

Please note: Minutes are unofficial until approved by the Community Development Authority at the next regularly scheduled meeting.

PUBLIC HEARING

7:30 A.M. (3)AB CU-09-01 Hal's Harley Davidson – 1925 S. Moorland Rd. – 2009
Calendar of Events.

**NEW BERLIN COMMUNITY DEVELOPMENT AUTHORITY
MINUTES
APRIL 2, 2009**

The public hearing relative to the request by Kirk Topel, c/o Hal's Harley Davidson for a Conditional Use for their calendar of events at 1925 S. Moorland Road was called to order by Mayor Chiovero at 7:34 A.M.

In attendance were Mayor Chiovero, Donald Vaclav, John Fillar, and Marta Broge. Also present were Greg Kessler, Director of Community Development; Amy Bennett, Associate Planner; Jessica Titel, Associate Planner; and City Attorney Mark Blum. Alderman Ken Harenda, Alderman Joe Poshepny, and Ted Anderson were excused.

Ms. Bennett read the public hearing notice and stated there was proof of publication.

Ms. Bennett gave a brief presentation describing the request and showed maps indicating the location.

Mayor Chiovero asked for questions or comments for the purpose of clarification.

Tom Eide, 2020 S. Sunset Ct. – Is everything going to be on their own site, nothing on the Rundle-Spence property?

Ms. Bennett – Yes.

Mr. Eide – They are not allowed to do anything on any other property other than their own site?

Ms. Bennett – There may be parking on the other property.

Mr. Eide – Last year they had it noted where their stages were going to be, and I had a conversation with Kirk last year who said the sound would be on the stage in the back, but then shortly after there was rain so he moved the sound to the stage in the front. I called you, Amy, and you said there was nothing else that you had that denoted any plans.

Ms. Bennett – My understanding, which I learned after our conversation, is that they are planning to use the stage in the front of the building as they have in the past.

Mr. Eide – Last year Kirk told me that he would not use it this year.

Kirk Topel, Hal's Harley, 1925 S. Moorland Road – We use the front stage only when the weather prohibits using the stage in back, and it is only when the event size is small enough that

everyone would fit back there. There is grass back there and it gets soft when it rains.

Mr. Eide – Is it going to be noted on their permit that everything has to be on their site, and no where else? I have learned in the past that if it is not in writing, it doesn't mean a thing.

Ms. Bennett – I don't see a specific condition for that. The CDA can decide to add that.

Mr. Eide – I called Ms. Bennett to ask for everything she has on this, which she e-mailed to me because it wasn't on the website. Now I come here and there is another list of items. How do I prepare to talk when I have no idea what information you are referring to?

Mayor Chiovarero – Mr. Eide, which sheet was not e-mailed to you?

Mr. Eide – She said she has 17 conditions. I have no clue what those are.

Ms. Bennett - I gave you the information that was submitted by the applicant, which is what you requested. I could have given you the staff report, but you had asked for the site plan and the information about the calendar of events that was submitted by the applicant so that is what I gave you.

Mayor Chiovarero – Do you have a copy of the Executive Summary in your possession right now?

Mr. Eide – I called Amy to ask if this is all you have because I showed up last year and there was more stuff. She said that was all she had.

Mayor Chiovarero – You can have my copy.

Mr. Eide – I wanted to look at it ahead of time.

Mayor Chiovarero – I know, but it is very simple.

Mr. Eide – When situations come up, I learn that it is not in writing and then he is allowed to do things that were not even discussed. I just want to be prepared when I come to these meetings.

Mayor Chiovarero – We understand that. The conditions Ms. Bennett is talking about are right here on the first page. Right now there is nothing about the condition you are requesting. If the CDA feels that we should add that condition, we can do that.

Mr. Eide – He is only asking for approval for the one site, so in my mind he would have to have a separate hearing if he wants to add another site.

Mayor Chiovarero – It my understanding, and the applicant can correct me if I'm wrong, that he plans on having the event on his site except for some parking.

Mr. Eide – I don't mind parking.

Mayor Chiovarero – I know sometimes, Kirk that you use some of the Falk property for parking. You don't have any events or vendors over there, do you?

