

CITY OF ONALASKA MEETING NOTICE

COMMITTEE/BOARD: Plan Commission
DATE OF MEETING: February 24, 2015 (Tuesday)
PLACE OF MEETING: City Hall – 415 Main Street (Common Council Chambers)
TIME OF MEETING: 7:00 P.M.

PURPOSE OF MEETING

1. Call to Order and roll call.
2. Approval of minutes from the previous meeting.
3. Public Input (limited to 3 minutes per individual)

Consideration and possible action on the following items:

4. **Public Hearing: Approximately 7:00 PM (or immediately following Public Input)** - Regarding rezoning request filed by Traditional Trades, 1853 Sand Lake Road, Onalaska, WI 54650, to rezone the properties at 1735 Pine Ridge Drive, 1150 Oak Timber Drive, and 1140 Oak Timber Drive, Onalaska, WI 54650 from Single Family Residential (R-1) District to Single Family and/or Duplex Residential (R-2) (Tax Parcels #18-6282-0, 18-6273-0, 18-6272-0).
5. Consideration of a request to extend the Final Plat submittal requirement for one year, as requested by Dr. Leo Bronston, on behalf of French Valley, LLC, 1202 County Rd PH, Suite 100, Onalaska for the French Valley Neighborhood Plat (Tax Parcels # 18-4480-0, 18-4481-0, 18-4482-1, 18-4485-0).
6. Discussion and consideration of an amendment to the Unified Development Code (UDC) regarding Telecommunication Structure and Towers.
7. Review and Discussion on Plan Commission Handbook.
8. Adjournment

PLEASE TAKE FURTHER NOTICE that members of the Common Council of the City of Onalaska who do not serve on the commission may attend this meeting to gather information about a subject over which they have decision making responsibility. Therefore, further notice is hereby given that the above meeting may constitute a meeting of the Common Council and is hereby noticed as such, even though it is not contemplated that the Common Council will take any formal action at this meeting.

NOTICES MAILED TO:

* Mayor Joe Chilsen, Chair

Ald. Erik Sjolander

Ald. Jim Olson

*Ald. Jim Bialecki

Ald. Bob Muth

Ald. Jack Pogreba

Ald. Harvey Bertrand

* Jarrod Holter, City Engineer

City Attorney Dept Heads

La Crosse Tribune Charter Com.

Onalaska Holmen Courier Life

WIZM WKTY WLXR WKBH

*Jan Brock

*Ron Johnson

*Knut Temte

*Craig Breitsprecher

* Andrea Benco - Chair Parks & Rec.

** Brian Udermann - Vice Chair Parks & Rec.

Traditional Trades

JD Manske Family Land Holdings Inc.

Leo Bronston

Onalaska Public Library

Date Notices Mailed and Posted: 2/20/15

In compliance with the Americans with Disabilities Act of 1990, the City of Onalaska will provide reasonable accommodations to qualified individuals with a disability to ensure equal access to public meetings provided notification is given to the City Clerk within seventy-two (72) hours prior to the public meeting and that the requested accommodation does not create an undue hardship for the City.



CITY OF ONALASKA

Agenda Item:

4

STAFF REPORT

Plan Commission – February 24, 2015

- Agenda Item: Public Hearing & Consideration of a rezoning request.
- Applicant: Traditional Trades, 1853 Sand Lake Road, Onalaska, WI 54650
- Property Owner: Elmwood Partners Limited Partnership, 1859 Sand Lake Road, Onalaska, WI 54650
- Parcel Numbers: 18-6282-0, 18-6273-0, and a portion of 18-9272-0
- Site Location: 1735 Pine Ridge Drive, 1150 Oak Timber Drive, and a portion of 1140 Oak Timber Drive, Onalaska, WI 54650
- Existing Zoning: Single Family Residential (R-1) District
- Neighborhood Characteristics: Properties within 250 feet of the property in question includes a combination of vacant land for single family residential, twindos, and two (2) triplexes.
- Conformance with Land Use Plan: The Comprehensive Plan identifies this area as *Mixed Density Residential or Traditional Neighborhood Residential*. This district is intended to accommodate primarily single family and duplex/two-flat residential development.
- Background: The applicant proposes to rezone Parcels 18-6282-0 & 18-6273-0 in entirety from Single Family Residential (R-1) to Single Family and/or Duplex Residential (R-2) District. The applicant proposes to rezone the eastern 16.5 feet of Parcel 18-6272-0 to R-2 District. This portion of the property is anticipated to be merged with Parcel 18-6273-0 to increase the rear yard. Properties adjacent to the Oak Timber Drive parcels are zoned R-2 and the properties across from the Pine Ridge Drive parcel contain 2 triplexes, a twindo, and vacant land.
- Action Requested: As a public hearing will be held, testimony from the public should be listened to and considered before deciding on the requested rezoning application.

REQUEST FOR ACTION & POSSIBLE CONSIDERATION BY PLAN COMMISSION:

February 24, 2015

Agenda Item 4:

Public Hearing & Consideration of Rezoning request filed by Traditional Trades, 1853 Sand Lake Road, Onalaska, WI 54650, to rezone the properties at 1735 Pine Ridge Drive, 1150 Oak Timber Drive, and 1140 Oak Timber Drive from Single Family Residential (R-1) District to Single Family and/or Duplex Residential (R-2) (Tax Parcels #18-6282-0, 18-6273-0, & 18-6272-0).

1. Rezoning Fee of \$150.00 (PAID).
2. Obtain a Certified Survey Map to amend boundaries of Tax Parcels 18-6273-0 and 18-6272-0 to reflect rezoning request.
3. Park Fee of \$922.21 per residential unit prior to issuance of building permit.
4. All associated setbacks for a twindo dwelling to be followed according to Section 13-2-6 of the Zoning Ordinance.
5. Owner/developer shall pay all fees and have all plans reviewed and approved by the City prior to obtaining a building permit. Owner/developer must have all conditions satisfied and improvements installed per approved plans prior to issuance of occupancy permits.
6. All conditions run with the land and are binding upon the original developer and all heirs, successors and assigns. The sale or transfer of all or any portion of the property does not relieve the original developer from payment of any fees imposed or from meeting any other conditions.
7. Any omissions of any conditions not listed in the minutes shall not release the property owner/developer from abiding by the City's Unified Development Code requirements.



