

**PLAN COMMISSION MINUTES**  
**City of Geneva**  
**109 James Street - City Council Chambers**

**May 9, 2019 – Meeting #1209**

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Chairman Stocking called the meeting of the Geneva Plan Commission to order at 7:00 p.m. Roll call followed:

Present: Chairman Stocking; Commissioners Case, Dziadus, Evans, Kosirog, Leidig, Mead, Slifka

Absent: Commissioner Stevenson

Staff Present: City Planner Paul Evans

Public Present: Jodie Henninger, 2300 Cabot Dr., Ste. 500, Lisle, IL; Peter M. Storm, 117 S. Second St., Geneva, IL; Todd Richards, H. R. Green, 420 Front St., McHenry, IL; Eric Mancre, 4320 Winfield Road, Ste. 200, Warrenville, IL; James Blaylock, 951 Ice Cream Dr., North Aurora, IL; David Mannebach, 912 S. Wells St. Chicago, IL; Tomi Minner, 101 E. Illinois, Aurora, IL; Planet Depos Court Rptr. Melanie Humphrey Sonntag; Recording Secretary Celeste Weilandt

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**Approval of the Agenda**

**Commissioner Case made a motion to approve the agenda. Second by Commissioner Kosirog. Motion passed by voice vote of 8-0.**

**Approval of Minutes of April 25, 2019**

**Minutes of the April 25, 2019 meeting were approved on motion by Commissioner Kosirog, second by Commissioner Dziadus. Motion passed by voice vote of 8-0.**

Chairman Stocking read the protocol for the following public hearings and swore in those individuals who would be speaking on them.

**Public Hearing**

**A. Fabyan Crossing/Oberweis Out Lot – The applicant is requesting:**

- 1) Amendments to the Fabyan Crossing Planned Unit Development (Ordinances 1993-45, 2017-10, and 2018-16; Resolution 2018-01) to modify the list of permitted uses, sign regulations, parking requirements, and the previously approved landscape plan, all related to the proposed development of a sit-down/drive-through restaurant on a new out lot on Lot 1; and
- 2) Final Planned Unit Development Plan Approval for a New Out Lot on Lot 1.

Location: 2100 S. Randall Road; Applicant: Oberweis Dairy

City Planner Evans read into the record the contents of the Plan Commission file.

Applicant, Mr. James Blaylock, 951 Ice Cream Drive, North Aurora introduced himself.

Mr. Todd Richards with H. R. Green, 420 Front Street, McHenry, IL, provided an overview of the site plan for the proposed Oberweis project, planned for the southeast corner of Lot 1 within the Fabyan Crossings development, located at the northwest corner of Fabyan Parkway and Randall Road. Reviewing the parking analysis for the site, Mr. Richards reported that with the reduction of the current parking stalls, approximately 380 stalls will remain for Lot 1 or a parking ratio of 3.49 per 1000 sq. feet. Planned were 66 parking spaces within the Oberweis parcel, with 4 spaces designated as drive-through waiting stalls. The At Home store agreed to share 34 spaces with the Oberweis development, located north of the Oberweis parcel. Of the 66 parking spaces, 62 spaces were reserved for dine-in customers. Details of the parking calculations for the parking utilization for the restaurant and the At Home store followed, noting that the peak hours for the two entities were not simultaneous and ample parking existed for both.

Mr. Richards confirmed that in lieu of having a free standing sign monument for Oberweis, they are requesting to amend the PUD to allow the additional facade signage for its three different restaurant concepts.

Next, addressing the landscape plan, Mr. Richards spoke to the fact that Oberweis' landscaping plan would be consistent with the 2017 PUD amendment to maintain the view corridor into the subdivision and Oberweis would be amending the PUD to allow the landscaping plans being presented tonight. Access to the site was addressed for the 4,256 square foot restaurant, along with the drive-through lane and the stacking allowance for 10 cars. Mr. Richards explained the functions for the drive-through lane.

Due to some commissioner confusion on how exactly the order/pick-up window worked, Mr. Blaylock returned to explain how the menu options for the Wood Grain Pizza and That Burger Joint would not be available on the drive-through sign – only ice cream would be ordered. However, the other two restaurant would offer call-in orders that could be picked up at the drive-through window.

Returning to the site plan, Mr. Richards discussed the sanitary sewer lines and stormwater flow for the site which would eventually flow to the basin to the north. He stated there would be a slight reduction of water run-off from the Oberweis parcel.

Commissioners 1) asked the petitioner to walk through the drive-through process; 2) voiced concern about vehicles leaving the site at the northern (lightly barricaded) area to exit the site if the parking lot was full versus the main entrance; 3) asked what the amount of indoor seating was (93); and 4) expressed concern about the proposed parking and drive-through being similar to the flow of Portillo's, which was not ideal.

