

CITY OF FRANKLIN
COMMITTEE OF THE WHOLE MEETING*
MONDAY, OCTOBER 31, 2011, 6:30 P.M.
COMMON COUNCIL CHAMBERS, FRANKLIN CITY HALL
9229 W. LOOMIS ROAD, FRANKLIN, WISCONSIN
AGENDA

- I. Call to Order and Roll Call
- II. Business
 - A. Eagle Scout Leadership Service Project presentation by Scot Skowronski and authorization to upgrade lumber to cedar for the construction of a gazebo in Ken Windl Park with funding from the Parks Department 2011 Capital Outlay Park Improvement Fund.
 - B. Concept review for a proposed Gordon Food Service Marketplace and future commercial development (at 6919 S. 27th Street) (Bill Casey, applicant).
 - C. Concept review for a proposed indoor controlled environment agriculture development (at 3617 W. Elm Road) (Scott Biller, applicant).
 - D. Concept review for a proposed mixed use development (at approximately 7000 W. Rawson Avenue) (The Hintze Group, applicant).
 - E. Common Council agenda setting.
- III. Adjournment

*Notice is given that a majority of the Plan Commission may attend this meeting to gather information about an agenda item over which the Plan Commission has decision-making responsibility. This may constitute a meeting of the Plan Commission per State ex rel. Badke v. Greendale Village Board, even though the Plan Commission will not take formal action at this meeting.

[Note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, contact the City Clerk's office at (414) 425-7500.]

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 10/31/2011
REPORTS & RECOMMENDATIONS	Eagle Scout Leadership Service Project Presentation By Scot Skowronski and authorization to upgrade lumber to cedar with funding from the Parks Department 2011 Capital Outlay Park Improvement Fund	ITEM NUMBER <i>II. A.</i>
<p>Eagle Scout candidate Scot Skowronski will present his project plans to Franklin Common Council for the construction of a gazebo at Ken Windl Park.</p> <p>At the Oct 10, 2011 Franklin Park Commission meeting Scot Skowronski presented his project to Commission members. They unanimously agreed with the plans, including the gazebo being constructed of cedar in lieu of treated lumber. To accomplish that, they recommended that up to \$1,000.00 be taken from the Parks Department 2011 Capital Outlay Park Improvement fund to be used to pay the additional cost for cedar lumber.</p> <p style="text-align: center;">COUNCIL ACTION REQUESTED</p> <p>Motion to approve Scot Skowronski's Eagle Scout Leadership Service Project at Ken Windl Park, as recommended by the Franklin Park Commission, and authorization to upgrade lumber to cedar with funding from the Parks Department 2011 Capital Outlay Park Improvement Fund.</p>		

APPROVAL <i>Slw</i>	REQUEST FOR COMMITTEE OF THE WHOLE	MEETING DATE 10/31/11
REPORTS & RECOMMENDATIONS	CONCEPT REVIEW FOR A PROPOSED GORDON FOOD SERVICE MARKETPLACE AND FUTURE COMMERCIAL DEVELOPMENT (AT 6919 S. 27TH STREET) (BILL CASEY, APPLICANT)	ITEM NUMBER <i>II.B.</i>

On October 26, 2011, Mr. Bill Casey of GFS Marketplace Realty Five, LLC, submitted an application for a Concept Review for a proposed GFS Marketplace to be located at 6919 S. 27th Street. The property is owned by Bouraxis Andreas Irrevocable Trust. The applicant intends to lease the property from the current property owner.

The subject property is zoned Planned Development District No. 10 (permitted and special uses generally coincide with the B-3 Community Business District), and encompasses approximately 3.19 acres. The property is currently vacant and is located north of two Riverwood Village retail buildings, directly south of the recently constructed Dental Associates building, east of Gander Mountain, and west of the City of Oak Creek. This property was previously proposed for Andy's Charhouse and most recently a Golden Corral restaurant. The area is identified for future commercial development in the City of Franklin 2025 Comprehensive Master Plan and is located within the S. 27th Street Corridor.

According to the applicant, Gordon Food Service (GFS) is North America's largest family-owned broadline foodservice distributor. GFS serves a variety of customers, including but not limited to, restaurants, theme parks, religious organizations, hotels, convenience stores, and schools. In addition to their distribution operations, GFS has over 140 Marketplace store locations throughout nine states. GFS has constructed several Wisconsin stores, including Madison, Racine, Pleasant Prairie, and most recently West Milwaukee. GFS Marketplace stores allow existing customers access to their products for emergencies or between deliveries. The stores also sell products for individual needs, functioning as a unique type of grocery store.

The attached preliminary plans propose an approximately 15,900 square foot building for the GFS Marketplace. The conceptual plans also include a future approximately 8,000 square foot addition to the building. The future use is anticipated for retail; however, uses would be allowed as under the B-3 Zoning District per PDD No. 10. Although, this would include the potential for a future restaurant and possible outdoor dining, sufficient parking would have to be provided for such a use. The applicant is only proposing to develop Phase I at this time and it is envisioned that the property owner would develop Phase II in the future. The timeframe for development of Phase II is unknown. The proposed GFS Marketplace building will consist primarily of brick and includes an awning and gooseneck lighting above the front corner entrance. The site when fully built out could potentially contain 119 parking spaces. GFS envisions construction of 67 of those parking spaces at this time, leaving 54 spaces for construction during Phase II.

Staff notes that the project will require an Amendment to PDD No. 10, consistency with the S. 27th Street Corridor standards, and the final plans and uses for Phase II are not being submitted to the City for review or approval at this time.

COUNCIL ACTION REQUESTED

Provide direction to the applicant regarding the proposed development for the proposed GFS Marketplace and future commercial expansion (at 6919 S. 27th Street) (Bill Casey, applicant).



Project Narrative

Gordon Food Service (GFS) proposes to construct an approximately 16,000 square foot retail food service store at 6919 27th Street, at the northwest corner of 27th Street & Riverwood Boulevard. The overall property consists of 3.18 acres, with proposed GFS ground lease area to consist of approximately 1.93 acres. The site is currently zoned Planned Development (PDD #10), with most recent PDD amendment taking place in 2008 (Golden Corral restaurant).

The current site plan shows two (2) phases of development within the larger 3.18 acre parcel, with the GFS project being Phase I and a potential retail building as Phase II. The retail building is shown as an attached building (although they will be structurally independent of each other) in order to show a more unified development look.

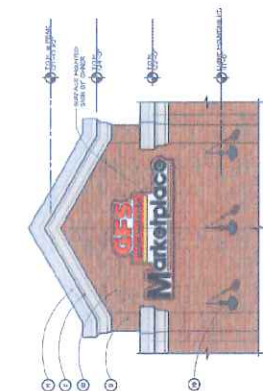
Access to the site is currently from Riverwood Boulevard, which is a signalized intersection with 27th Street. A future connection to the property to the north is shown at the northwest corner of the property, although this connection is anticipated with Phase II development. No access is proposed to 27th Street.