Traditional Trades

Design | Builder | Developer | Sales & Leasing

1853 Sand Lake Road | Onalaska, WI | (608) 783-4785

January 21, 2015

Planning Department
City of Onalaska
Brea Grace / Katie Meyer

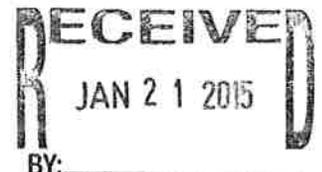
Brea & Katie,

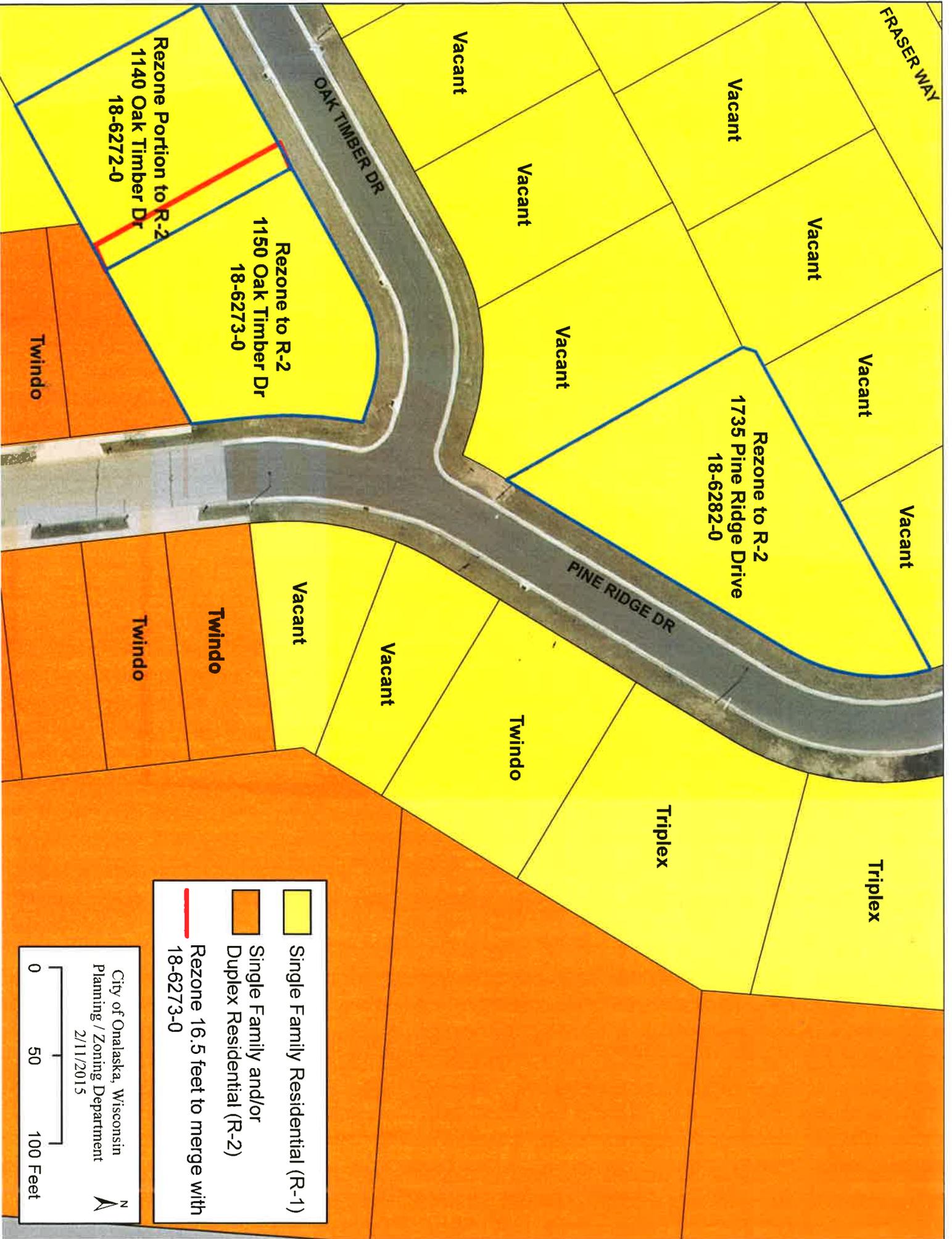
Attached is an application for re-zoning in Meier Farm Addition Five.

Traditional Trades is requesting that Lot 1, Block 15 and Lot 9 and a portion of Lot 8, Block 11 be re-zoned to R-2 zoning. At the present time all the lots from Rolling Oaks to Fraser Way are R-2 and TND except these two lots. This re-zoning would create a nice appealing flow into the R-1 zoning at the north end of Pine Ridge Drive and to the west on Oak Timber Drive. Traditional Trades has built and/or owns all the homes on Pine Ridge Drive between Rolling Oaks & Fraser Way. We are planning on building residences on these two lots that would match and blend with the other homes on Pine Ridge Drive. This re-zoning will fit into the comprehensive plans for the area. Your help and understanding with this re-zoning would be appreciated.

Sincerely,

Adam Aspenson
Traditional Trades





	Single Family Residential (R-1)
	Single Family and/or Duplex Residential (R-2)
	Rezoned 16.5 feet to merge with 18-6273-0

City of Onalaska, Wisconsin
 Planning / Zoning Department
 2/11/2015

0 50 100 Feet

N



City of Onalaska, Department of Planning & Zoning, 415 Main Street, Onalaska, WI 54650

REZONING OR TEXT AMENDMENT APPLICATION

The following checklist will ensure the timely processing of your application:

➔ **Overview/ Cover Letter Describing the following:**

- ▶ Detailed Description of Proposed Rezoning or Text Amendment
- ▶ Description of how Proposed Rezoning Meets Unified Development Code Standards
 - ▶ Compatibility with Surrounding Neighborhood (existing and anticipated development within 250 ft of proposed use and within 500 ft along the same street)
 - ▶ Consistency with the Comprehensive Plan (relationship of proposed use to the goals, objectives and policies)

➔ **\$150 Permit Application Fee (Payable to the City of Onalaska)**

If incomplete, no further processing of the application will occur until the deficiencies are corrected.

A Map or Text Amendment to the City of Onalaska Unified Development Code / Zoning Ordinance may be proposed at any time. Amendments to the Zoning District Map or Overlay District Map proposed by the public shall be initiated by submitting a completed application by owners of all parcels proposed to be rezoned. The application for amendments to the Text of the UDC / Zoning Ordinance shall include the text in question as well as proposed text.

Request for Amendment to:

- Zoning District Map (Rezoning) Zoning Ordinance (Text Amendment)
- Zoning Overlay District Map (Rezoning)

Description of Request to Amend the Unified Development Code - Zoning Ordinance: (Text and/or Map(s)):

Existing Zoning District: R-1 Proposed Zoning District: R-2

(SEE ATTACHED)

Per Wisconsin's Open Meeting Law, comments on this permit application, either by the applicant or concerned citizen, shall be raised in person at the scheduled meeting or brought up to City Staff (through conversation, written letter or email) for review at the scheduled meeting. Due to Wisconsin's Open Meeting Law, Plan Commissioners and Alderpersons are unable to discuss this matter outside of a scheduled public meeting. Thank you.

RECEIVED
JAN 21 2015
BY: _____



City of Onalaska, Department of Planning & Zoning, 415 Main Street, Onalaska, WI 54650

REZONING OR TEXT AMENDMENT APPLICATION

Property Address: **PINE RIDGE DRIVE**

Parcel Number: **18- (SEE ATTACHED)**

Zoning District: **R-1**

Applicant: **TRADITIONAL TRADES**

Contact: **ADAM ASPENSON**

Mailing Address: **1853 SAND LAKE ROAD**

City, State, Zip: **ONALASKA, WI 54650**

Phone Number: **608-783-4785**

Email: Primary Contact

Business:

Owner/Contact:

Mailing Address:

City, State, Zip:

Phone Number:

Email: Primary Contact

Property Owner: **ELMWOOD PARTNERS LIMITED PARTNERSHIP**

Contact: **KEVIN FRY**

Mailing Address: **1859 SAND LAKE ROAD**

City, State, Zip: **ONALASKA, WI 54650**

Phone Number: **608-781-4777**

Email: **KEVIN.FRY@ELMWOODPARTNERS.COM** Primary Contact

The undersigned hereby makes application at the location stated herein. The undersigned agrees that all work shall be done in accordance with the requirements of the City of Onalaska Unified Development Code / Zoning Ordinance and with all other applicable City Ordinances and the laws and regulations of the State of Wisconsin.