Peak hours for the restaurant and drive-through were discussed and the fact that it could be difficult for cars to back out when cars were in the drive-through lane. Also discussed was the length of time the other Oberweis restaurants were in business (3 to 4 years); whether there was enough sight line to the north near the trash enclosure to exit the site; and whether installing a Right Turn Only sign for those exiting the site would make sense -- thereby directing traffic to either the signal light at Glen Eagle or to the right in/right-out pork chop just south of McDonalds. Some Commissioners supported the Right Turn Only signage out of the Oberweis site.

Chairman Stocking opened up the hearing to public comment.

Ms. Jodie Henninger, 2300 Cabot Drive, Ste. 500, Lisle, IL, an attorney with the firm of Kling, Callow and McLaine, stated she represented the owner of Lot 4 (Bear Valley Partners), who purchased the land in December 2006 from Dial Realty Geneva, LLC and whom leased the land to McDonalds (tenant) pursuant to a ground lease dated October 20, 1994. Ms. Henninger opposed the proposed development on behalf of her client and explained how the development diminished the value of her

client's property. Should the development move forward, Ms. Henninger summarized that counsel for McDonalds would move forward with litigation. (Ms. Henninger submits counsel's letter and portions of the relevant ground lease) She estimated that her client's loss between the rent and real estate taxes would be a loss of over One Million Dollars. Other losses were read off.

In addition, Ms. Henninger stated her client hired a civil engineer (ESM Civil Solutions) who reviewed the plans and had the following concerns about the Oberweis plan: inadequate parking due to the shared parking arrangement with At Home, patrons walking through the drive-through lane to reach the restaurant, the drive-through holding spaces were in conflict with vehicles around the trash pickup area, the entrance alignment was too close to the entrance to the shopping center, possibly causing accidents, and two feet of separation existed between the drive-through traffic from north-bound vehicles along the commercial drive. The site plan was too large for the out lot parcel.

Should the plan be approved she stated it may result in litigation between the various parties and would harm her client. The PUD was put into affect to protect all parties of the Fabyan Crossing shopping center. Ms. Henninger urged the commissioners to not support the proposal.

Discussion by Commissioner Mead and Ms. Henninger centered on who were the actual parties to the ground lease, the fact that the ground lease did not affect the petitioner (Oberweis), and Henninger's client was basically concerned about the special use condition pertaining to diminished property value. And while the PUD was put in place to protect Henninger's client (McDonalds), the matter was really a private matter and not the City's concern. City Planner Paul Evans recalled the amended PUD in 2006 allowed for a restaurant use. Further dialog followed with Commissioner Evans noting that the commission should review the petition for what was in the best interest of the City.

As pointed out by Planner Evans, the 2006 amended PUD allowed restaurants and cocktail lounges. He clarified the petitioner had the right to construct a restaurant on the site, but the drive-through portion required a special use permit. The original PUD allowed for a restaurant on Lot 4.

Asked how important the drive-through was for the site, Mr. Blaylock confirmed the drive-through was an important aspect of the business due to the many fountain sales that go through it.

Chairman Stocking pointed out that because the restrictions of the shopping center were so cumbersome, tenants of the shopping center were coming before the City complaining about the enforcement of private agreements that this commission was not responsible to work out; instead, a court of law existed for that purpose.

Mr. Peter Storm, with the firm of Cooper, Storm & Piscopo, Geneva, Illinois and representing Dial Geneva Realty LLC and Geneva 2 whose client owns Lot 5 (detention pond), explained that a Reciprocal Easement Agreement (REA) existed which had nothing to do with the ground lease. The REA prohibited the proposed development and was a private covenant. He acknowledged this commission had no jurisdiction on the matter. However, if the City approved the petitioner's request there would be litigation with respect to the REA that contained the covenants. Mr. Storm proceeded to explain that when the PUD was being developed, the restrictions to prohibit a drive-through were put in place as a zoning protection against the type of development being proposed. Further details followed. Mr. Storm noted that McDonalds was not part of the REA.

Further discussion followed by Mr. Storm regarding the restrictions and some of the other criteria for the special use.

Commissioner Evans inquired of staff that if the drive-through was approved, then the end result would be an amended PUD that allowed a drive-through on the site. Planner Evans concurred but explained the result from any litigation could amend the approval decision.

Civil engineer for Oberweis, Mr. Todd Richards, with HR Green, returned and discussed the current flow of water on the site draining west to east and into catch basins. No additional water was being diverted into the overall stormwater management facility for the subdivision and the pervious area of the site was being reduced. Details followed.

No further discussion was received from the public.

Commissioner Mead confirmed with the applicant that the request for signage, if allowed, would prohibit any pylon or monument signage going forward.

**Motion by Commissioner Case, second by Commissioner Leidig to close the public hearing. Roll call:**

**Aye: Case, Dziadus, Evans, Kosirog, Leidig, Mead, Slifka, Stocking**

**Nay: None**

**MOTION PASSED. VOTE: 8-0**

Commissioners agreed that five items needed to be addressed: an amendment to the PUD to allow a drive-thru, façade signage, landscape plan, parking requirements, and stacking concerns which could affect the parking spaces located on the east side of the site, along with many turning movements from the entrance/exit area. With the suggestion of installing a right-in/right-out pork chop there, staff pointed out that emergency vehicles would need the full access. Regarding vehicular backups, Commissioner Slifka pointed out that if there was a back-up, at least it backed up into the site and not onto a public road. An opportunity also existed for vehicles to leave if they had to.