Site utility service is readily available along the south (Riverwood) property line. Service stubs for sanitary sewer and water connections are to be extended from Riverwood into the GFS building. Gas, electric and phone/data are available along both the south and east property lines. The future (Phase II) retail will utilize separate utility service lines from the GFS building. The storm water drainage from this site (both Phase I and Phase II) will connect to existing development storm sewer, with no additional management measures proposed at this point in time.

The building materials will consist of a "utility brick", capped with a decorative EIFS cornice and metal cap flashing. GFS Marketplace Stores uses a "utility brick" called Bella Brik, made by Consumers Concrete. The Bella Brik color is blended especially for GFS and is called "GFS Blend". This Bella Brik will sit on top of a classic water table made of precast concrete and a plinth course of split face architectural block the color of "Whitesands".

Other colors for the exterior store finishes are as follows. The standing seam metal canopy will be "Colonial Red", as well as the metal doors and guardrail. The aluminum entry doors and windows are "Colonial White", also in this range of white will be the wall fixtures and light pole standards. The EIFS cornice will be "Pearl" matching the aluminum entry doors, and the cap flashing will be "Parchment" and match the "Natural Grey" of the precast concrete water table. For additional highlights, the canopy will have decorative "Black" gooseneck wall fixtures that create a warm and inviting building entry.

Pending City approvals and permits, construction expected to begin in the Spring of 2012, with store opening in mid to late 2012.



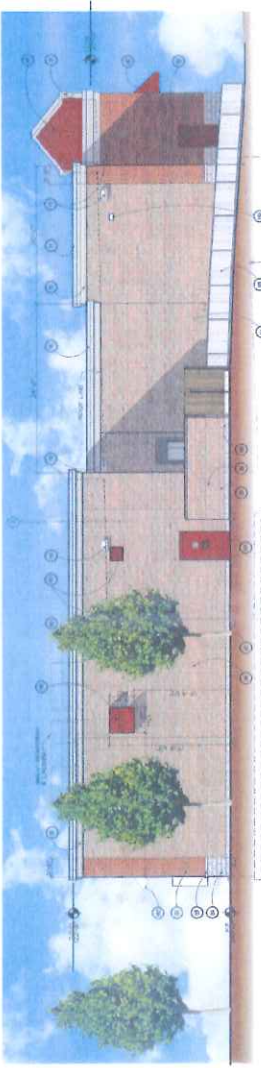
1 SIGN ELEVATION ABOVE ENTRY



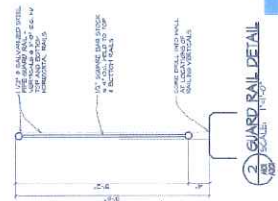
EAST ELEVATION



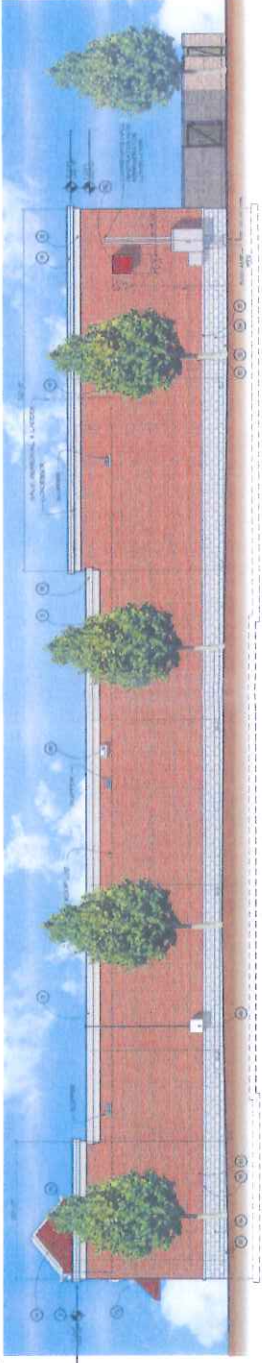
SOUTH ELEVATION



WEST ELEVATION



2 GUARD RAIL DETAIL



NORTH ELEVATION

paradigm design

5803 HILL NW,
SUITE 1
BIRMINGHAM, AL 35244

918.725.5455
918.725.5457
PARADIGMDC.COM
FAX: 918.725.5411

PROJECT

GFS MARKETPLACE STORE

Franklin

OCT 26 2011

City Development

FRANKLIN, AL

BUILDING OWNER:

Placate Real Estate, Inc.

422 10TH STREET SW
BIRMINGHAM, AL 35203

RELEASE DATE:

PROJECT

1002014

SHEET

A 201

APPROVAL <i>Slw</i>	REQUEST FOR COMMITTEE OF THE WHOLE	MEETING DATE 10/31/11
REPORTS & RECOMMENDATIONS	CONCEPT REVIEW FOR A PROPOSED INDOOR CONTROLLED ENVIRONMENT AGRICULTURE DEVELOPMENT (AT 3617 W. ELM ROAD) (SCOTT BILLER, APPLICANT)	ITEM NUMBER <i>II. C.</i>

On October 26, 2011, Mr. Scott Biller of Integrated Aquaponics, LLC, submitted an application for a Concept Review for a proposed aquaponics/indoor controlled environment agriculture development to be located at 3617 S. 27th Street. The property is owned by Harold B. Biller.

The subject property is currently zoned RC-1 Conservation Residence District, and encompasses approximately 80 acres. The property is currently vacant and is located north of agricultural land zoned RC-1, south of agricultural land and commercial property zoned B-7 South 27th Street Mixed Use Office District, east of agricultural land zoned A-1 Agricultural District, and west of vacant commercial land zoned B-7 District. The area is identified for future mixed use development in the City of Franklin 2025 Comprehensive Master Plan and is located within the S. 27th Street Corridor.

According to the applicant, aquaponics is a sustainable form of farming that is able to produce two crops within one system, fish and a variety of plants. The applicant has indicated several benefits of an aquaponic system: sustainable and continuous food production; production of organic produce; production of food that is free of pathogens and soil born diseases; uses very little water compared to traditional farming; and production is local and reduces energy consumption associated with transportation. Please see the applicant's project narrative for additional details.

The applicant intends to phase the development, starting with one "module." A module consists of three 28' x 105' bays that are connected to form a single greenhouse. Phase 1 also includes a 1,200 square foot attached administration building. The applicant is illustrating up to six modules on approximately 4.13 acres. The applicant may propose a Certified Survey Map to separate the area needed for the aquaponics use and initial six modules.