Signature of Applicant: *Adam Aspenson* Date: **1-21-15**

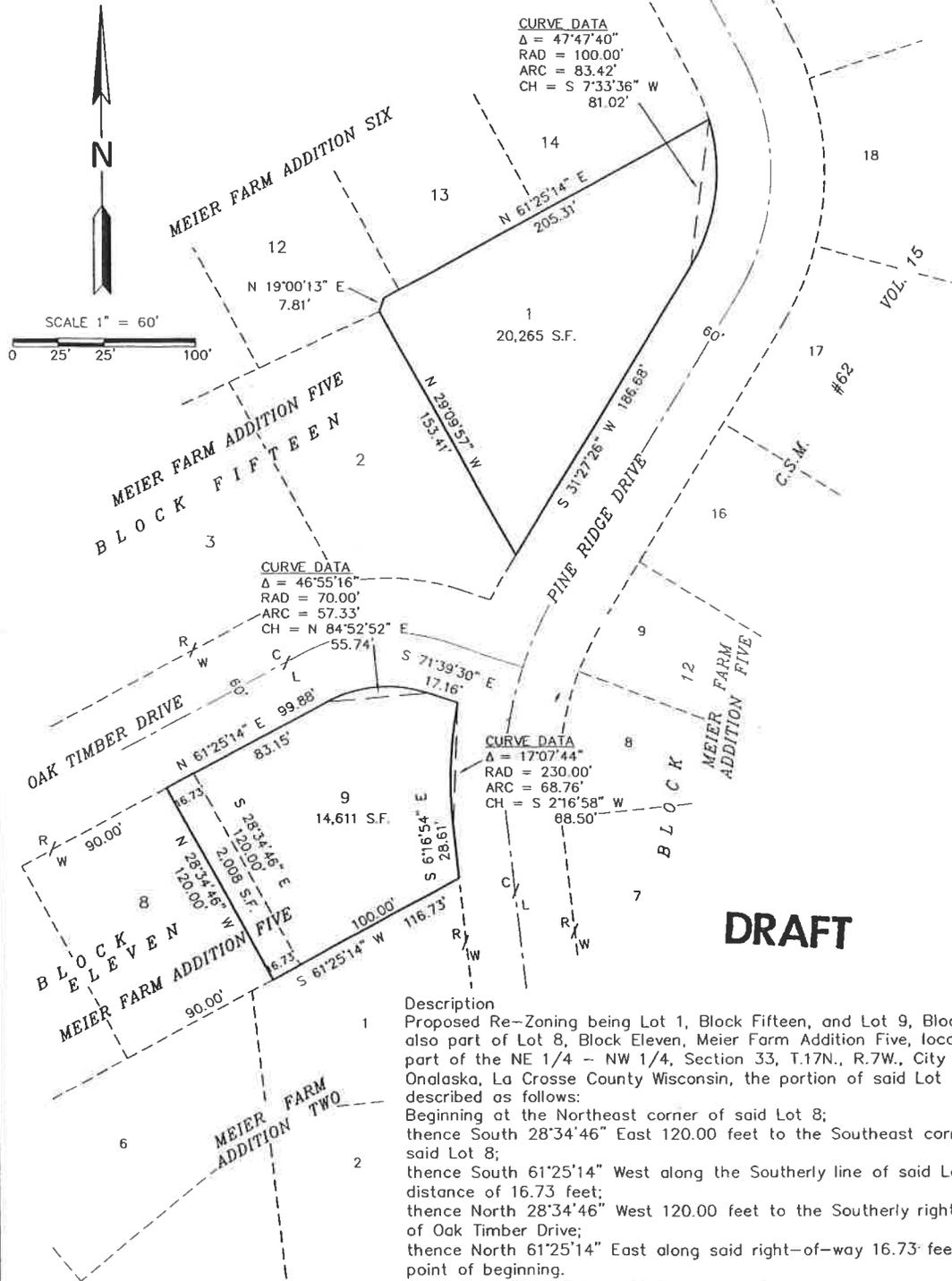
Signature of Property Owner: *Kevin Fry* Date: **1-21-15**

OFFICE USE ONLY:	Date Submitted:	Permit Number:
Permit Fee:	<input type="checkbox"/> Cash <input type="checkbox"/> Check #	Application Received by:

CITY OF ONALASKA

RECH: 00120063 1/21/2015 2:19 PM
 TRAN: 450.0000 PLANNING & ZONING
 OPER: Cash/ TERM: 001
 REF#: SW - 12993
 PAID BY: TRADITIONAL TRADES
 18-6282-0 18-6272-0 18-6273-
 ZONING SIGN CUP PER
 TENDERED: 150.00
 APPLIED: 150.00
 CHANGE: 0.00
 BY: *[Signature]*
 JAN 1 2015
 50.00R
 CHECK(\$)

PROPOSED RE-ZONING MAP
MEIER FARM
ADDITION FIVE
 TO THE CITY OF ONALASKA
 PART OF THE NE 1/4 - NW 1/4,
 SECTION 33, T. 17 N., R. 7 W., CITY OF ONALASKA,
 LA CROSSE COUNTY, WISCONSIN



1 Description
 Proposed Re-Zoning being Lot 1, Block Fifteen, and Lot 9, Block Eleven, also part of Lot 8, Block Eleven, Meier Farm Addition Five, located in part of the NE 1/4 - NW 1/4, Section 33, T.17N., R.7W., City of Onalaska, La Crosse County Wisconsin, the portion of said Lot 8 described as follows:
 Beginning at the Northeast corner of said Lot 8;
 thence South 28^{\circ}34'46'' East 120.00 feet to the Southeast corner of said Lot 8;
 thence South 61^{\circ}25'14'' West along the Southerly line of said Lot 8 a distance of 16.73 feet;
 thence North 28^{\circ}34'46'' West 120.00 feet to the Southerly right-of-way of Oak Timber Drive;
 thence North 61^{\circ}25'14'' East along said right-of-way 16.73 feet to the point of beginning.
 Said Lot 1, Block Fifteen 20,265 square feet.
 Said Lot 9, Block Eleven 14,611 square feet.
 Said portion of Lot 8, Block Eleven 2,008 square feet.

RECEIVED
 JAN 21 2015
 BY: _____

RE-ZONING MAP
MEIER FARM ADDITION FIVE
 PART OF THE NE 1/4 - NW 1/4
 SECTION 33, T.17 N., R. 7 W.,
 CITY OF ONALASKA, LA CROSSE COUNTY, WI
 DATE 1/7/15
 SCALE 1"=60'

**NOTICE OF PUBLIC HEARING
BEFORE THE CITY OF ONALASKA
PLAN COMMISSION**

Please take notice that the City Plan Commission for the City of Onalaska will hold a public hearing on

**TUESDAY, FEBRUARY 24, 2015
APPROX. 7:00 P.M.
(or immediately following public input)**

in Onalaska City Hall, 415 Main Street, Onalaska, Wisconsin 54650 at which time they will consider an application filed by Traditional Trades, 1853 Sand Lake Road, Onalaska, WI 54650, who is requesting rezoning from R-1 to R-2 for properties located at 1735 Pine Ridge Drive, 1140 Oak Timber Drive and 1150 Oak Timber Drive, Onalaska, WI 54650.

