

**PUBLIC HEARING**  
**VILLAGE OF EGG HARBOR PLAN COMMISSION**  
**Tuesday, July 24, 2018 6:00 p.m.**  
**Paul J. Bertschinger Community Center**  
**7860 STH 42, Egg Harbor Wisconsin**

TO WHOM IT MAY CONCERN:

Notice is hereby given that the Village Plan Commission of the Village of Egg Harbor will hold a public hearing on Tuesday, July 24<sup>th</sup>, 2018 scheduled to begin at 6:00 P.M. or soon thereafter, at the Paul J. Bertschinger Community Center, 7860 STH 42, Egg Harbor Wisconsin in regards to the following application for a conditional use permit.

Peter Gentry, on behalf of One Barrel Brewing Co. to construct a brewery/tap room at 4633 Market Street in the Village of Egg Harbor.

All interested parties are invited to attend and give testimony. Deliberations may be made by the Village Plan Commission at their regular meeting following the hearing.

Dated July 12<sup>th</sup>, 2018

**Mueller opened the hearing at 6:00 p.m. in regards to the following application for a conditional use permit: Peter Gentry, on behalf of One Barrel Brewing Co. to construct a brewery/tap room at 4633 Market Street in the Village of Egg Harbor.**

- Mueller explained that under the provisions of the recently adopted Sec. 62.23(7)(de) of the Wisconsin Statutes, conditional use permit decisions must now be made on the basis of oral testimony before the Plan Commission that establishes, by substantial evidence the necessity of a conditional use and reasonableness of each condition. Documents in support of or in opposition to the conditional use can be submitted but they must be done through testimony by the presenter at the hearing. Oral testimony must be given under oath. Conditions to be established during the public hearing through Finding of Fact and Conclusions of Law.
- Commissioners can ask questions to those testifying, audience members cannot.
- Mueller asked Attorney Vande Castle if he had anything to add regarding the change in the State Statute.
- Attorney Vande Castle explained that about six or seven years ago there were a number of cases were decided in regards to conditions and conditional use permits.
- The cases came about in large part from large property owners wanting to either change the use or operation of their property or do something to the property that required them to come back to the municipality and go through the conditional use permit process.
- Vande Castle stated that what happened in most cases was that there was one property owner from a community and there would be a large number of citizens that would come in opposition to the project.
- Vande Castle stated that this started to become somewhat of a popularity contest.
- Most of the cases involved rather unusual conditions being imposed because there was an

attempt to slow down the developments or make it difficult for the property owner to develop the property.

- Vande Castle explained that a lot of these cases were property owners in the community, not someone coming from outside the community.
- The municipalities felt when they went to court that they sort of lost, but sort of won because some conditions were lost but some conditions were still imposed.
- The property owners felt that they were at a disadvantage because they were subject to unusual and unnecessary conditions.
- This led to a push through the State legislature to adopt the statute referenced by Mueller.
- The statute was changed at the end of last year and came into effect earlier this year and the ramifications of the statute change are now coming through.
- Vande Castle stated that he and the Administrator have been going back and forth with an individual who wanted to submit a position statement in writing because they could not attend the meeting.
- Vande Castle stated that unfortunately the way the new system works is that the hearing acts like a trial.
- As Mueller read in the opening statement, everything needs to be supported by substantial evidence.
- Each side needs to present evidence and the Plan Commission has to weigh that evidence. The Plan Commission is acting like a judge.
- The requirement for substantial evidence implies that there is due process given to all sides. This means that the testimony has to be sworn testimony presented to the commission at the time they are making the decision during the public hearing.
- The Plan Commission can only consider what is in its view substantial evidence supporting the position either for or against the condition.
- Vande Castle stated that written position statements are no longer permissible.
- All of the conditions must be reasonable and must bear some relationship to the underlying ordinance.
- There is no case law yet that specifically deals with how this operates.
- There is nothing in the statute that says you cannot submit written position statements, however when you go back into the substantial evidence requirement evidence has to be submitted orally through testimony so it makes a record.
- This process as known as quasi-judicial hearing.
- This in the view of the legislature there is a more balanced process.
- The conditions have to be reasonable.
- All of the findings of facts, conclusions of law, and decisions need to be supported and a written decision has to be filed.
- Everyone that would like to testify has to be sworn in and would need to present to the Plan Commission.
- There is no longer the opportunity for cross examination by the public, therefore the public cannot ask questions of the applicant.
- The Plan Commission can ask the applicant questions.
- Smith stated that the Village ordinance does have a list of things that can be considered for conditional uses and asked if the Plan Commission could impose a condition based on this list.
- Vande Castle said that the Plan Commission could base a condition off of this list and