The applicant listed several potential future uses for the remaining areas of the 80 acre property: a farmer's market or retail public market; mixed use wellness/health center; sustainable home sites with integrated aquaponic modules; and a Continuous Care Retirement Community (CCRC) centered around an aquaponic module. Potential acreage for each future use is shown on the proposed Master Site Plan.

The proposed use is currently prohibited within the RC-1 District. Staff recommends the applicant apply for a Unified Development Ordinance (UDO) Text Amendment to add "Indoor Controlled Environment Agriculture" as a type of use in Table 15-3.0602 of the UDO and that use be considered as a Special Use in the RC-1 District. Accordingly, the

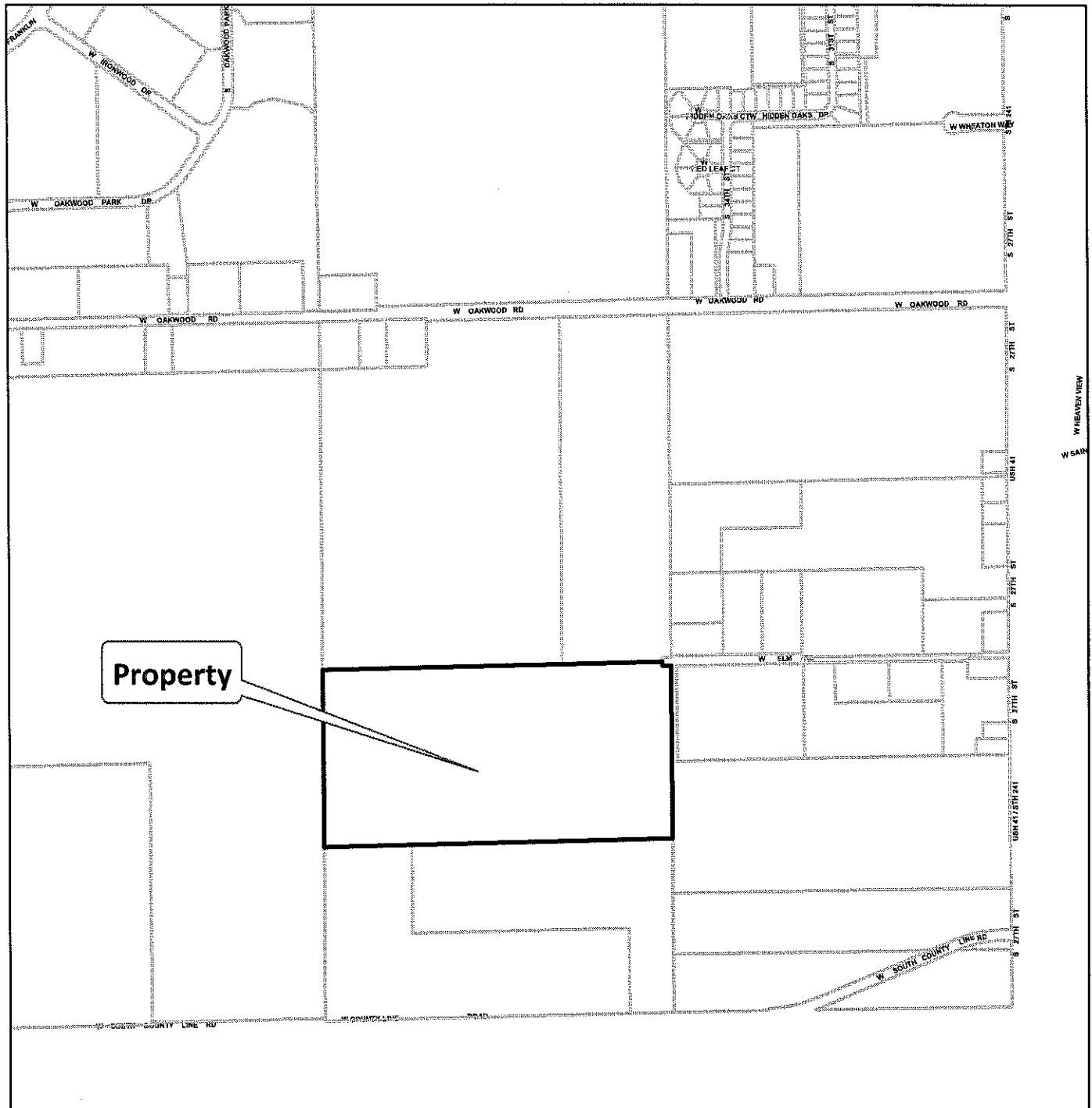
applicant will also be required to submit a Special Use Application under this process scenario. A Comprehensive Master Plan Amendment application may also be required. Other process options include rezoning the property to a Planned Development District, an agricultural district, or a newly created district. It is staff's understanding that the applicant is considering creation at a separate parcel for this proposal, in which case a CSM would also be necessary.

As previously stated, the property is located within the S. 27th Street Corridor and is subject to the South 27th Street Overlay Design Standards. These standards promote high-quality developments and the use of high-quality building materials, such as brick and stone, and site features. Staff has concerns the applicant's development of a greenhouse will not meet these standards. The standards do allow for Plan Commission waivers for certain requirements.

COUNCIL ACTION REQUESTED

Provide direction to the applicant regarding the proposed indoor controlled environment agriculture development (at 6617 W. Elm Road) (Scott Biller, applicant).

3617 West Elm Road



0 700 1,400 2,800 Feet

City Development 2011
(2010 Aerial Layer)



October 26, 2011

Franklin

OCT 26 2011

City Development

**Project Narrative
Integrated Aquaponics, LLC
Proposed Commercial Aquaponic System
3617 W. Elm Road
Franklin, WI**

The Parcel:

Harold Biller owns a 79.79 acre parcel located on the SW corner of Elm Rd and the proposed extension of 35th St (tax key 979-9997-000). Integrated Aquaponics, LLC will be purchasing a 4.13 acre parcel that will be split off via a CSM. The current zoning is RC-1. It is also understood the long range planning calls for this area to be developed with a mixed use overlay. Scott Biller, a member of Integrated Aquaponics, has developed a master site plan (see attached drawing), that provides a concept for how this site could be developed over time. The goal is to make sure we have a good fit into the surrounding urban fabric and to meet the city's goal for increasing the tax base with the highest and best use for that area. We would like to incorporate a form of sustainable agriculture throughout the site. This is different than traditional farming. Aquaponics falls under the classification of "Controlled Environment Agriculture". All growing operations take place in an enclosed bio-secure greenhouse. Controlled environment agriculture reduces the risk of production due to unpredictable weather, insect infestations and other environmental variables. An "Integrated Aquaponic System" allows for continuous sustainable food production year round.