Property is more particularly described as:

Computer Number: 18-6282-0
Section 33, Township17, Range 7
MEIER FARM ADDITION FIVE LOT 1 BLOCK 15

Property is more particularly described as:

Computer Number: 18-6272-0
Section 33, Township17, Range 7
MEIER FARM ADDITION FIVE LOT 8 BLOCK 11

Property is more particularly described as:

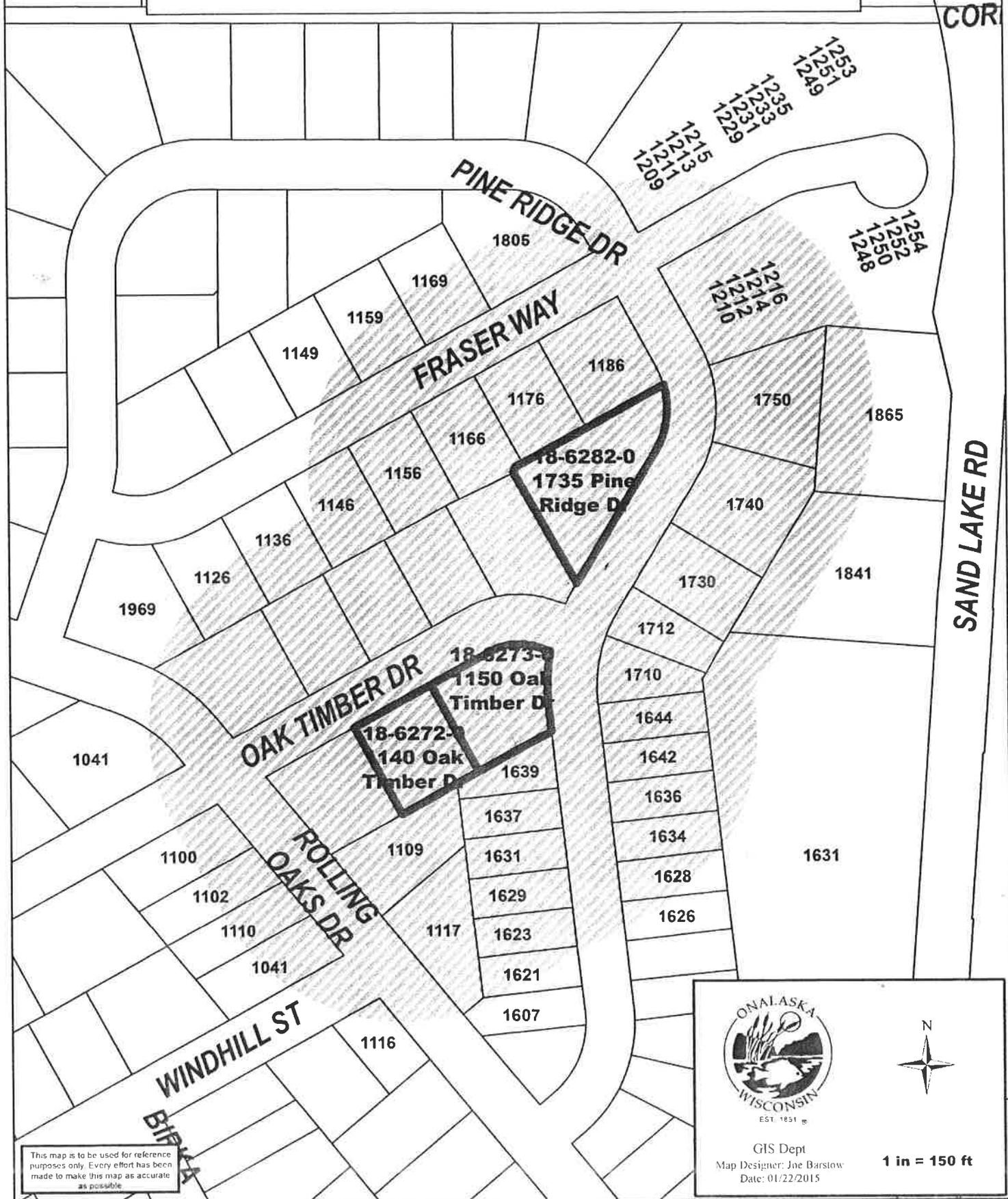
Computer Number: 18-6273-0
Section 33, Township17, Range 7
MEIER FARM ADDITION FIVE LOT 9 BLOCK 11

YOU ARE FURTHER NOTIFIED that the City of Onalaska Plan Commission will hear all persons interested, their agent or attorney concerning this matter.

Dated this 30th day of January, 2015.

Cari Burmaster
City Clerk

PROPERTIES WITHIN 250FT OF PARCELS: 18-6272-0, 18-6273-0, 18-6282-0



This map is to be used for reference purposes only. Every effort has been made to make this map as accurate as possible.

GIS Dept
Map Designer: Joe Barstow
Date: 01/22/2015

1 in = 150 ft



CITY OF ONALASKA

STAFF REPORT

Plan Commission – February 24, 2015

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Agenda Item: Consideration of a request to extend the Final Plat submittal requirement for one-year, as requested by Dr. Leo Bronston, on behalf of French Valley LLC, 1202 County Road PH, Suite 100, Onalaska, for the French Valley Neighborhood Plat (Parcel #s 18-4482-1, 18-4481-0, 18-4480-0 and 18-4485-0).

Applicant: Dr. Leo Bronston, on behalf of French Valley LLC, 1202 County Road PH, Suite 100, Onalaska

Property Owner: French Valley LLC, 1202 County Road PH, Suite 100, Onalaska

Parcel Number: 18-4482-1, 18-4481-0, 18-4480-0 and 18-4485-0

Site Location: North of French Road

Existing Zoning: Planned Unit Development

Neighborhood Characteristics: Residential

Conformance with Comprehensive Land Use Plan: The Comprehensive Plan's Future Land Use Plan designate this area as *Conservation / Cluster Residential*. The proposed development is consistent with the intent of this land use category.

Background: A general timeline on approvals of this development is as follows:

January 8, 2008 – Development Agreement was approved by the Common Council.

March 11, 2008 – Final Implementation Plan for PUD & Preliminary Plat was approved by the Common Council. (By a relatively recent amendment to the City's Zoning Ordinance, final plats were given 36-months to be submitted; this deadline would have been March 2011.)

September 9, 2008 – Common Council granted a 1-year extension for filing of the Final Plat.

July 14, 2009 – Common Council granted a 1-year extension for filing of the Final Plat.

November 9, 2010 – Common Council granted a 1-year extension for filing of the Final Plat.

January 10, 2012 – Common Council granted a 1-year extension for filing of the Final Plat.

February 12, 2013 – Common Council granted a 1-year extension for filing of the Final Plat.

February 11, 2014 – Common Council granted a 1-year extension for filing of the Final Plat.

Relevant sections from the Unified Development Ordinance:

Sec. 13-9-20 (b)(3) Final Plat Review and Approval – Plan Commission Review.

If the Final Plat is not submitted within thirty-six (36) months of the last required approval of the Preliminary Plat, the Plan Commission may refuse to approve the Final Plat. The City Plan Commission may consider requests to extend the thirty-six (36) month requirement, as set forth in 13-9-20(a)(1) above.

CITY OF ONALASKA

Sec. 13-9-20 (a)(1) Final Plat Review and Approval – Filing Requirements.