Mr. Topel – There would be two exceptions on the calendar for 2009 where we would extend beyond our property which includes the Falk parking area. I will point it out on the map. On the event on May 9, 2009 we would have motorcycles that are part of the show there and a small tent for registration. At the September 3-6, 2009 event we have a 60' semi-trailer planned to be in that location sandwiching the drive between the Falk property and our property. Aside from those two events, we are looking at parking only.

Mayor Chiovarero – My understanding is in the first event with the bike show there would be no selling of products there.

Mr. Topel - There would only be vendors on September 3-6, 2009 on property other than ours.

Mayor Chiovarero – No live music or anything like that on the other properties.

Mayor Chiovarero asked three times if there was anyone else with a comment or question for clarification, seeing none.

Mayor Chiovarero asked if there was anyone wishing to speak in favor of this application, seeing none.

Mayor Chiovarero asked if there was anyone wishing to speak in opposition?

Tom Eide, 2020 S. Sunset Ct. – I already mentioned about the stage in the front. I will point out on the map where my house is so you can get a perspective. Last year during the large event Mayor Chiovarero said he would try to stop by my house to see what it is like. That never came to pass.

Mayor Chiovarero – I did stop in your cul-de-sac.

Mr. Eide – My daughter called me on the first day of the large event last year to let me know that she was walking all around the house looking for people because she heard voices. It was that loud in our house. She thought somebody was in our house talking. I brought home a sound meter from work and did some readings. There was a motorcycle speed competition right across the street from my house. On Thursday afternoon the noise level in my house was 83.8 decibels with the windows open. On the patio outside my house the level was 86 decibels. I walked over to the competition and the reading was 110.3 decibels about 20 feet away from the cycles. The sound level at the music stage was 108.5 decibels. The speakers for both of these items were pointed at my house. They both point west. I called Kirk and didn't get an answer. I called City Hall on Friday morning and asked what the sound levels were that were allowed at events. I was told that there really isn't a number and that it is just up to the cops to enforce it, and nothing could be done because they had a permit. It really depends upon the officer that responds. I, therefore, chose not to call the police because I figured it would do no good because they sit over at the event, enjoying it and getting paid for it. The difference is, I feel that I have a right to enjoy my house, because it is my house which I paid for. Since I couldn't find any guidelines in the New Berlin codes, I looked at what others have done. In West Allis the maximum sound level allowed in a commercial area is 71 decibels. The maximum sound level allowed in a residential area is 67 decibels. The sound level in my house was 45 times louder than what would be allowed in West Allis. That is in my house! The sound on my patio was 100 times

louder than what would be allowed in West Allis. I moved to New Berlin because I thought it was a much better place to live than West Allis. Here is a little more information. A jet taking off is 120 decibels. The bike competition was 110 decibels. The stage was 108.5 decibels. Not much difference. Would you like your house to be right across from those things? A vacuum running is 70 decibels. Therefore, the sound in my house was equivalent of having 40 vacuums running. Are you willing to have 40 vacuums running in your house while you are trying to enjoy your house on your day off? I moved across the street from a commercial area, not an outdoor entertainment complex. At the Wisconsin State Fair, which is an entertainment complex, they have a person that goes around to verify that no stage ever goes above 100 decibels. The stages around the perimeter of the park are set up so they are facing away from the residential areas. Every time Hal's comes here, they get a green light to do whatever they want. Like he says, in case of this or in case of that, and it's really not all written down. Again, I would like to ask for some restrictions to be put in writing so they have to conform to them. I would like some sound levels set, some guidelines, and not just somebody to say, "I think it's ok". I really think there should be some sort of guidelines for the police to use to enforce, but it is vague and there isn't really anything for the police to enforce. Once they get a permit, it's a free for all. Thank you.

Mayor Chiovero asked three times if there was anyone else wishing to speak in opposition of this application, seeing none.

Mayor Chiovero asked for questions from the Commission.

Mr. Fillar – What is bike competition?

Mr. Topel – The bike competition that Mr. Eide referenced was specifically a tractor trailer set-up where two bikes are put on it and they were run up on a dino, so they are run stationary. That trailer was on the leased property that the Campbell's had. While we had some responsibility for what was going on on that lot, we did not place people there or secure vendors there. When we were made aware of that on the first night, we made sure they quit an hour earlier than they were supposed to on subsequent nights, and we have no intention of bringing that back at any point in the future for anything that we would hold in relationship with what we do at the store.