Zoning and Use:

Currently agriculture use is not a permitted use in the RC-1 zoning. We would be requesting a change in the Unified Development Ordinance (UDO) to allow this type of "Controlled Environment Agriculture" to be allowed as a special use. We also understand that amending the UDO does not guarantee that the special use will be granted. We would still need to request the special use which must be approved by the Plan Commission and Common Council. We are proposing to create a 4.13 acre parcel to accommodate the commercial aquaponic system (see site plan).

The Concept:

Aquaponics is a sustainable form of farming that is able to produce two crops within one system, fish and varying types of plants. This system has the ability to produce an intensive volume of high quality produce in a small area. The proposed system is contained in a bio-secure environment. Both plants and fish are produced inside an enclosed greenhouse and support building. This is an integrated system where plants benefit the fish and the fish benefit the plants. This symbiotic relationship allows for higher yields of both crops than if produced separately. It does not require the use of any insecticides, pesticides or fertilizers. The produce is also considered to be 100% organic.

The purpose of developing this type of agriculture in an urban environment is to demonstrate that produce can be grown in a sustainable manner and consumed locally (within a 50 mile radius of the production facility). This greatly diminishes the associated transportation costs of food production. This type of system makes local food production attractive and commercially competitive. We have designed our system on a modular approach. We will build 6 individual modules which will make up a "Pod". A 6 module system allows for weekly production of both the fish and plant crops. Pods would then be replicated on other sites extending the food production to other urban locations. This basically will decentralize the entire food production chain.

This type of “controlled environment agriculture” is an intermediately mature technology. This concept has great potential in the commercial marketplace. The initial design concept has 30 years of research behind it. The leading university in the research of Aquaponics has had a commercially scaled operation running in continuous production for the past 12 years. There are many commercial systems patterned after this design that are in operation around the US and the world and have validated this design concept.

The Benefits of an Aquaponic System:

- Sustainable and continuous food production.
- Produces organic produce (no insecticides, pesticides or chemical fertilizers).
- Produces food that is free of pathogens and soil born diseases.
- Uses very little water compared to traditional farming.
- Production is local and reduces energy consumption associated with transportation.

Development Process

Development of the Integrated Aquaponic Pod will be accomplished through a phased process.

Pre-planning:

- Obtaining all governmental approvals
- Site and building design
- Installation of site improvements and utilities
- Establish channels for sales of the produce and fish.

Phase I:

- Build and make operation “Module 1”

Phase II:

- Continued operation of Module 1 while tweaking the crop selection.
- Build and make operational Modules 2-6

Daily Operations:

This facility would be operated during normal business hours from 7 am to approximately 7 pm. No overnight activities will be required. Each module will have one full time manager operating the system with 1 or 2 part-time employees to assist in the daily operations and harvesting. Local traffic impact will be limited to deliveries of supplies on a bi-weekly basis and the shipping of produce likely to be on a weekly basis.

Daily Functions

- Feeding the fish
- Seeding, rotating and harvesting of the plants
- Observation and monitoring of the system
- Water quality testing
- Cleaning filters and system components
- Weekly processing and packaging of produce
- Weekly fish harvesting (fish processing will be performed off site)

System Size

One module consists of (3) 28’x105’ bays that are gutter connected to form one greenhouse (8,820 SF), and a 10’x84’, galleria connector building. A separate 1200 SF administration building will be attached to the Galleria (see attached drawings) in phase II. The complete “Integrated Aquaponics Pod” will consist of 6 modules built in phases over a 2-3 year period. A complete Pod will cover 60,000 SF of the 180,000 SF site.

Production Capacity

Each module will consist of 4-800 gallon fish tanks that can produce 3,600 lbs of tilapia annually. The hydroponic component is capable of producing the equivalent of 77,000 heads of lettuce and 5,800 pounds of tomatoes annually. Future production will include other types of produce such as specialty greens, culinary herbs, other fruit bearing plants and medicinal herbs. These more valuable crops will be introduced in the second year once the system has been stabilized. The lettuce head count is representative of the system's capacity. A complete Pod (6 modules) operating at full capacity will produce the equivalent of 425 lbs of tilapia, 8,800 heads of lettuce and 675 lbs of tomatoes on a weekly basis.

Site Requirements

Site Utilities: This system will require electricity and natural gas to be extended to the site.

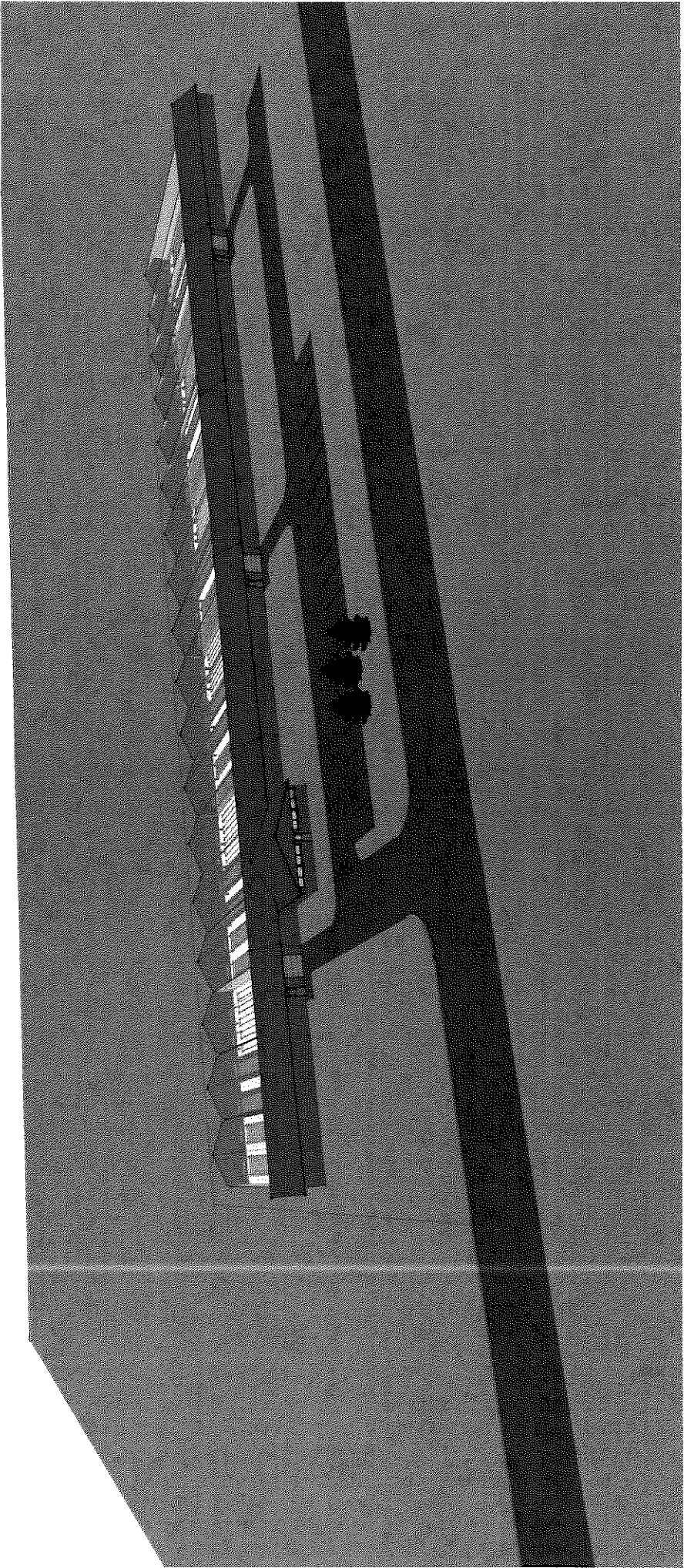
Water: A standard well will be installed. A high capacity well is not required. This is a closed loop system. Once the tanks have been filled the daily water replacement is approximately 2% of the total system volume due to plant transpiration and evaporation. A single module will contain 11,200 gallons. Water replacement will be 225 gallons per module or approximately 1500 gallons per day for the whole Pod. A 20 GPM pump would need to run approximately 10 hours for the initial fill of each module and then only 15 minutes per day under normal operations.