The owner or subdivider shall file thirty (30) copies of the Final Plat not later than thirty-six (36) months after the date of approval of the Preliminary Plat; otherwise, the Preliminary Plat and Final Plat will be considered void unless an extension is requested in writing by the subdivider and for good cause granted by the City.

Action Requested: Approval of a one-year extension (to March 11, 2016) allowing the French Valley Neighborhood Final Plat be submitted later than the 36-months filing requirement after the approval of the Preliminary Plat.

Recommended Conditions of Approval:

- a) Amendment of the March 2008 Development Agreement between French Valley, LLC and the City of Onalaska prior to the commencement of any construction activities, including public improvements. Developer is advised to schedule adequate time for the amended Development Agreement to be reviewed and approved by the City's Plan Commission and Common Council.
- b) All permits must be current prior to the start of any construction activities (i.e., sanitary sewer and water approvals from WDNR). All plans and specifications must be resubmitted to the City for review & approval (i.e., stormwater plan).

French Valley, LLC

1202 County Road PH| Ste 100 | Onalaska, WI 54650
608.781.2225 | drbronston@bronstonchiro.com

February 11, 2015

Planning and Zoning Department
City of Onalaska
415 Main Street
Onalaska, WI 54650

Re: French Valley Neighborhood
Final Plat Extension Request

Dear Planning and Zoning Department,

On behalf of French Valley, LLC, we are formally requesting an additional one year extension to allow for final plat to be submitted later than the 36 month filing requirement following approval of the preliminary plat.

The French Valley neighborhood is a unique project and a great deal of support for implementing the project has been offered. However, due to influx market conditions and high inventory, we feel that it is advantageous to delay construction for the initial development phases. This extension allows partners and lenders the time to better understand the changing market and project housing demands to ensure that our initial development will meet home buyer demands and expectations.

The French Valley neighborhood vision as defined by the Final Implementation Plan offers a variety of housing options and price points that provide us with the flexibility to meet challenging market demands. We do not intend to deviate from the approved vision as we feel it remains valid and will be a wonderful addition to the community.

We appreciate the consideration of our extension request. Please feel free to contact me should any additional information be needed or any questions arise. We look forward to continuing our partnership with the City as we progress toward realization of this unique neighborhood within the City of Onalaska.

Sincerely,



Dr. Leo Bronston
Managing Partner
French Valley, LLC

Cc: Deena Murphy
Brea Grace
Jason Stangland
Jeff Moorhouse
Duane Ring, Jr.
Steven Tanke



CITY OF ONALASKA

STAFF REPORT

Plan Commission – February 24, 2015

Agenda Item:

6

Agenda Item: Discussion and consideration of an amendment to the Unified Development Code (UDC) regarding Telecommunication Structure and Towers.

Background: The 2013 state biennial budget bill (2013 Wisconsin Act 20) included significant changes to State Statutes limiting local regulation of communication towers (cellular and broadcast). This includes the following, that municipalities cannot:

- Limit cell phone towers to certain zoning districts.
- Require a minimum setback to a residential district.
- Impose a setback or fall zone requirement that is different from a requirement that is imposed on other types of commercial structures.
- Disapprove an application based on an assessment by the political subdivision of the suitability of other locations for conducting the activity.
- Require monopole design.
- Limit the height of a cell phone tower to under 200-feet.
- Require stealth towers / stealth applications.
- Disapprove an application based solely on aesthetic concerns.
- Disapprove an application based solely on the height of the tower or on whether the structure requires lighting.
- Limit the duration of any permit that is granted.
- Prohibit placement of emergency power systems.
- Require that a cell phone tower be placed on property owned by the political subdivision.
- Impose environmental testing, sampling or monitoring requirements, or other compliance measures for radio frequency emissions.
- Enact an ordinance related to radio frequency signal strength or the adequacy of mobile service quality.
- Require an applicant to construct a distributed antenna system instead of either constructing a new tower or using collocation.
- Consider a project to be a substantial modification if the project adds more than 20-feet to the height of a tower that is not more than 200-feet tall but the greater height is necessary to avoid interference with an existing antenna.
- Consider a project to be a substantial modification if the project adds 20-feet or more to the diameter of the tower but the greater diameter is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable.

But, the City can charge a higher fee and require a bond.

CITY OF ONALASKA

Another change is the requirement that the municipal decision on an application has to be made within 45-days or 90-days, depending on the type proposal (e.g. Class 1 Collocation or Class 2 Collocation).

Some additional information/ frequently asked questions is attached to this packet.

You can find the City of Onalaska's existing ordinance on telecommunication structures by going to the City's website (www.cityofonalaska.com) -> City Government -> Code of Ordinances -> Title 13 Zoning -> Chapter 6: Accessory Uses and Miscellaneous Standards -> Section 13-6-6 Telecommunication Structures and Towers.

Requested Action: Review and discussion of proposed ordinance amendment. If directed by Plan Commission, staff will schedule a public hearing for the March 24th Plan Commission meeting.



Overall, 2005 Wisconsin Act 81 represents a significant state decision to alter important local land use policy. Notably though, it does not replace local power with state authority.



Land-Use Policy from page 409

authority in the 2005 law by creating section 62.23, which provides that

[A]n ordinance enacted under this subsection [62.23(7)] may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

Thus, Act 81 eliminated Wisconsin city and village authority to reduce nonconforming structures through amortization.

Overall, 2005 Wisconsin Act 81 represents a significant state decision to alter important local land use policy. Notably though, it does not replace local power with state authority. Thus, the legislation is not the type of state encroachment described by Bosselman and Callies and is not part of the quiet revolution they reported. Rather, Act 81 is quite different, characterized not by replacement of but elimination of local authority.

The Cell Tower Siting Law (2013)

Cellular tower construction can be a controversial issue in some communities. After all, cell towers are rarely lauded for their beauty or how well they fit with existing land uses, particularly in residential areas. Accordingly, many Wisconsin cities and villages exercised their zoning or police power authority and enacted ordinances that govern procedures for the construction and location of cellular towers. These ordinances have been an important

part of the land use policies in these communities.

The state legislature significantly altered local authority to regulate cell tower siting this year. As part of the biennial state budget bill, it created section 66.0404 of the Wisconsin Statutes, which proponents claimed “will continue to allow local municipal zoning control of new wireless facilities.”¹ However, the statute clearly imposes new and significant limits on the manner and extent to which a city, village, town or county may use its zoning authority to regulate the siting and modification of mobile service (cell phone) facilities.

Subsection (2)(a) of the new law provides:

Subject to the provisions and limitations of this section, a political subdivision may enact a zoning ordinance under s. 59.69, 60.61, or 62.23 to regulate any of the following activities: 1. The siting and construction of a new mobile service support structure and facilities. 2. With regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities.

However, subsection (2)(h) states that “A political subdivision may regulate the activities described in par. (a) only as provided in this section. And, the preemption clause set forth in subsection (2)(i) further provides:

1. July 9, 2013 Press Release, Wisconsin Wireless Association, Inc.

If a political subdivision has in effect on July 2, 2013, an ordinance that applies to the activities described under par. (a) and the ordinance is inconsistent with this section, the ordinance does not apply to, and may not be enforced against, the activity.

Thus, 66.0404 only allows cities and villages to use their zoning authority to regulate cell towers and only if the zoning regulations do not violate the parameters set forth in the law. Notably, there are significant restrictions in the law on traditional and well-established local zoning powers.

