? It is a problem today. I don't think we need to make that problem worse. I think it is negligent if we say we have a problem, what is another 100?
- ssssss. Emily Pitchford: Why not say they can add 40 more seats but not 92. Then, how do you justify that?
- tttttt. Jim Kalny: You would need something to justify that. It would be tough to support.
- uuuuuu. Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.
- vvvvvv. Emily Pitchford: They are adding seats, but they are also adding parking, and this is now a joined larger parcel. I'm not saying it's correct, but our ordinance allows this.
- wwwwww. Lou Nyberg: Impervious surface was an issue, but it no longer is. There are a lot of positive things that have been done for this project. If you have an Architectural Committee to review it or if the Plan Commission reviews it, you need something to support that the project doesn't comply with the master plan. Jim Kalny has reviewed the requirements several times. I don't think we have a good factual foundation to deny this application. I am willing to listen to arguments but if you fix what you are asking our ordinance to fix, how do you deny that? You have to have something substantial to do that.
- xxxxxx. Cambria Mueller: So, our master plan isn't sufficient grounds to generally say a particular building is too big for this area, because we don't have a specific ordinance to back that up?
- yyyyyy. Jim Kalny: You don't have an ordinance and you don't have any specific facts that tie the size and parking issue to the increase. I shouldn't say you don't. You have to ask yourself if you do have sufficient facts that this addition is going to be causing problems that

- are contrary to the master plan. That is a part of the problem you have.*
- zzzzzz. Cambria Mueller: If I go to Target early in the morning for Starbucks, there are only a few cars in the parking lot and 10 people in the store. If I go at 4:00 PM there are a lot of cars in the parking lot and 200 people in the store. Doesn't common sense tell you that the more people you have the area the more congested it will become?*
- aaaaaaa. Jim Kalny: That is at different times. That is a little bit of a problem with your code. You base it on seating. That is transient. There might be 5 people at a table that is intended for 2. There are many variables that it is hard to get a handle on.*
- bbbbbbb. Cambria Mueller: The plan also says there are many voices advocating to maintain a quaint aesthetic in the Village. You could even take out the word quaint. Maintaining aesthetics in current and future developments. Listening to those voices that spoke yesterday and emailed us over the last few months. Our constituents provided the input for the master plan. Doesn't that count for anything?*
- ccccccc. Jim Kalny: You could take the position that it does. How that will hold up, I don't know. There is the warning that you can't just base it on opinion. That is where you might run into a problem.*
- ddddddd. Kathy Navis: As Emily said, they aren't adding this on to the existing property. They bought the adjacent lot which I would guess doubled the size of their lot. They took down a number of buildings that were there that also generate traffic in the area.*
- eeeeeee. Cambria Mueller: They could have taken that building down to add parking. That is one of the options we had considered in an earlier meeting when we were talking about the fee in lieu of parking. They could put a parking lot on that parcel, but they are not.*
- ffffff. Megan Sawyer: So, the discussion here is if this project fits with our master plan or not, specifically the elements we're reviewing.*
- ggggggg. Jon Kolb: If we pass this project or not, I don't believe it does fit with the Master Plan.*
- hhhhhhh. Kathy Navis: Much of this is about people feelings about what they would like this to look like. Once it is finished, they might be saying this is a really nice addition to the Village. Many were opposed to the Kress Pavilion but now those same people support it and use it regularly.*
- iiiiiii. Paula Cashin: I agree with that recap of the history of the Kress Pavilion. We received many communications opposed to that project before it was built.*
- jjjjjjj. Megan Sawyer captured the conclusions and proposed conditions in the DRAFT Findings of Facts document.*
- kkkkkkk. Criteria 152.044 (A) (m) Consideration shall also be given to the purpose and intent of the Village Zoning Code as found in §152.002 and §152.003 Egg Harbor Zoning Code respectively.*
- lllllll. The Commission members did not deliberate on this criterion.*
- mmmmmmm. Cambria Mueller moves to table the Conditional Use Permit deliberation, directing staff to refine the findings of fact and conclusions of law document for a future meeting.**
- nnnnnnn. Kathy Navis second**
- ooooooo. Motion unanimously carried. Chris Roedl Abstained.**
- ppppppp. Cambria Mueller moves to table the Special Development District Relief deliberation until a future meeting.**
- qqqqqqq. Kathy Navis second**
- rrrrrrr. Motion unanimously carried. Chris Roedl Abstained.**
- sssssss. Cambria Mueller moves to move agenda items 9 and 10 ahead of item 8.**
- ttttttt. Emily Pitchford second**
- uuuuuuu. Motion unanimously carried.**