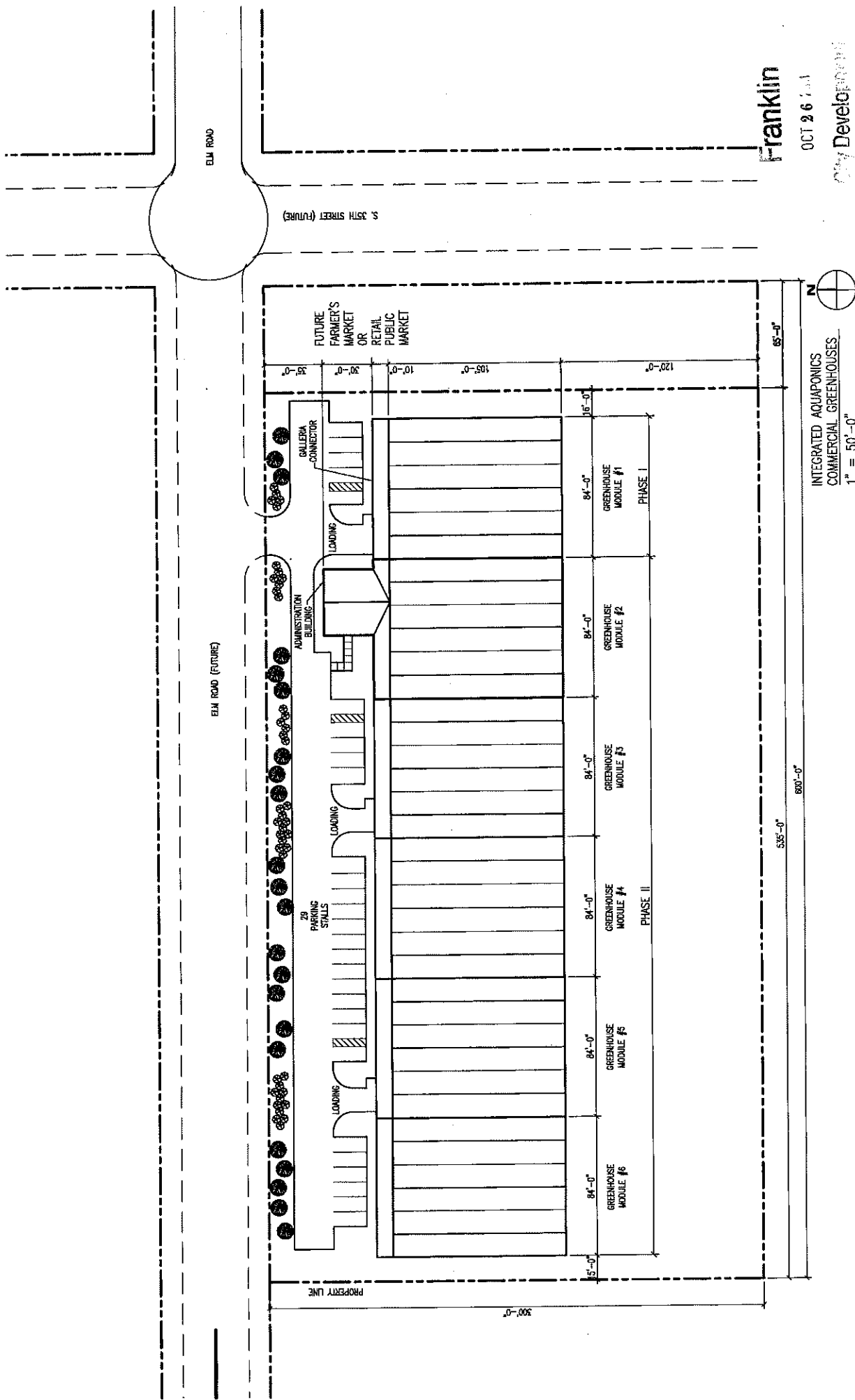
Sanitary: Requirements are minimal since each aquaponic module is a closed loop system. The waste stream is converted to nutrients for the plants to consume. There is no discharge from the system itself and the sanitary load would come only from the occupants working in the facility.