**Motion by Commissioner Mead, second by Commissioner Evans to amend the Fabyan Crossing Planned Unit Development permitted uses for the commercial tract originally adopted by Ordinances 1993-45 (Exhibit 9) to allow a sit-down and drive-through restaurant on Lot 1 as a permitted use, subject to staff's Findings of Fact in the staff analysis. Roll call:**

**Aye: Case, Dziadus, Evans, Kosirog, Leidig, Mead, Slifka, Stocking**

**Nay: None**

**MOTION PASSED. VOTE: 8-0**

**Motion by Commissioner Mead, second by Commissioner Evans to approve a Final Planned Unit Development Site Plan for a New Out Lot on Lot 1, including Items 2, 3, and 4 on Page 2 of the staff report, to amend the façade sign standards originally adopted by Ordinance 1993-45 (Exhibit 10) and subsequently amended by Ordinances 1996-22, 1996-34, 2017-10 and 2018-16, to allow façade signs for the Lot 1 out lot, and to amend the final Landscape Plan adopted by Ordinance 1993-45 (Exhibit 7) and subsequently amended by Ordinance 2017-10, and to amend the final site plan and parking requirements adopted in Ordinance 1993-45 (Exhibit 6), and subsequently amended under Ordinance 2003-20 and Resolution 2018-01 for Lot 1, and further conditioned upon staff's recommendation that: 1) final engineering site approval shall be required prior to building permit issuance by the City; 2) recordation of a Final Plat of Subdivision and Plat of Public Utility Easement for the required lot prior to building permit issuance; and 3) the approval of any additional façade signs are in lieu of having a free-standing sign for the Lot 1 Out Lot, all subject to the conditions and Finding of Fact in staff's report. Roll call:**

**Aye: Case, Dziadus, Evans, Kosirog, Leidig, Mead, Slifka, Stocking**

**Nay: None**

**MOTION PASSED. VOTE: 8-0**

**B. At Home Sign Variation** – A sign variation, pursuant to Section 11-14-5A of the Geneva Zoning Ordinance, to permit a 76 sq. foot wall sign to be displayed on a secondary building façade (north façade). *Location:* 2100 S. Randall Road; *Applicant:* J&S Electric and Sign. City Planner Paul Evans read into the record the contents of the Plan Commission file.

Ms. Tomi Minner, 101 E. Illinois, Aurora, for the petitioner, explained At Home was seeking an additional sign (significantly less in size) to the north façade that juts out so that drivers traveling south within the shopping center would see the At Home sign and find its location.

Commissioner Mead noted that additional signs already existed around the site and if the building did not jut out there would be no reason for the application to be before the commission. Asked if this request was approved, would the next tenant be able to have their sign on the same plane, wherein Planner Evans confirmed they would. Asked if there were comparable signs at other shopping centers, commissioners mentioned a shopping center to the south. Other questions followed as to what would happen if the building was subdivided, wherein staff explained it would remain with the northern-most tenant, by right, and not the other tenant. Concern was voiced that another variation could come before the commissioners.

Commissioner Stocking saw no hardship for the variation, seeing that the building already had high visibility and other signs existed throughout the site. Commissioners Kosirog and Slifka, however, felt the City should support such a request in order for the retailer to be successful, given the difficulty of the retail industry currently, and the sign being proposed was tastefully done.

**Motion by Commissioner Case, second by Commissioner Kosirog to close the public hearing Roll call:**

**Aye: Case, Dziadus, Evans, Kosirog, Leidig, Mead, Slifka, Stocking**  
**Nay: None** **MOTION PASSED. VOTE: 8-0**

**Motion by Commissioner Mead, second by Commissioner Leidig to approve a sign variation, pursuant to Section 11-14-5A of the Geneva Zoning Ordinance, to permit a 76 sq. foot wall sign to be displayed on a secondary, north-facing building façade of the At Home store, including staff’s findings of fact in its staff report. Roll call:**

**Aye: Dziadus, Evans, Kosirog, Leidig, Mead, Slifka**  
**Nay: Case, Stocking** **MOTION PASSED. VOTE: 6-2**

**Public Comment** – None

**Other Business**

Planner Evans reported the discussion for the Downtown zoning ordinance update will continue with hopes to close the public hearing on May 23, 2019. Items for the tentative June meeting were shared. The Mill Race charette is scheduled to be held June 24 through 27<sup>th</sup> at Riverside Banquets. Lastly, the Greenhouse project was approved by City Council this past Monday.

**Adjournment**

**Meeting was adjourned at 8:50 p.m. on motion by Commissioner Evans, seconded by Commissioner Leidig. Motion carried unanimously by voice vote of 8-0.**