Mr. Fillar – Of the five outside events scheduled for the rest of the year, besides the one coming up this weekend, how many are going to involve vendors being on the property, and how many will involve outside music?

Mr. Topel – There are six dates on the calendar. The first one is this weekend. It is an indoor event. There is music indoors. It is a charity fund raiser. The second event is an outdoor event and would have music that would run from noon to 5:30 P.M. and would have vendors. The third event involves demonstrating of motorcycles. There is no entertainment, music, or vendors. The fourth event is an awareness day for animals. We have music, but it is not a live band, it is radio station remote with some presentations. The fifth event would have vendors and music. That is Labor Day weekend. The last event is an indoor Christmas party. There is music. It is held indoors. There are no vendors.

Ms. Broge – On the Milwaukee Rally event, what are the music hours?

Mr. Topel - Music hours are Thursday and Friday 4:00 P.M. – 7:00 P.M.; Saturday Noon – 4:00

P.M.; Sunday 11:00 A.M. – 2:00 P.M.

Ms. Broge – Thank you. Perhaps the gentlemen that was up here speaking misspoke. He said the speakers were pointing west. He is east of the property.

Mr. Topel – The speakers have never been pointed east with the exception of music that we have had at the very west end of our property. When we have held music that deep into the property, it is my understanding that it has not been a concern for Mr. Eide. When we have had music back there, he has had no issue with any of the sound. The other location that we have had music in the past is the cement platform in the front parking lot. The speakers point north. When we do put music up there we try not to put a certain type of music. We try to put more country type music. There is carry over in all directions, I don't question that.

Ms. Broge – The only location the gentleman has an issue with is when the music is up front because you can't put it in back due to weather conditions. Is that correct?

Mr. Topel – That is one of the main concerns that Mr. Eide has.

Mr. Eide – In years past that was the case, but last year's band that they had in the back was quite a bit louder. I could hear them clearly in my house. That is when I went over with the meter to read it.

Mayor Chiovarero – Are you talking about during the anniversary dates?

Mr. Eide – Yes.

Mayor Chiovarero – OK.

Mr. Eide – He is having the Labor Day thing again. It's a four day event. There is no information about what he is bringing.

Mayor Chiovarero – I have been at these Milwaukee Rally events. He is just one dealer. They try to attract customers to introduce their dealership. It is a much, much smaller scale than the 105th. It is more of a customer appreciation and dealership recognition event.

Mr. Eide – I know, but say the band is at 109 decibels. That means that is still nine times louder than any band they allow to play at State Fair. Even though it is just a little band in the back doesn't mean they couldn't still have guidelines on how to monitor their sound. I'm sorry. I got my directions mixed up. They were pointed east.

Ms. Broge – There are other neighbors in that area. Have we had other complaints over the years from other neighbors?

Ms. Bennett – We have never received any calls.

Mayor Chiovarero - Last year Mr. Eide and I had several discussions. I also talked to the police chief. The police chief had received a call from Mr. Eide. They went over at the time and did not feel there was an issue. I don't know if there was a break in the entertainment at that time. I know Kirk was aware of it. He apologized the following day and followed up with Mr. Eide that

he was not able to hear his cell phone or did not have it on to be able to return his call at the time. Kirk had given Mr. Eide his cell phone number so he could get in touch with him if he wanted. I know Kirk tried to comply, but there was a lot of stuff going on during the 105th. Kirk did everything he could to try to control it. There is also the property directly to the south where there was an outside vendor who rented that area. I think the event ran smooth over the Anniversary, there were some concerns about the activities on that property.

Mr. Fillar – I went to the party last year and they had music in the back. In my opinion, it wouldn't have been a problem for anyone near Moorland Road, however, I can see where having the music in the front would be a big problem. I thought a simple solution to this would be to ask the vendor to modify his situation there so that no matter what the weather is, he always has the music in the back. That would seem to take care of the objections of the gentleman from across the street. Can the arrangement be changed so you only have music in the back?