could base a condition off of their own personal knowledge.

- The courts have allowed this in other cases even before the statute change.
- Kolb confirmed that every conditional use permit can be looked at on a case by case basis.
- The substantial evidence creates some basis in the record on why the conditions were imposed.
- Mueller confirmed that the Plan Commission has to weigh competing testimony as what is reasonable or what is unreasonable.
- The list of reasonable items to be considered as conditions in the ordinance are guide posts to what should be weighed as reasonable evidence.
- The Plan Commission can weigh the credibility of the testimony.
- Kolb stated that there were some suggestions to update the Zoning Code and Vande Castle stated that the Village Board would have to vote to update the code.
- Vande Castle stated that the Village's zoning code was kind of ahead of the game in regards to the statute change because it requires a Class 2 notice and has the list of reasonable items that are considered reasonable for a conditional use permit.
- Heller stated that he feels as though it is the Plan Commission's responsibility to go through the items listed in the ordinance as reasonable things to consider for a conditional use permit.
- The Commission will review the findings of fact, conclusions of law, and decisions document.
- Staff will then be able to act on issuing the permit tomorrow.
- Van Laanen confirmed that anyone who would like to testify needs to testify under oath.

Testimony:

Mueller swore in the following individuals willing to provide testimony:

Peter Gentry  
5120 Card Ave.  
McFarland, WI

Megan Vandermause  
Village of Egg Harbor  
Deputy Administrator/ Deputy Clerk – Treasurer  
7860 STH 42  
Egg Harbor, WI 54209

- Gentry explained that he is here to represent One Barrel Brewing Co. that would like to construct a brewery/tap room at 4633 Market St. in the Village of Egg Harbor.
- Gentry stated that he would like to reference the minutes from the June 24<sup>th</sup>, 2018 meeting minutes in regards to his presentation for the project.
- Gentry said that he submitted some more information for the façade of the building and he is happy to answer any questions regarding the project.
- Attorney Vande Castle stated that typically what has happened at the last meeting will now happen at the public hearing.
- Mueller stated that from now on the first meeting will be the acceptance of the conditional

use permit paperwork and the public hearing will be scheduled.