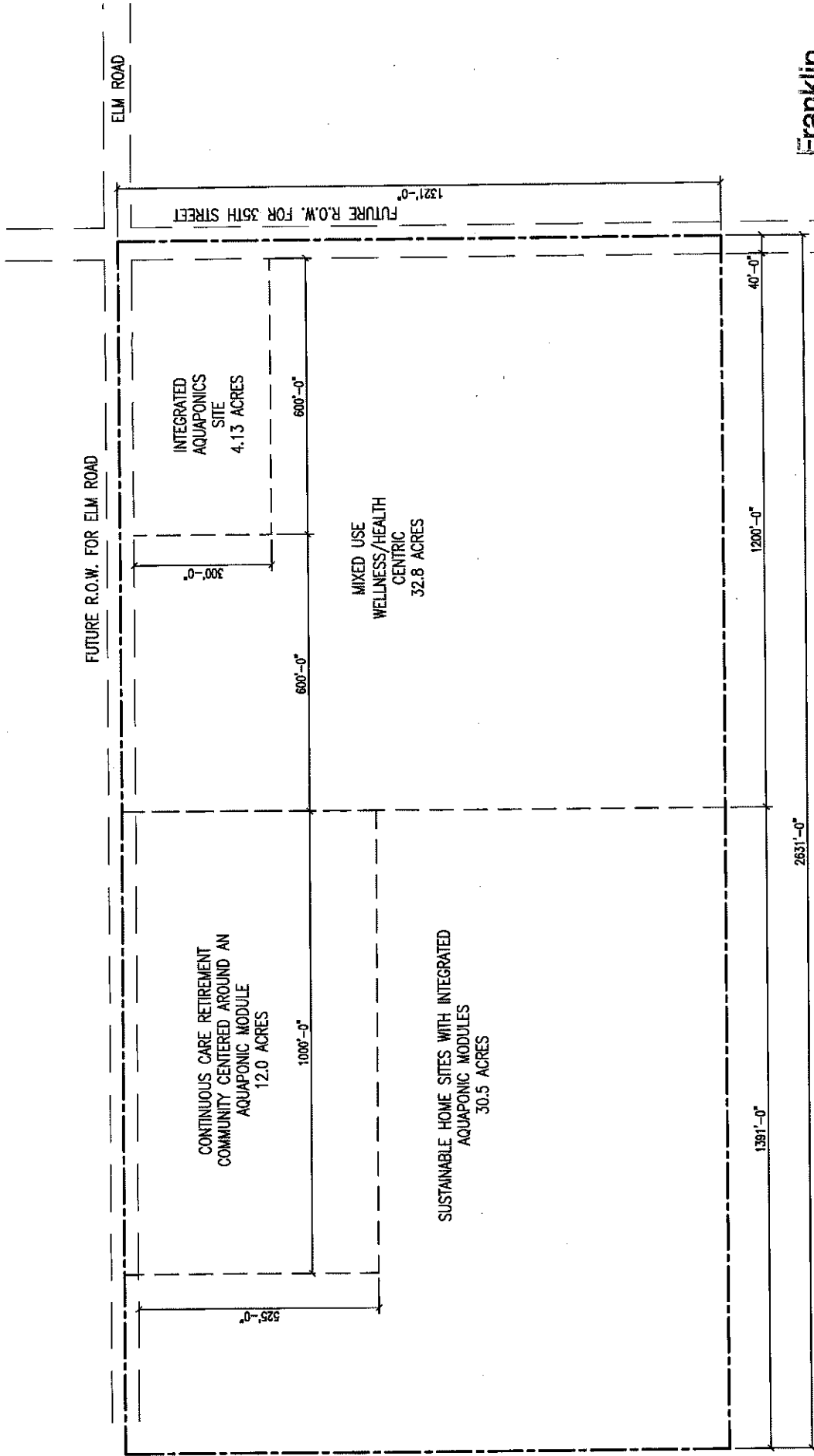
Heating, cooling and Ventilation: Heating will be accomplished via an in-floor radiant hot water heat system used to maintain the water temperature in the raft tanks which act as a thermal heat sink. This method allows the air temperature to be 10-15 degrees cooler than the target water temperature further reducing the heat load. Supplemental heat will be provided by a high efficiency natural gas condensing unit heater. The systems design will also take advantage of passive solar gain during the day. Additional energy savings will be obtained from thermal insulation of the ground as well as the greenhouse structure itself. Capturing the waste heat from supplemental HID lighting running at night will also reduce the buildings heat load. Ventilation will take advantage of natural convection when possible using ridge venting and exhaust fans in the greenhouse end walls.

Electrical Requirements: Each module consists of (1) 1½ HP water pump, (1) 1½ HP regenerative air blower and (40) 1000W HID supplemental lighting in the greenhouse. Additional electrical requirements include a walk-in cooler, the mechanical equipment, the office area, equipment monitoring and other miscellaneous electrical functions. Monthly electrical consumption for one module runs from a low of 1,300 KWH to a high of 12,800 KWH.

Access and Parking: Access for this project initially would consist of extending a private road from the west end of Elm Road with a permanent connection made to the future extension of Elm Road. The site will contain surface parking for circulation of cars and trucks used for food distribution, employees and visitors. Impervious surface area is approximately 22,000 SF.







Franklin

OCT 26 11

The Development



PROPOSED MASTER SITE PLAN
 PARCEL TAX ID: 979-9997-000
 79.79 ACRES
 OCTOBER 26, 2011

APPROVAL <i>Slw</i>	REQUEST FOR COMMITTEE OF THE WHOLE	MEETING DATE 10/31/11
REPORTS & RECOMMENDATIONS	CONCEPT REVIEW FOR A PROPOSED MIXED USE DEVELOPMENT (AT APPROXIMATELY 7000 W. RAWSON AVENUE) (THE HINTZE GROUP, APPLICANT)	ITEM NUMBER <i>II. D.</i>

On October 26, 2011, Mr. John Klement submitted a Concept Review application for a mixed use development proposed at approximately 7000 W. Rawson Avenue on behalf of the property owner. The property is owned by Scan Partnership, LLC.

The subject 10.42 acre property is currently vacant and has a B-2 General Business District zoning designation. The property is located north of Westminster Condominiums, south of the Polish Center, east of a single-family residence, and west of Marmax Distribution Company. The area is identified for future commercial development in the City of Franklin 2025 Comprehensive Master Plan.