8. Attorney Kalny Memorandum on increase in intensity.

- a. *Jim Kalny presented an overview of his memorandum on increased intensity as presented in the meeting packet. When non-conforming use is involved, there has to be an expense of use or expense of a structure to require revisiting a Conditional Use Permit. One Barrel is different in that it is a conditional use that is permitted. Different rules apply to a conditional use. When I look at the increase in intensity in your ordinance, that only is applied against the ordinance that was in place when the condition was originally approved.*
- b. *Kathy Navis: My building for example is grandfathered and is non-conforming with regard to parking. It used to be conforming, but it is now not conforming compared to the updated parking fulfillment. One Barrel was conforming when they applied even if it is not conforming to the current parking requirement. They were supposedly conforming when they proposed the project because of being able to count parking spots within the 500-foot limit. Under present day ordinances, they are now non-conforming.*
- c. *Emily Pitchford: So, an increase in seating does trigger a parking review, not a CUP review.*
- d. *Jim Kalny: That is correct, with regard to parking. It does not trigger a CUP review unless there is an addition to the structure that would impact your nonconformity.*
- e. *Chris Roedl: They did add an awning that is attached to the building.*
- f. *Megan Sawyer: This would tie back to the original CUP and conditions that was imposed.*
- g. *Kathy Navis: So, if someone adds seating, they will need to go through a parking review, and they go back to square one for their parking requirement?*
- h. *Jim Kalny: For a parking review only, you are going to only consider the additional seats. They would have to only pay for the additional seats, against the code that was in place when they were approved. That is true unless they expand the building or add land to the parcel.*
- i. *Cambria Mueller: Why wouldn't the parking review be covered under the current ordinance? If you are short so many spots, the ordinance today says that is \$250 per spot.*
- j. *Jim Kalny: You could make that argument but then you are treating it as the loss of a non-conforming use. That is what we are doing with Shipwrecked. For One Barrel, they are expanding permitted use. That only triggers a parking review that is reviewed against the ordinance that was in place at the time the permit was issued. It is not a loss of conformity under state law. That would be when they are expanding the physical building or property. Square footage is generally what is used for things like intensity. The problem with using seating is it can be easily manipulated. This one took me some time to sort through.*
- k. *Cambria Mueller: Thank you for putting this together for us.*

9. Attorney Kalny Review of One Barrel Brewing Conditional Use Permit

- a. *Jim Kalny presented an overview of his review of the existing One Barrel Brewing Conditional Use Permit as presented in the meeting packet. The original CUP application was the first one under the new Wisconsin statute in 2017. There was a good job making the record but not as good making the conditions. We did say that applicant needs to return to the Plan Commission if there are changes to the parking lot. There is a reference to the original plan for 35 spots, but there is no specific condition that we can enforce. It is just too vague. When one barrel applied, they had the 500-foot rule for parking fulfillment. I don't think he is in violation of the 500-foot rule today. It is clear under the law that when you expand your premise and you have a non-conforming use, that brings the entire property into question. It is also clear however that if you are simply expanding intensity,*