- Vande Castle stated that the presentation from last meeting would now occur during the public hearing.
- If questions do come up that require follow up the Plan Commission could adjourn the public hearing to a later date to follow up on questions.
- The Plan Commission will vote on the approval of the conditional use permit tonight.
- When the Plan Commission goes into deliberations and discuss what is going to be a condition and Vandermause will prepare a document to be reviewed by the Plan Commission tonight.
- Pitchford confirmed that the Plan Commission can follow up on the few points from last meeting.
- Vandermause testimony:
  - “According to section 152.045(B)(7) of Chapter 152 Zoning of the Village of Egg Harbor Municipal Code, restaurants and taverns are a conditional use in the Village’s multi-use district.
  - The proposed project meets the setback requirements, building height requirements, and minimum floor area requirements.
  - The proposed project requires 54 parking spots, 35 of which will be provided on-site and 19 on-street parking spaces. The property is eligible to count the on-street parking within 500 ft. of the parcel.
  - Section 152.074 (B)(1) (a-l) includes the factors deemed to be reasonable items upon which discretion can be exercised in approving or denying a conditional use. The consideration or non-consideration of these factors is not mandatory; but only suggested as guidelines to aid the exercise of discretion of the Plan Commission:
    - a) The number of living units in the proposed area
    - b) The effects of traffic control on abutting Village roads and streets and safety to the Villagers, pedestrians, and motorists.
    - c) The general health and well-being of the Village residents.
    - d) The increase in area noise.
    - e) The increase in potential public or private nuisance.
    - f) The availability of municipal services such as fire protection, waste disposal, and sewage.
    - g) The adverse effects on the environment.
    - h) The protection of lake shore, lake, and ground waters.
    - i) Effects on surrounding plant foliage and vegetation.
    - j) The kind and quality of amusements and entertainment.
    - k) General growth and dynamics of the Village.
    - l) The Village Master Plan.
      - Mueller stated that this does clarify the parking question that came out of the last meeting.
      - Mueller said that Gentry did provide samples of what the colors and materials would be used for the renovated building which does correlate with the Cape Cod style Gentry referenced at the last meeting.
      - Kolb confirmed that there will be 35 parking spots on the property.
      - Navis clarified that Gentry will be adding about 20 parking spaces to the current parking lot.
      - Smith stated that for clarification there is far more than the 19 spots that would be counted as on street parking available within the 500 ft. of the parcel.
      - Mueller asked Gentry to clarify what will be done with the kitchen space that is planned in the area.
      - Gentry explained that he is hoping to have a third party cover about 350 sq. ft. of gray box or white box space, this would allow a third party to rent this space to serve to-go type food.
      - This would be similar to a food truck operation, but would eliminate the food truck that would take up space outside.

- Mueller asked if customers ordering from the food vendor would have to go into One Barrel to order food. Gentry explained that as it stands now there is a pick-up window that would allow people to order from outside.
- Kolb asked if there will be a wait staff that will take food and drink orders and Gentry said that the food vendor would be separate from the brewery so there would not be a wait staff taking orders.
- There will be a window to the brewery space.
- Mueller confirmed that customers could order food pick it up from the window and take it back to their table to eat it. Gentry confirmed that this is correct.
- Customers could also just order food without going into One Barrel.
- Smith asked if one vendor would be used for an entire season for if vendor would be changed during the season, and Gentry explained that he is hoping to have one vendor for five years.
- There will be no cooking by the food vendor on the premises, all the cooking would be done in a licensed kitchen in another location.
- The Commission discussed that the impervious surface ratio has not been calculated in regard to the increase in parking lot area on the property.
- Gentry explained that he plans to work with a civil engineer on the design of the parking lot and impervious surface requirements would be reviewed with a zoning permit.
- The Commission stated that they do typically review parking lot plans as well as lighting plans for parking lots.
- The Plan Commission discussed if the proposed project would change the traffic patterns in the area.
- The Plan Commission agreed that since the entrance to the building is on Market St. traffic is not likely to be negatively affected.
- The Commission confirmed that the latest the brewery would potentially be open is 10:30 p.m.
- There are no plans to have live music.
- The operation would have a minor effect on the Wastewater system and Gentry stated only a low quantity of beer will be brewed per year.
- There will be a specific area in the parking lot for delivery trucks.
- Kolb stated that in regards to the Village's Master Plan, he does feel like there are quite a few drinking establishments in the Village with the new distillery and now a new brewery.
- The Commission discussed that the proposed location is the area where a project like this fits.
- Gentry stated that although alcohol can be problematic, through his six years of experience he has had no incidents or problems.
- The business would not be open like a typical bar's hours.
- Navis asked if Gentry has thought about providing housing for his employees and Gentry stated that he has looked into the possibility of providing housing for his employees by possibly buying a different parcel for housing.
- The Plan Commission reviewed the finding of facts.
  - That an application for a Conditional Use Permit was filed by the Applicant with the Village on June 22, 2018 (the "Application") for that property located at 4633 Market Street Egg Harbor, WI 54209, more particularly described on ATTACHMENT "A" hereto (the "Property").
  - That a Public Hearing regarding the application was duly noticed and published as a Class 2 Notice under Chapter 985, Wis. Stats, which notice was published in the Door County Advocate on July 14<sup>th</sup>, 2018 and July 21<sup>st</sup>, 2018 as appears by the Affidavit of Publication on file herein.
  - That the Property is currently zoned Multi-Use under and pursuant to Sec. 152.045 of the Code.
  - That testimony was presented by Peter Gentry on behalf of the Applicant that the Applicant proposes to construct a brewery and taproom with a proposed seating