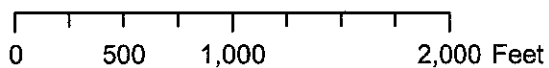
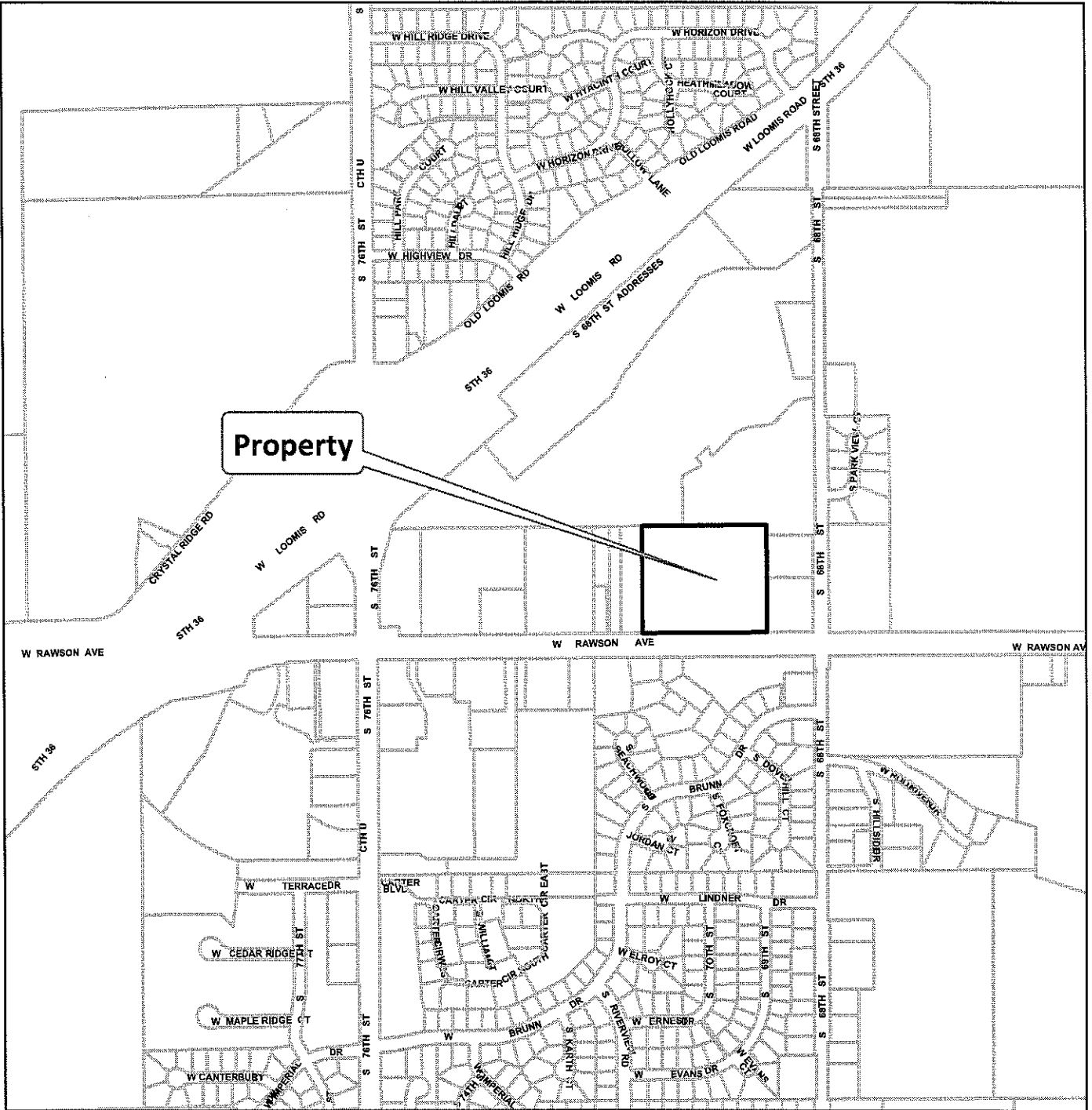
The attached preliminary plans propose a senior living apartment complex, a memory center, and two separate buildings for future retail uses. According to the applicant, the proposed 150 to 160 unit senior apartment complex will offer market rate housing for residents over the age of 55. The site contains several protected natural resources, including wetlands and associated wetland buffers and setbacks, young woodlands, mature woodlands, and steep slopes. The applicant anticipates filling portions of the wetlands on the property and encroaching into the steep slopes. Staff did not find sufficient evidence to determine that the steep slopes are a non-protected man-made feature. The property also contains a SEWRPC Primary Environmental Corridor.

Staff recommends the applicant apply for a change of zoning to Planned Development District. A Comprehensive Master Plan Amendment and a Natural Resource Special Exception will also be required.

COUNCIL ACTION REQUESTED

Provide direction to the applicant regarding the proposed mixed use development (at approximately 7000 W. Rawson Avenue) (The Hintze Group, applicant).

~ 70th and Rawson



**City Development 2011
(2010 Aerial Layer)**



THE HINTZE GROUP, LLC
6936 N BRAEBURN LANE GLENDALE, WI 53209
P: 414-550-0644 • FAX: 414 351-3242
THEHINTZEGROUP@YAHOO.COM

October 27, 2011

City of Franklin
Planning Department
9229 West Loomis Road
Franklin, WI 53132

Franklin
OCT 27 2011
City Development

CONCEPT REVIEW APPLICATION

68th Street and Rawson Avenue, Franklin
Tax Key: 743-8997-000

The Hintze Group, LLC has been asked by the property owner, SCAN Partnership, LLC to develop and present a conceptual plan for the development of the vacant parcel described above.

The property consists of a 10.42 acres situated along the north side of Rawson Avenue west of 68th Street in the City of Franklin. The property is currently unimproved and contains a B-2 zoning classification. The property does contain various natural resources including wetlands, young woodlands, mature woodlands, and steep slopes.

The concept plan that we are presenting for review consists of a mixed-use, multi- family senior residential building as well as two, free-standing retail buildings. The plan, as proposed, will ultimately require a change in zoning to Planned Development District.

We appreciate the opportunity to present this concept and look forward to your observations and commentary.

Respectfully submitted,


R. Jay Hintze


John W. Klement

CONCEPT PLAN

BEING A PART OF THE SW 1/4 OF SECTION 3, T.5N., R.21E., CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN



SCALE: 1" = 50'

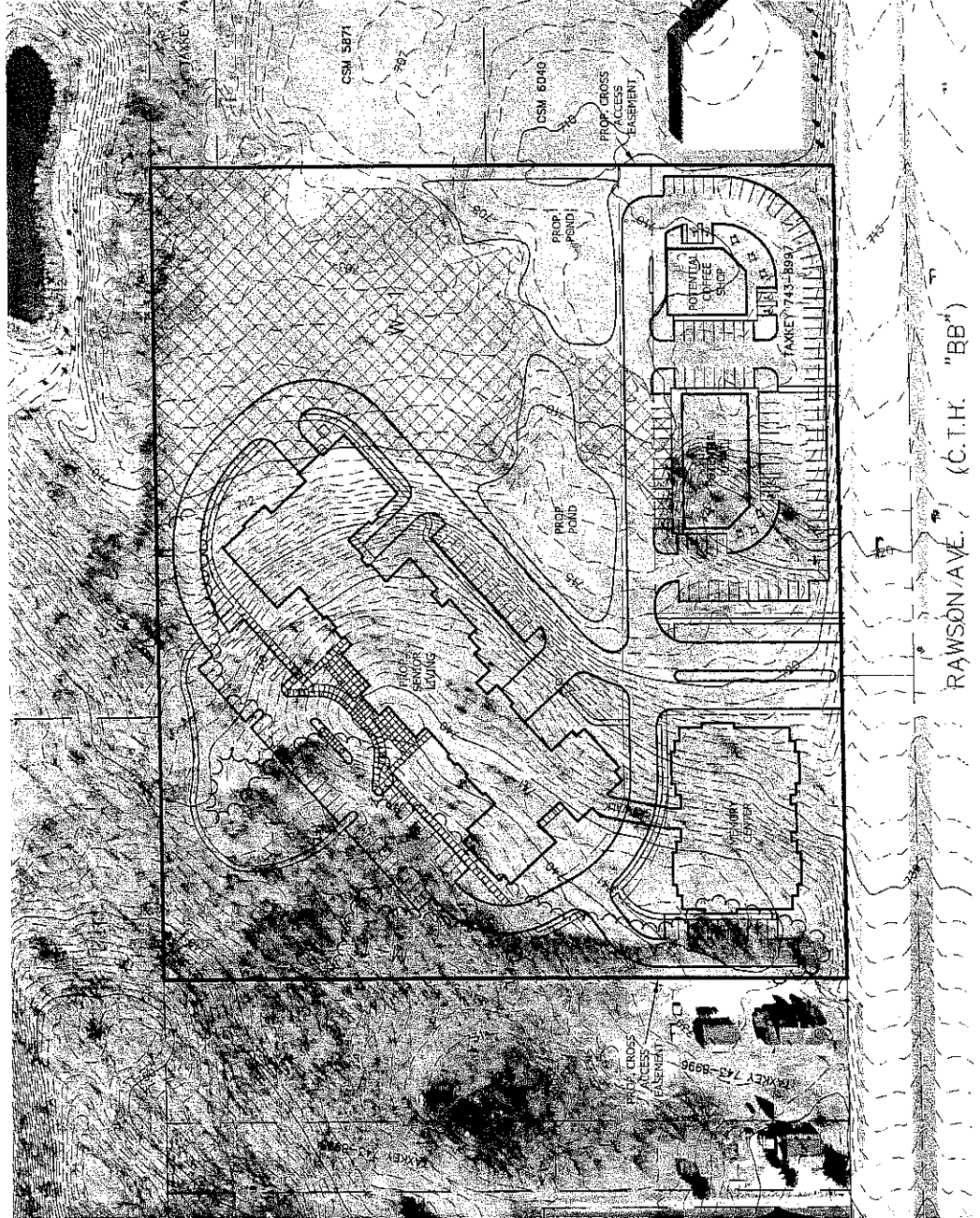
PREPARED BY:
 YAGGY COLBY ASSOCIATES
 500 MAPLE AVE.
 DELAWARE, WISCONSIN
 (414) 644-1100