- you have to let us know about that so we can address that. What code applies? Taking it all into consideration, One Barrel is in a very defensible position in my opinion. They are not in violation at this point. They still have to address that intensity. Let's say they were under the \$50 rule, and they expanded their business from requiring 50 parking spots to 100 parking spots, they would have to pay for that additional 50 spots. They have to stay in line with the rule that is in place at the time they apply. That is my opinion of the cleanest way to read and apply this ordinance. I believe they are covered using the on-street parking that was in place when they applied.*
- b. *Megan Sawyer: The last bullet in the memorandum on page 2, there are 37 spots on Market Street, 26 spots on Church Street, 35 on Hwy 42, allow for counting 98 spots of on street parking spaces within 500 feet.*
 - c. *Chris Roedl: That feels fair to me if that expanse at this time. My concern is that if that creates a slippery slope for any future expansions that were originally approved prior to Act 67?*
 - d. *Jim Kalny: I think you might already be there. One of the existing restaurants adds some outdoor tables. It is grandfathered in. The code that was in place when they were approved applied. The smart thing to do is make sure you are careful with the conditions that you apply to future projects.*
 - e. *Chris Roedl: How do you go back to a permit that has already been approved?*
 - f. *Jim Kalny: You would have to go to a permit system. That is a different way to look at it and a lot of work.*
 - g. *Kathy Navis: For example, Chris could double the outdoor seats on the patio, and would still comply? One Barrel just built a new physical space, that is an expansion of the physical space. I believe there are chairs back there. If they expand their physical space, then we go back to square one – correct?*
 - h. *Jim Kalny: Yes, that is correct, if that was not reasonably anticipated in the first CUP approval. Did they say for example that they were going to have an outdoor bar area and not show it on the plan? I think in this case they actually did.*
 - i. *Peter Gentry: We did show that on the original plan. The original plan showed an outdoor bar that doesn't exist. The Bar on the northside was also on the plans.*
 - j. *Kathy Navis: Did you add physical space on the north side for seating? The addition that you put in on the south side. If you add physical space that increases your seating, isn't that an addition to your property?*
 - k. *Jim Kalny: It depends on what is in your conditional use. Take Shipwrecked for example, their original CUP was for the original property before they bought a neighboring parcel and combined them through a CSM to expand. That is what bring in a non-conforming use. A more interesting question is what if you expand in a way that wasn't anticipated in the originally contemplated in the CUP? Maybe you have to go back to square one if that expansion wasn't reasonably contemplated. When you approve a CUP to use the south side, but they don't immediately install something but later you add a pad there, that complies the CUP.*
 - l. *Jon Kolb: One Barrel said they originally had a bar in the plans but didn't put it in. They also said they were going to build a parking lot on the plan. Doesn't it work both ways? I can see where if they had a bar on the plans, they have a right to put it in, but they also had a parking lot that they should be required to put in.*
 - m. *Jim Kalny: It does kind of work both ways. That is a moot point now as he is however now proposing to do more than what was on his original plan.*
 - n. *Chris Roedl: If it is determined that the use in the back requires a new CUP, couldn't they move their seats to the front where it wouldn't be considered a change in use by structure?*
 - o. *Cambria Mueller: I would agree it would be a loophole but that would defeat the purpose of*

that addition, for spending the money to provide that additional space.

- p. Kathy Navis: What exactly constitutes an increase of intensity? What is physical property? Is adding a slab or a structure considered to be an increase of intensity?*
- q. Jim Kalny: Normally it is when actual real estate is added to a property. Arguably, the adding a structure or an addition to a building could sometimes nullify a conditional use permit. Arguably, you could say adding the pad on the south side of the building is an expanse of the conditional use, if you can say it wasn't something you considered at the time of the approval.*
- r. Megan Sawyer: Showed the plans from the original One Barrel submission.*
- s. Lou Nyberg: Initially the project was proposed to have 88 inside seats and 72 outside seats. John Heller came up with 88 inside and 320 outside. Chris counted a total of 372. If we go with John Heller's count, they have more than Shipwrecked. If he is going to add more, he is going to be well over 400.*
- t. Kathy Navis: What are you proposing to do on the new patio you poured on the south side of the building?*
- u. Peter Gentry: We didn't pour anything. It is gravel. We are planning to use it as we see fit. When I came to you for a permit, I didn't anticipate that you would challenge my conditional use and my ability to operate a business. This challenges my very existence in the village. If you take away that permit, you take away my lively hood and I don't feed my family.*
- v. Cambria Mueller: You have to come to us for a permit so that is why we are having this discussion. It isn't our intention to shut you down.*
- w. Peter Gentry: I presented a plan. I did not intentionally mislead anyone. At the time, the regulations were what they were. I was following them at that time, and I am still following them today. Regulations have changed and it seems like you want me to now comply with the changed regulations. I won't do that. I am offering in good faith to add more parking that I originally proposed. I further offered to have my entire staff park up at the dog park. I would like this conversation to be positive.*
- x. Cambria Mueller: Do any of the members have anything else to say or want staff to look into this in more detail.*
- y. Kathy Navis: My question for Jim Kalny is that someone is approved for a conditional use permit for 150 seats. They then add another 200 seats. Is adding gravel pad considered to be an expanse of use?*
- z. Jim Kalny: Off the top of my head, pouring peat gravel isn't considered to be a structure but I'm not sure what your code says.*
- aa. Tom Strong: I was involved in this one early in the year. We reviewed this along with the building inspector. It looked like it might be a covered structure. It turned out this was not the case. We both concluded that this landscaping wasn't something that required a zoning or building permit.*
- bb. Jim Kalny: So that probably isn't expanding the conditional use because we aren't expanding the structure. Hypothetically you raise a good point. What happens when someone adds to the structure and that isn't addressed in the conditional use permit?*
- cc. Peter Gentry: I would like to see some action on my SDD relief to add parking. The longer we delay, the longer we don't have that additional parking. I'm happy to discuss the CUP permit but I would like to move on to the SDD relief application for setback relief.*