Mr. Topel – I would love to do that. We have plans to do it. It is a question of cost. The area between the Spence property and our building is a natural water route. There is a creek that goes through there. When we developed the property, we put culverts in there with the approval of the City. The problem is in the spring of the year, as it coincides with this first event, the ground can be exceptionally soft if we have had a lot of snow and rain. A van pulling a trailer driven in there would sink to the wheel well. It is not a problem when there is dry weather. We have plans in the future, if the City approves, would be to continue the asphalt from the parking lot and put up a pavilion so there would no longer be entertainment or noise up in the front lot. That is our plan.

Mr. Fillar – Is this something you could have ready next summer?

Mr. Topel – Depending on our year financially. We had planned to request the asphalt this year, so I would say it is probably something we could do for next year.

Mr. Fillar – I think that might take care of this problem.

Mr. Vaclav – How far below Moorland Road does Hal's sit?

Mr. Topel – 16 feet.

Mr. Vaclav – Do you still have trouble with bands that are behind Hal's Harley Davidson?

Mr. Topel – No. That is the lowest grade level. That has not been an issue to my knowledge.

Mayor Chiovero asked for further comments or questions from the Committee, seeing none.

Mayor Chiovero closed the public hearing at 8:04 A. M.

**NEW BERLIN COMMUNITY DEVELOPMENT AUTHORITY
MINUTES
APRIL 2, 2009**

The Community Development Authority Meeting was called to order by Mayor Chiovero at 8:04 A.M.

In attendance were Mayor Chiovero, Donald Vaclav, John Fillar, and Marta Broge. Also present were Greg Kessler, Director of Community Development; Amy Bennett, Associate Planner; Jessica Titel, Associate Planner; and City Attorney Mark Blum. Alderman Ken Harenda, Alderman Joe Poshepny, and Ted Anderson were excused.

Motion by Ms. Broge to approve the CDA minutes of February 5, 2009. Seconded by Mr. Vaclav. Motion carried unanimously.

COMMUNITY DEVELOPMENT AUTHORITY EXECUTIVE DIRECTOR'S REPORT

None

NEW BUSINESS

1. (3)AB CU-09-01 Hal's Harley Davidson – 1925 S. Moorland Rd. – 2009 Calendar of Events.

Motion by Ms. Broge to approve the Conditional Use Permit for Hal's Harley-Davidson 2009 Annual Dealership Special Events Calendar located at 1925 South Moorland Road subject to the application, plans on file and the following conditions:

- 1) Plan of Operation:
 - a) See attached 2009 Special Event Calendar.
 - b) Applicant shall contact and coordinate with the City of New Berlin Police Department, the Clerk's Office, the New Berlin Fire Department and the Streets Department in writing a minimum of three weeks before each scheduled event. This shall trigger any necessary permits or license required for any scheduled event.
- 2) Applicant shall contact Waukesha County Department of Environmental Health for any necessary permits pertaining to food supplied via a licensed vendor.
- 3) Sanitation and fresh water facilities shall be adequate for the actual number of people using the site as required by Waukesha County Health Department.
- 4) If liquor is to be sold on site, applicant shall contact the City of New Berlin Clerk's Office to obtain a liquor and soda permit.
- 5) If any sales or solicitation of business will occur with vendors on site, a Direct Sellers Permit will be required from the Clerk's office.
- 6) All barricades shall be properly permitted by the City of New Berlin Streets Department and the New Berlin Police Department if applicable. Contact Streets Department to discuss all applicable barricade and signage requirements three weeks prior to event.