- capacity of 190 on the Property (the “Project”) with food service provided by a third party vendor, as more particular identified in the Application on file herein.
- That testimony was presented by Megan Vandermause, Deputy Administrator/ Deputy Clerk –Treasurer, on behalf of the Village that in order for the Project to obtain Village approval, a Conditional Use Permit under the provisions of Sec. 152.070, et sec. of the Code would be required.
  - That compliance with the provisions of Sec. 152.048 of the Code regarding off-street parking would be required for the proposed Project.
  - That evidence was presented by the Applicant that 35 parking spaces would be provided in the on-site parking designated on the Site Plan attached to the Application.
- The Plan Commission reviewed the conclusions of law.
    - That the Plan Commission has proper jurisdiction to hear this matter.
    - Due notice was properly given to all parties and publication of the Public Hearing was duly and properly made.
    - That there is sufficient evidence in the record to conclude that The Project is in compliance with the zoning regulations for the Multi Use District including setback requirements, building height requirements, and minimum floor area requirements.

**Smith moved to close the public hearing, second by Pitchford, motion carried.**

**Village of Egg  
Harbor**

**Plan Commission Meeting Minutes  
July 24<sup>th</sup>, 2018 at 6:15 p.m.**

**Paul J. Bertschinger Community Center  
7860 STH 42, Egg Harbor, WI 54209**

**1. Call Meeting to Order**

Mueller called the meeting to order at 6:58 p.m. Those in attendance were Cambria Mueller, Kathy Navis, Emily Pitchford, Jon Kolb, Joe Smith, Lou Nyberg, Mary Anne Scherer, Ryan Heise, and Megan Vandermause. Also in attendance was the Village Attorney, William Vande Castle. In attendance in the audience were Peter Gentry, Lisa Van Laanen, John Heller, Dawn McGinnis, Aaron Lopez, Paula Cashin, and Jessie Hill.

**2. Approve agenda**

Smith moved to approve the agenda, second by Pitchford, motion carried.

**3. Pledge of Allegiance**

**4. Approve minutes of June 26<sup>th</sup>, 2018**

Scherer moved to approve the June 26<sup>th</sup>, 2018 meeting minutes, second by Nyberg, motion carried.

**5. Open Session (limited to 10 minutes)**

- Van Laanen stated that the parking situation on CTH G is a mess and she was hoping that the Village or the County could add some parking on G.
- Van Laanen also stated that she would be interested in seeing if Shipwrecked could add street parking in front of their parking lot.
- Van Laanen stated that she would also suggest asking the county to add more parking spots on G.

- McGinnis stated that she doesn't think that more parking on G will help the situation.

**6. Attorney Vande Castle's conditional use permit correspondence**

- The correspondence was reviewed during the public hearing.
- Smith asked how this statute does not violate home rule.
- This is the first time that the state has stepped in and told the local municipalities what to do.
- The state's argument is, is that they are saying that this is a procedural due process requirement.
- The state is walking right up to the line of going against home rule.

**7. One Barrel Brewing Conditional Use Permit Application**

- The Plan Commission discussed conditions for the conditional use permit.
- The Plan Commission discussed adding a condition in regard to the parking lot in order to review lighting and the parking lot section of the ordinance.
- The ordinance does specifically say that the parking lot plan should be reviewed by the Plan Commission versus staff.
- The Plan Commission discussed adding a condition regarding screened garbage receptacles as has been a condition on other conditional use permit applications.
- Vandermause reviewed the proposed conditions.
- That the Applicant shall return to the Plan Commission with any modification to the current parking lot through drawings provided by a civil engineer.
- That the Applicant shall screen garbage receptacle areas.
- That the Village Staff shall prepare and issue a Conditional Use Permit to the Applicant consistent with the Determination herein, which Conditional Use Permit shall be recorded against the Property to protect and preserve the rights and responsibilities identified herein.
- The last condition allows staff to issue the conditional use permit.
- The Plan Commission reviewed the findings of fact, conclusions of law, and determination document for the conditional use permit application.