Regulations setting height limits on buildings and structures is a very common feature of city and village zoning codes. Such regulations are specifically authorized by section 62.23(7) of the Wisconsin statutes, the Wisconsin zoning enabling law, which grants cities and villages the power to control the “height . . . of buildings or other structures.”

However, 66.0404 severely limits the ability of local governments to use height considerations to regulate cell towers. Respectively, subsections (4)(u) and (4)(L) of the new law specifically prohibit local governments from limiting “the height of a mobile service support structure [cell tower] to under 200 feet” or disapproving “an application based solely on the height of the mobile service support structure or on whether the structure requires lighting. Thus, the law virtually eliminates an important and longstanding local zoning power consideration, the height of structures.

Aesthetics of buildings and structures are also an important and historical consideration in local zoning decisions and the exercise of local zoning authority. However, the new law also limits this zoning consideration and municipal zoning control by making it impermissible under (4)(g) to “[d]is approve an application to conduct an activity described under sub. (2)(a) based solely on aesthetic concerns” and, under 4(gm), to “[d]isapprove an application to conduct a class 2 collocation on aesthetic concerns.”

Lastly, the classic feature of zoning is a regulatory scheme that limits the land use activities in particular areas. Local zoning codes specify where residential, commercial and industrial uses and other activities may or may not be conducted. Separating land use activities to diminish the negative impacts of incompatible land uses in the same location or area is the essence of zoning and a primary focus of local zoning authority.

The new cell tower siting statute eliminates this essential feature of zoning. Section 66.0404(4)(c) of the law provides that a city or village may not “[e]nact an ordinance prohibiting the placement of a mobile service support structure in particular locations within the political subdivision.” Accordingly, cell towers, unlike other land uses, and no matter how incompatible with any existing land uses, cannot be restricted to specific zoning districts. Accordingly, every city or village neighborhood is now subject to cell tower installation and local authority to truly “zone” cell towers is, at best, superficial.

Like the 2005 nonconforming structure legislation, the cell tower law does not seek to supplant local authority with

state authority. So, again, it is not similar to the 1966 shoreland zoning law or other quiet revolution legislation. Instead, the cell tower law represents another significant state encroachment upon local land use policy authority and simply eliminates local power.

CONCLUSION

Is Wisconsin undergoing a new quiet revolution in land use control? There is insufficient evidence to reach that conclusion yet. However, the nonconforming structure and cell tower siting laws represent a different relationship between the state and local governments on land use policy. Unlike the shoreland zoning and comprehensive planning laws of the last century, which maintained significant local authority despite state entry into important land use policy areas, the highlighted 2005 and 2013 laws are significant attempts to eliminate or restrict local land use power. This certainly makes them noteworthy to local officials who may find it useful to consider future legislation through this lens and contemplate the potential impacts on land use policies in their communities from such a change.

Zoning 516

This is the html version of the file http://www.wicounties.org/uploads/legislative_documents/final_mobile-cell-tower-q-a.pdf.
Google automatically generates html versions of documents as we crawl the web.

FAQ's From Wisconsin Counties Association

MOBILE TOWER SITING REGULATIONS AND RADIO BROADCAST SERVICE FACILITIES: FREQUENTLY ASKED QUESTIONS (FAQ'S)

Q: What is the effect on local control?

A: Ultimately, counties and municipalities will still have control over permit approval. A county or municipality may deny a permit application as long as the denial is not contrary to Wis. Stat. § 66.0404.

Q: What is the effect on local fees and revenue?

A: The new law creates a standard set of fees that are tied to the actual cost of the permit process. Costs are capped at \$3,000 for new tower requests and major modifications. Minor modification requests are subject to the standard building permit fee or \$500, whichever is less.

Q: Will the new law lead to new towers clouding the landscape?

A: Under the new law, counties and municipalities may deny an application for a new tower if the applicant refuses to evaluate using existing towers. Due to the shortened and standardized review process for carrier upgrade for existing towers, the bill provides an incentive for carriers to use existing towers.

Q: Will the new law have a negative impact on environmental enforcement?

A: The process still requires local assessment and approval. Further, radio frequency emissions are regulated by the federal government and will be applied across the

state.

Q: Can a county or municipality prohibit a cell tower from being placed on its property?

A: A county or municipality may not prohibit the use of its land for cell tower siting, but can deny a permit application as long as the denial is consistent with a regulation that complies with Wis. Stat. § 66.0404.

Q: Can a county or municipality charge a fee for use of their land for a cell phone tower?

A: Yes. Nothing has changed for counties or municipalities in this regard.

Q: What is the status of existing contracts to use public land under this the new law?

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A: Existing contracts agreed to before passage of the new law remain in effect for their duration.

Q: What happens once an existing contract to use public land expires?

A: A contract for use of public land may be renegotiated once an existing contract expires.

Q: Can a county or municipality require placement of a mobile tower facility on public land or deny the placement of a cell phone tower in a particular area for aesthetic reasons?

A: The new law prohibits counties and municipalities from requiring providers to use government owned facilities and for denying a new tower application based solely on aesthetic reasons.

Q: Under this new law, which unit of local government has jurisdiction in terms of its ordinances?

A: If a county enacts a zoning ordinance that pertains to tower siting only in the unincorporated parts of the county unless a town enacts an ordinance that regulates new structures or substantial modification of existing structures after the county has adopted its own ordinance. Under this circumstance, the county ordinance does not apply, and may not be enforced in the town. If the town later repeals its ordinance, the county ordinance then would be applied in that town.

Q: If a county or municipality denies a permit, what is the recourse that can be taken by the aggrieved party?

A: If a county or municipality denies a permit on either public or private property, that entity must include a written notification and provide substantial justification supporting its decision. The aggrieved party may bring action in the circuit court of the county where the proposed activity, which is the subject of the application, is to be located.

A: How long do counties and municipalities have to review for a new siting or substantial modification application?

Q: The new statute, codified at Wis. Stat. § 66.0404, limits the local government review period for new siting or substantial modification applications to 90 days and provides for a 45-day review period for collocation permits that do not require substantial modification.

For questions, contact WCA Legislative Associate Dan Bahr at 866.404.2700.

Sec. 13-6-6 Telecommunication Structures and Towers.

- (a) **Purpose.** The purpose of this ordinance is to regulate by conditional use permit (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to class 1 collocation, the substantial modification of an existing support structure and mobile services facilities; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile services facilities. It is the intent of the City of Onalaska to regulate Mobile Service Support Structures and Facilities as permitted by Wisconsin State Statutes Chapter 66.0404.
- (b) **Authority.** The City of Onalaska has the specific authority under Wis. Stat. §66.0404.
- (c) **Definitions.** The definitions contained in sec. 66.0404(1) Wis. Stats. are hereby adopted and incorporated by reference.
- (d) **Exemptions.** The following shall be exempt from the requirement to obtain a conditional use permit, unless otherwise noted:
- (1) The use of all receive-only television antenna and satellite dishes.
 - (2) Amateur Radio and/or Receive-Only Antennas. This ordinance shall not govern the installation of any antenna that is owned and/or operated by a federally licensed amateur radio operator and is used for amateur radio purposes or is used exclusively for receive only purposes.
 - (3) Mobile services providing public information coverage of news events of a temporary or emergency nature.
- (e) **Siting and Construction of any New Mobile Services Support Structure and Facilities or the Substantial Modification of an Existing Support Structure and Mobile Service Facilities (Class 1 Collocation).**
- (1) **Conditional Use Permit Required.** A conditional use permit is required for the siting and construction of a new mobile services support structure and facility and/or substantial modification of an existing support structure and mobile service facilities (class 1 collocation) and is subject to the conditions set forth in this ordinance as well as any applicable site plan review and permitting and building and electrical permitting under City Ordinances 15-1-2 and 15-1-73.
 - (2) **Applications for Conditional Use Permit.** Applications for a conditional use permit shall be provided by the Land Use and Development Director. Applications shall be completed and filed with the Land Use and Development Director and shall include the following information.
 - i. Name and business address and contact information for the applicant, for the property owner and for the owner of the structure.
 - ii. Location of the proposed or affected support structure.
 - iii. The location of the proposed mobile service facility.
 - iv. If the application substantially modifies an existing support structure, a construction plan which describes the proposed modification to the support structure and the equipment and network components, including antennas, transmitters,