- 7) Applicant shall apply for and receive a loudspeaker permit from the City of New Berlin Police Department.
- 8) Apply and obtain appropriate building, plumbing and electrical permits when required to do so by code.
- 9) Temporary wiring for displays or lighting circuits shall require electrical permit and inspection from Building Inspections. Electrical work shall be performed by a licensed electrician.
- 10) Tents and other membrane structures erected for a period of less than 180 days shall comply with the International Fire Code per Wisconsin Enrolled Commercial Building Code. (Section 3103)
- 11) Temporary structures that cover an area in excess of 120 square feet shall not be erected, operated or maintained for any purpose without obtaining a permit from the local building official per Wisconsin Enrolled Commercial Building Code. (Section 3103.1.1)
- 12) Site plan with location and sizes of all temporary structures will be required at time of building permit application.
- 13) Information delineating the means of egress and the occupant load shall be provided at time of building permit application. Temporary structures shall have permanent fire rating labels attached for inspectors review.
- 14) Tent Permit and inspection by the City of New Berlin Fire Department are required for events requiring tent set up. One or more fire extinguishers required in all temporary structures.
- 15) Applicant shall apply for and receive individual Sign Permits for all event signage and banners prior to installation.
- 16) The City of New Berlin reserves the right to review any potential complaints and take appropriate action, if necessary.
- 17) Site Plan:
 - a) Applicant shall coordinate all traffic flow with Waukesha County Department of Transportation and shall contact Waukesha County DOT to inform them of the events.
 - b) There shall be no parking on Moorland Road or in the neighborhood East of Moorland Road. All event parking shall be contained on site or adjoining properties. If parking is to be on adjoining properties, letters from those property owners shall be on file with the City prior to allowing any off-site parking.
 - c) Parking and all activities shall meet all setback requirements.
 - d) All signs shall be installed outside the ultimate right-of-way.

Seconded by Mr. Vaclav.

Motion by Mr. Fillar to amend the motion to include that no music is to be played on the front stage. Motion to amend fails for lack of second.

Mr. Fillar explained his intent for the amendment was to force the issue. If the owner is expected to do this, he would be more likely to actually do it and we won't get promises of trying to do as good as possible. Also because of the number of events, Mr. Fillar expressed his concern of this turning into an annual festival and these grounds could become festival grounds which is not the intent in an industrial park. With all the events, people, music, etc. it is starting to look less like a business at times.

Mayor Chiovaturo commented that the event list for this property seems to be getting shorter every year. Hal's Harley has been very accomodating with the City as well as with the neighbors.

Upon voting the original motion passess with Ms. Broge, Mayor Chiovaturo, Mr. Vaclav voting Yes and Mr. Fillar voting No.

2. (3)JT SG-09-10 Hal's Harley Davidson – 1925 S. Moorland Road – Sign.

Motion by Ms. Broge to approve the request, along with Waiver Request #1, for a sign face change to an existing legal non-conforming monument sign located at 1925 S. Moorland Road subject to the application, plans on file and the following reasons:

WAIVER REQUEST #1: Applicant is requesting a waiver from Section 275-61.E(1) which states that any alteration to a legal nonconforming sign, including changing the sign face, requires that the sign shall be brought into compliance with the current zoning code. The sign currently exceeds the maximum height of 8-feet.

- 1) The applicant is proposing a partial face change of an existing monument sign. The "Buell" portion of the existing sign will be replaced with an LED message board.
- 2) Section 275-61.I(1)(c)[2] of the zoning code states: "The monument sign shall not exceed eight feet in overall height above the mean lot grade and shall be set back entirely outside the base setback line". The existing sign is 12-feet tall.
- 3) Due to existing site conditions, such as the speed of traffic and grade changes along Moorland Road, staff recommends approval of the waiver. The grade at Moorland Road is approximately 2-feet higher than the grade of the sign base. The building sits at a grade approximately 16-feet lower than Moorland Road.
- 4) Since this is a legal non-conforming sign and the sign is not being brought into compliance with the existing code, Staff cannot administratively grant approval of the face change.
- 5) The Community Development Authority has the authority to grant this waiver pursuant to Section 275-52(C), which states "The Plan Commission may waive or modify any or all of the other requirements of this article if it determines that:
 - a) The site or activity in question will have no appreciable off-site impact;
 - b) Compliance with the requirement(s) is impractical or impossible due to site conditions or other circumstances beyond the control of the applicant;
or
 - c) The specific requirement is not necessary for a particular site to ensure compliance with the requirement of this chapter.

Seconded by Mr. Vaclav.

Motion by Mr. Fillar to amend the motion to limit the sign use to text only, no graphics. Motion to amend fails for lack of second.

Mr. Fillar explained his intent to limit the sign use to text was to eliminate the potential for distracting motorists on Moorland Road. Mr. Fillar said by allowing these animated signs and graphic signs to grow along Moorland Road, it's going to turn into a honky-tonk environment. If this concept gets carried away, it will look bad.