**Smith moved to approve the findings of fact, conclusions of law, and determination document for the conditional use permit application filed by Peter Gentry on behalf of One Barrel Brewing Co., second by Pitchford, motion carried.**

**8. The Orchards Properties Certified Survey Map**

- Scherer asked why the CSM is coming to the Plan Commission after the construction has started.
- Vandermause stated that lots can be split or combined at any time as long as the lots comply with the zoning regulations.

**Smith moved to approve the Orchards Properties Certified Survey Map, second by Nyberg, motion carried.**

**9. Shipwrecked Parking Lot**

- Smith stated that the parking lot as presented to the Plan Commission does not satisfy the Village code.
- Shipwrecked is planning on coming back next month with a Special Development district relief application for the parking lot.
- Shipwreck will paint three parking spots in there parking lot and put up no parking signs in the meantime.

- Signs for a loading zone will be put up designating the side of the building as a loading zone from 6:00 a.m. to 12:00 p.m. Monday through Friday.
- Smith stated that the building has 85 spots within 500 feet of the parcel.
- The business requires 75 parking spots according to the zoning code.
- If the parking lot is approved for special development district relief there will be more parking in the parking lot.
- Mueller asked if the Plan Commission could require Shipwrecked to add in additional parking in front of the parking lot.
- Heise stated that Shipwrecked cannot add parking spots if the spots would not be put on their property.
- Kolb asked how the water runoff from the parking lot will affect the area and if the water would run into the bay.
- Smith stated that there is curb and gutter all the way down dock road but he has not observed the water situation.
- Kolb pointed out that before the parking lot at least had a small row of cedars as green space.

#### **10. Request for Proposals Comprehensive Plan and Zoning Code update**

- Mueller stated that this is part of the Plan Commission plan to update the Comprehensive Master Plan update.
- Mueller stated that the Plan Commission is now in the position to bring in a consultant.
- Vandermause put together the RFP for the comprehensive plan update as well as the zoning code update.
- When Vandermause first checked with a consultant on updating the master plan, he recommended updating the land use or zoning map.
- Vandermause stated that through conversations with the Plan Commission and Village Board there has been discussions of updating the zoning code.
- Attorney Vande Castle has also made suggestions for updating the code based on the state statute change in regards to the conditional use permit.
- Vandermause stated that the timeline of the RFP will allow for cost estimates to be available for budget time.
- The RFP will need to be approved by the Village Board and will go live on August 13<sup>th</sup>.
- The RFP does refer to a selection committee and Vandermause explained that she is hoping this committee can be staff a member of the Village Board and a member of the Plan Commission.

#### **11. Code Violations**

- Vandermause report that Mojo Rosa's has one too many sandwich boards so she will follow up with the business owner to get this corrected.
- Vandermause confirmed that the property with the building that fell down is on the corner of STH 42 and CTH E, she will continue to look into this.
- Vandermause verified that the dumpster that was in the right of way on Mariner Road was corrected.
- Vandermause stated that the fire department was contact in regards to Matthew House and the fire department will be following up on the issue.
- The Plan Commission asked if the parking lot on CTH E was moved off of the lot line and Vandermause will follow up with the building inspector on this.
- The Plan Commission also asked when Jackson will be planting the trees required via the conditional use permit. Staff will make an inquiry with Jackson.

#### **12. Next Meeting**



The next meeting is August 28<sup>th</sup>, 2018 at 6:00 p.m.

**13. Adjourn**

Mueller moved to adjourn, second by Kolb, motion carried.

DRAFT