receivers, base stations, power supplies, cabling and related equipment associated with the proposed modifications, as well as a visual analysis, photo simulation or graphic illustration showing what the proposed mobile service facility and support structure will look like in its surroundings.

- v. If the application is to construct a new mobile service support structure, a construction plan which describes a proposed mobile service support structure and equipment network components, including antennas transmitters, receivers, base stations, power supplies, cabling and related equipment to be placed on or around the new mobile services support structure.
- vi. If the application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why applicant did not choose collocation, including a sworn statement from the individual who has responsibility over the placement of the mobile services functionality, coverage and capacity; is technically unfeasible or is economically burdensome to the mobile services provider.
- vii. If an applicant submits an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under i. through vi. above, the Land Use and Development Director shall consider the application complete. If the Land Use and Development Director does not believe the application is complete, applicant shall be notified in writing within ten (10) days of receiving the application, that the application is not complete and outlining the required information that was not complete.
- viii. The fee for a Conditional Use Permit for a Class 1 Collocation shall be \$3,000.00.

(3) **Referral to Plan Commission.** After an application is complete as determined by the Land Use and Development Office, the matter shall be referred to the City of Onalaska Plan Commission for review.

- i. Within ninety (90) days of its receipt of a complete application, the Plan Commission shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree in writing to an extension of the 90 day period:
 - i. Review the application to determine if it complies with all applicable aspects of the political subdivision's building code and subject to the limitations in this section and the zoning ordinance.
 - ii. Make a final decision whether to approve or disapprove the application.
 - iii. Notify the applicant in writing of its final decision.
 - iv. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

- ii. The Plan Commission may deny an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described in 13-6-6(d)(2)(vi) above.
 - iii. An applicant must provide the Plan Commission with proof that the support structure complies with district setbacks established in 13-1-15(2)(4) or with an engineering certification showing that a mobile service support structure, or an existing structure is designed to collapse within a smaller area than the set back or fall zone area required 13-1-15(2)(4) including snow and ice fall areas, then the zoning ordinance does not apply to such a structure unless the Plan Commission or Zoning Department provides the applicant with substantial evidence that the engineering certification is flawed.
- (4) **Limitations.** Conditional Use Permits for siting and construction of any new mobile service support structure and facilities and land use permits for Class 1 collocations shall only be granted provided the following conditions exist:
- i. If the location of the proposed mobile services support structure or mobile service facility is on leased land, the lease agreement does not preclude the lessee from entering into leases on the site with other provider(s) and there is no other lease provision operating as a bar to collocation of other providers.
 - ii. The applicant has obtained Federal Communications Commission (FCC) license numbers and registration numbers if applicable.
 - iii. The applicant and/or agent have copies of Findings of No Significant Impacts (FONI) statement from the Federal Communications Commission (FCC) or Environmental Assessment or Environmental Impact Study (EIS) if applicable.
 - iv. The applicant and/or agent have copies of the determination of no hazard from the Federal Aviation Administration (FAA) including any aeronautical study determination or other findings, if applicable.
 - v. The applicant and/or agent have plans indicating security measures (i.e. access, fencing, lighting etc.)
 - vi. For new mobile service support structures, the applicant has obtained a report prepared by an engineer licensed by the State of Wisconsin certifying the structural design of the tower and its ability to accommodate additional antennas.
 - vii. For new mobile service support structures, the applicant has obtained a report prepared by an engineer licensed by the State of Wisconsin certifying the structural design of the tower and its ability to accommodate additional antennas and submits a map identifying the fall zone of the support structure, including ice and snow fall zones
 - viii. The applicant and/or agent have proof of liability coverage.
 - ix. The applicant and/or agent have copies of an Affidavit of Notification indicating that all operators and owners of airports located within five (5) miles of the proposed site

have been notified via certified mail and the applicant has complied with any airport overlay zoning districts.

- x. The facility of collocation is designed to promote site sharing, such that space is reasonably available to collocators and such that telecommunication towers and necessary appurtenances, including but not limited to parking areas, access road, and utilities are shared by site users whenever possible.

(f) **Class 2 Collocation**

- (1) **Conditional Use Permit Required.** A conditional use permit is required for the collocation on an existing support structure and mobile service facilities (class 2 collocation) and is subject to all of the conditions for a Class 1 Collocation as well as those conditions listed below.
- (2) **Applications for Conditional Use Permit.** Applications for a conditional use permit shall be provided by the Land Use and Development Director. Applications shall be completed and filed with the Land Use and Development Director and shall include the following information.
 - i. The name and business address of and the contact individual for the applicant, for the property owner, and for the owner of the proposed mobile service facility and for the existing support structure.
 - ii. The location of the proposed or affected support structure.
 - iii. The location of the proposed mobile service facility.
- (3) A class 2 collocation is subject to the same requirements for the issuance of building and electrical permits to which any other type of commercial development or land use development is subject including sections 15-1-2 and 15-1-73 of the City Ordinances except that the fee for a Conditional Use Permit for a Class 2 Collocation shall be \$500.00 per s. 66.0404(4)(d).
- (4) If an applicant submits to the Land Use and Development Director an application for a building permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the Plan Commission shall consider the application complete. If any of the required information is not in the application, the Land Use and Development Director shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- (5) Within 45 days of its receipt of a complete application, the Land Use and Development Director shall complete all of the following or the applicant may consider the application complete, except that the applicant and City may agree in writing to an extension of the 45 day period.
 - i. Make a final decision whether to approve or disapprove the application.
 - ii. Notify the applicant, in writing, of its final decision.
 - iii. If the application is approved, issue the applicant the relevant Conditional Use Permit.

- iv. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

(g) **Information Report.** The purpose of the report under this section is to provide the City with accurate and current information concerning the telecommunications facility owners and providers who offer or provide telecommunications services within the county or that own or operate telecommunications facilities within the county, to assist the City in enforcement of this subsection and to assist the City in monitoring compliance with local, state and federal laws.

(1) Information Report. All telecommunications tower owners of any new telecommunications tower shall submit to the Land Use and Development Director Telecommunications Facility Information Report (the "Report") within 45 days of the following events:

- i. Following conditional use approval;
- ii. Receipt of a written request from the City of Onalaska Land Use and Development Office; or
- iii. Any change in occupancy of the tower.

The Report shall include the tower owner name(s), address(es), phone number(s), contact person(s) and proof of bond as security for removal. The tower owner shall supply the tower height and current occupancy, if applicable, the number of collocation positions designated, occupied or vacant. This information shall be submitted on the City form provided and designed for such use and shall become evidence of compliance.