Mayor Chiovaturo relayed that taking away the graphic portion of the sign would take away from the effects that the applicant is trying to achieve with that type of sign.

Upon voting the original motion passes with Ms. Broge, Mayor Chiovaturo, Mr. Vaclav voting Yes and Mr. Fillar voting No.

3. (3)AB UA-09-09 Super Products, 17000 Cleveland Avenue – 2,500 Sq. Ft. Building Addition.

Motion by Mr. Fillar to approve the request for Use, Site and Architectural approval to construct a 2,500 sq. ft. building addition and dock doors, along with the parking waiver, located at 17000 W. Cleveland Avenue, subject to the application, plans on file and the following conditions:

Waiver #1: Applicant is requesting a waiver from the City's parking requirements. Section 275-57-1 requires 111 parking spaces for this business, the applicant is proposing 68 spaces.

- 1) General:
 - a) Plan of operation shall be consistent with submitted plans on file.
 - b) Architecture Review Committee approved the building addition architecture on March 18, 2009.
 - c) Applicant shall submit a payment of \$14,252.73 prior to the issuance of the Zoning Permit for trees previously removed (25,000 sq. ft) on site for compliance with the woodland protection section of the code.
 - d) Dumpsters shall be properly screened from the street and public view in accordance with Section 275-56 of the Zoning Code.
 - e) Employee and customer parking shall be contained on site.
 - f) Any signage shall require a separate application and issuance of a Sign Permit prior to fabrication and installation.
- 2) Engineering:
 - a) Applicant shall repair and/or unblock the storm sewer in the Calhoun Road driveway area.
 - b) A catch basin may be required to be added to the parking lot area if there are low points resulting from the addition. A determination and/or plan shall be submitted prior to issuance of the Zoning Permit.
- 3) Building Inspections:
 - a) Building plans shall be signed and stamped by a licensed architect or professional engineer per the Wisconsin Enrolled Commercial Building Code. (Comm.61.31).
 - b) Building plans shall be approved by the State of Wisconsin Dept. of Commerce Safety and Buildings Division. (Comm. 61.70).
 - c) Apply and obtain appropriate building, electric and plumbing permits.

- d) The building shall be fully accessible from the parking lot to the interior elements. (Comm. 63.1101 and ICC/ANSI A117.1)
 - e) Erosion control shall be approved, permitted, installed and inspected prior to any commencement of any site work or issuance of building permits.
- 4) Fire Department:
- a) Install Knox Box.
 - b) Monitor Fire Flow.

Seconded by Ms. Broge. Motion carried unanimously.

4. ()GK PG-631-5 Pinewood Creek Project – Compliance Certificate

Motion by Mr. Vaclav to accept the Pinewood Creek Compliance Certificate.
Seconded by Mr. Fillar. Motion carried unanimously.

5. ()GK PG-516 Comprehensive Plan Update

Mr. Kessler announced Neighborhood Meeting “D” is scheduled for April 8, 2009 at the New Berlin West High School Idea Lab at 6:00 P.M. and Neighborhood Meeting “G&H” is scheduled for April 20, 2009 at New Berlin City Hall Council Chambers at 6:00 P.M. The draft chapter for Neighborhood “C” which is for the New Berlin Industrial Park is completed and available on the website. Edits or comments are welcomed. Neighborhood “J” draft chapter is being developed and will reference the Ruckert & Mielke Report and the GDMP Plan for this area. In summary, we are about half way through the entire process. We have dealt with all the neighborhoods but the final two meetings. Now we will be getting to the actual overall chapters such as transportation, utilities, implementation, intergovernmental cooperation, etc. We are anticipating Open Houses on this process in early September, and hopefully the document will be ready for Public Hearing in October.

COMMUNICATION

6. Communication To: Plan Commission
Communication From: Jessica Titel, Associate Planner
RE: “Blue Collar, Green Collar”, by Cecily Burt, Planning, February 2009

Committee members acknowledged receipt of this communication.

ADJOURNMENT

Motion by Mr. Fillar to adjourn the Community Development Authority meeting at 8:30 A.M.
Seconded by Ms. Broge. Motion carried unanimously.