10. Review of Special Development District Relief Application filed by Peter Gentry on behalf of Double Barrel Brewing Co LLC for 4633 Market Street (Parcel # 1180125302612E) and scheduling of public hearing if necessary

- a. *Peter Gentry provided a summary of the project he is proposing to add parking and a storage facility on the existing parcel. I know you have a difficult job. We are trying to come into line with village code. This is a good faith effort to do what you have been asking me to do. Our sincere hope is that you will consider this proposal as soon as possible. I would like to break ground before the frost sets in. I would be happy to provide any additional information that you need to move this forward.*
- b. *Cambria Mueller: I do applaud you for adding parking. I am sorry that you had to endure some of the comments that you have heard. It has been a learning experience for us as well. Act 67 makes us jump through hoops. We also make you jump through hoops as well.*
- c. *Megan Sawyer presented an overview of the Double Barrel Brewing Co LLC for 4633 Market Street (Parcel # 1180125302612E) Special Development District relief application as presented in the packet. The applicant is requesting relief from section § 152.030(A) and § 152.028(A)(3) that. I conclude that this is in line with the comprehensive plan and all criteria required to consider this proposal at a public hearing, with the Plan Commission requesting additional information from the applicant. This SDD hearing would require a class one notice.*
- d. **Chris Roedl moves to schedule the public hearing for the SDD application for Monday September 13, 2021, at 4:00 PM at the Kress Pavilion Great Hall.**
- e. **Cambria Mueller second.**
- f. **Motion unanimously carried.**

11. Correspondence

- a. *No Correspondence received at the time the packet was created.*
- b. *An email was received by staff from Dawn McGinnis on August 24, 2021*

12. Zoning Report

- a. *Megan Sawyer provided an overview of Zoning Administration activities for the Month of July. There was a single remodel off of. Also permits were issued for new buildings at Apple Ridge and on White Cliff. Cupola house is being re roofed. I don't know what the future use is. There haven't been any applications submitted to the Village.*

13. Open Session

- a. *Cambria Mueller opened the floor for public comment.*
- b. *David Pollman: The Shipwrecked expansion can no longer be referred to as the largest restaurant in the county anymore. One Barrel holds that honor.*
- c. *Kathy Navis: The people testifying last night simply wanted us to turn down the shipwrecked project. I want it in the record that I felt this is a permitted use in that zone and they met the zoning ordinances.*
- d. *Jon Kolb: I disagree. I believe related to traffic density and safety, this project does not comply with the comprehensive plan. I believe safety is a major evidence-based reason.*
- e. *Paula Cashin: We have to have evidence. You can't just say you don't like it.*

14. Next Meeting

- a. **Public Hearings for One Barrel Special Development District Relief: September 13th 4:00 PM.**

- b. Regular Meeting: September 28, 2021, 6:00 PM IN PERSON ONLY at the Paul Bertschinger Community Center. Large Meeting Room.

15. Adjourn

- a. **Cambria Mueller moved to adjourn.**
- b. **Paula Cashin second.**
- c. **Motion unanimously carried.**
- d. Meeting adjourned at 9:45 PM.

Minutes completed by Tom Strong on August 27, 2021. Submitted for approval on September 28, 2021.

Bold – Commission Action

Italics – Summarized Comments