(h) **Removal/Security for Removal.** It is the express policy of the City of Onalaska and this ordinance that telecommunications towers be removed once they are no longer in use and not a functional part of providing telecommunications service, and that it is the telecommunications provider's responsibility to remove such telecommunications towers and restore the site to its original condition or a condition approved by the City of Onalaska Land Use and Development Director or designee. This restoration shall include removal of any subsurface structure or foundation, including concrete, used to support the telecommunications tower down to 5 feet below the surface. After a telecommunications tower is no longer in operation, the provider shall have 180 days to effect removal and restoration unless weather prohibits such efforts and an extension is granted by the Land Use and Development Director. Permittee shall record a document with the La Crosse County Register of Deeds showing the existence of any subsurface structure remaining below grade. Such recording shall accurately set forth the location and describe the remaining structure. The owner of any telecommunications tower shall provide to the City of Onalaska, prior to the issuance of the conditional use permit, a performance bond in an amount based on a written estimate of a qualified remover of said types of structures or Twenty Thousand Dollars (\$20,000) whoever is less, to guarantee that the telecommunications tower will be removed when no longer in operation. The City of Onalaska will be named as obligee in the bond and must approve the bonding company. The City may require an increase in the bond amount after five (5) year intervals to reflect increases in the Consumer Price Index. The provider shall supply any increased bond within a reasonable time, not exceeding sixty (60) days from the City's request. A permittee may substitute a letter of credit in the amount set

forth above or in the alternative, a permittee with several sites in the City may submit a master bond to cover all of said sites. A master bond or a letter of credit, may in the City's discretion, be in an amount sufficient to secure removal from one site if the master bond or letter of credit provides for replenishing any amount use as the master bond or letter of credit covers any other site in the City.

(i) **Structural Design and Environmental Standards.**

(1) **Mobile Service Support Structure, Antenna and Facilities**

Requirements. All mobile service facilities and mobile service support structures except exempt facilities as defined in subsection (d), shall be designed to reduce the negative impact on the surrounding environment by implementing the measures set forth below.

- i. Mobile services support structures shall be construed of metal or other nonflammable material, unless specifically permitted by the City to be otherwise.
- ii. Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their functions.
- iii. Equipment compounds shall be constructed of non-reflective materials (visible exterior surfaces only). Equipment compounds shall be designed to blend with existing architecture in the area or shall be screened from sight by mature landscaping, and shall be located or designed to minimize their visibility.
- iv. Mobile services facilities, support structures and antennas shall be designed and constructed in accordance with the State of Wisconsin Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, City of Onalaska Building Code, Electronic Industries Association (EIA), American National Steel Institute Standards (ANSI), and American National Standards Institute (ANSI) in effect at their time of manufacture. Mobile service facilities and support structures shall not interfere with or obstruct existing or proposed public safety, fire protection or Supervisory Controlled Automatic Data Acquisition (SCADA) operation telecommunication facilities. Any actual interference and/or obstruction shall be corrected by the applicant at no cost to the City.

(2) **Site Development.** A parcel intended for the location of new mobile service facilities, mobile service support structures, and equipment compounds shall be located so as to permit expansion for mobile service facilities to serve all potential collocators.

(3) **Vegetation Protection and Facility Screening.**

- i. Except exempt facilities as defined in subsection (d), all mobile service facilities shall be installed in a manner as to minimize disturbance to existing native vegetation and shall include suitable mature landscaping to screen the facility, when required by the Plan Commission or Land Use and Development Director. For purposes of this section "mature landscaping" shall mean trees, shrubs or other vegetation of a minimum initial height of five (5) feet

that will provide the appropriate level of visual screening immediately upon installation.

- ii. Upon project completion, the owner(s)/operator(s) of the facility shall be responsible for maintenance and replacement of all required landscaping as long as a telecommunication facility is maintained on the site.
- (4) Fire Prevention. All mobile services facilities shall be designed and operated in accordance with all applicable codes regarding fire protection.
 - (5) Noise and Traffic. All mobile service facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to nearby properties. To that end the following measures shall be implemented for all mobile services facilities, except exempt facilities as defined in subsection (d):
 - i. Noise producing construction activities shall take place only on weekdays (Monday through Saturday, non-holidays) between the hours of 7:00 a.m. and 7:00 p.m. except in times of emergency repair, and
 - ii. Backup generators, if present, shall be operated only during power outages and for testing and maintenance purposes.
 - (6) Separation Requirements. Mobile service support structures shall be separated by a minimum of 2640 feet, except that:
 - i. Two (2) mobile service support structures may be permitted to be located within 100 feet of each other subject to approval of the City of Onalaska Plan Commission.
 - ii. Camouflaged mobile service support structures are exempt from the separation between mobile service support structures requirement listed above.
- (j) **Abandonment.** Any antenna, mobile service facility or mobile services support structure that is not operated for a continuous period of twelve (12) months shall be considered abandoned. Upon application, the City of Onalaska Land Use and Development Director may extend the time limit to abandon once for an additional six (6) month period. Such extension shall be based on the finding or that the owner or permit holder is actively seeking tenants for the site. After the expiration of the time periods established above, the following shall apply:
- (1) The owner of such antenna, mobile service facility or mobile services support structure shall remove said antenna, mobile service facility or mobile service support structure, including all supporting equipment, building(s) and foundations to the depth as otherwise herein required within ninety (90) days of receipt of notice from the Land Use and Development Director notifying the owner of such abandonment. If removal to the satisfaction of the Land Use and Development Director does not occur within said ninety (90) days, the City of Onalaska Land Use and Development Director may order removal utilizing the established bond as provided above and salvage said antenna, mobile services facility or mobile service support structure, including all supporting equipment and building(s). If there are two or more users of a single mobile services support structure, this provision shall not become effective until all operations of the mobile service support

structure cease. If a bond has not been previously established or is not current, the City may perform the work and bill or assess the owner or permit holder of the mobile services support structure.

- (2) The recipient of a conditional use permit allowing a mobile service support structure and facility under this section, or the current owner or operator, shall notify the Land Use and Development Director within 45 days of the date when the mobile services facility is no longer in operation.
- (h) **Severability.** If any of provision of this ordinance or its application to any person or circumstance is held invalid according to Wisconsin State Statutes §66.0404, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application and to this end the provisions of this ordinance are severable.
- (i) **Penalty Provisions.** Any person, partnership, corporation or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction, pay a forfeiture of not less than \$100.00 nor more than \$500.00, plus the applicable surcharges, assessments and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance.



CITY OF ONALASKA

STAFF REPORT

Plan Commission – February 24, 2015

Agenda Item: Review and discussion on Plan Commission Handbook

Background: The Center for Land Use Education (CLUE) provided the 2nd Edition of the Plan Commission Handbook (2012) online for downloading at no-cost. The handbook is meant to assist Plan Commissioners, local governmental officials, and citizens in understanding the role and responsibilities of the Plan Commission and provide a background on community planning, public participation strategies and plan implementation.

The handbook further provides information regarding ordinance administration (creation and enforcement), zoning regulations and subdivision regulations. A variety of samples of ordinance language, zoning applications and additional resources are provided within this document for use by Plan Commissioners.

Staff is presenting this item to the Plan Commission as an informational item.

The Handbook may be found here: <http://www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/PlanCommissions.aspx>