LOCATION MAP



LEGEND

- APPROXIMATE NATURE DATA FOR GRAY NATURAL RESOURCE MAP
- ZONING CLASSIFICATION
- EXISTING TREES
- PROPOSED TREES



Franklin

OCT 27 2011

City Development

PROJECT: 10946
 FILE: 10946.DWG
 DATE: 10/27/2011
 CHECKED BY: K-H
 SHEET 1 OF 1

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE November 1, 2011
REPORTS AND RECOMMENDATIONS	Common Council agenda setting	ITEM NUMBER <i>II. E.</i>

This subject matter was referred from the October 4, 2011 Council meeting upon a direction to staff to review and recommend the methodology for agenda setting. The subject is being returned without any draft legislation for a number of reasons. Initially, the Council did not provide any specific direction as to any preferred method, and the Common Council may be satisfied with leaving the Municipal Code unamended and the current process to continue. Second, staff did a brief random survey of municipal codes upon the subject including Green Bay, Brookfield, Sheboygan, Kenosha, Waukesha, South Milwaukee, Glendale, Wausau, Madison, Pewaukee, Sun Prairie and West Allis, with only three being noted for something different than the current Franklin Code, i.e., the Madison Code provides that the Common Council President sets the agenda. Third, the issue is likely here because of a Legal Comment in the October, 2010 *Municipality* magazine published by the *League of Wisconsin Municipalities* (copy attached). Strict adherence to the simple bottom line of that opinion, that only the Council may set its own agenda, presents some immediate logistical concerns impacting governmental efficiency. A considered method of addressing that opinion would be for no item to appear upon a Council agenda unless the Council previously approved that appearance as an action item. A new agenda category of "new business" would appear on agendas to provide for any subject matter item requested (from any source?), to allow the Council to vote on whether that subject should appear on its next agenda (exceptions could be specified for certain sources, such as City departments). Regardless of the Council's previously directed interest in streamlining the development process, such a "new business" process could add two weeks (between Council meetings) to the review process for many matters. Finally, discussions among staff have not produced any considered need for any change to the current process, with next to zero recall over the past two decades plus of any concern generated by the existing process. The existing process is as set forth below in §19-2. of the Municipal Code, together with the three *League* legal opinions issued over the years, also set forth below. The October, 2010 *Municipality* Legal Comment is attached.

§19-2. Order of business.

A. Agenda. The business of the Council shall be conducted according to the agenda prepared by the Clerk. All matters intended to be placed upon a regular meeting agenda shall be submitted to the Clerk no later than 9:00 a.m. on the Friday during the week preceding the regular Tuesday meeting, and the Clerk shall distribute the agenda to Common Council members no later than 5:00 p.m. on the Friday during the week preceding the regular Tuesday meeting. No matters may be otherwise added to the agenda excepting those which are emergency in nature and could not have been submitted to the Clerk prior to the aforesaid deadline. The Clerk shall determine whether an item is emergency in nature, which determination shall consider whether, absent the consideration of such matter at the forthcoming meeting, harm may result to the health, safety and welfare of the community; irreparable harm may result to the applicant or some other individual or entity; or whether the subject matter being appropriate for Council determination would become moot, unavailable or preempted.

[Amended 12-16-1997 by Ord. No. 97-1482; 3-5-2002 by Ord. No. 2002-1708]

B. Citizen comment period.

(1) Every agenda of City Council meetings shall include, immediately following roll call, an agenda item entitled "citizen comment period." Such agenda item shall authorize any person to address the City Council.

(2) During the citizen comment period, no person shall speak for longer than three minutes at each Council meeting, unless the City Council shall direct otherwise to an individual. City Council direction may take the form of unanimous consent.

[Amended 3-5-2002 by Ord. No. 2002-1708; 8-18-2009 by Ord. No. 2009-1976]

(3) Nothing contained in this subsection is intended to limit in any way the right of the electorate to petition or Common Council agenda setting

November 1, 2011

Page 2

in any manner contact City government officials.

C. Committee of the Whole. The Common Council members shall regularly meet as a Committee of the Whole on the first Monday of each calendar month at 6:30 p.m., except when otherwise scheduled by majority vote of the Common Council or the Committee of the Whole to accommodate summer schedules, holidays, election days and the like. All meetings of the Committee of the Whole shall be held in the City Hall, except where a meeting is attended by a number of persons in excess of that number for which the facility may provide reasonable public access for the meeting or where the City Clerk, upon the advice and consent of the Mayor, has determined in advance of a meeting that such a large attendance is anticipated, and in either such event, the meeting may be adjourned to or scheduled at, respectively, a larger facility. The Mayor shall preside over meetings of the Committee of the Whole, unless absent, in which case the Common Council President shall preside; in the further absence of the Council President, the Alderperson designated upon the rotation calendar for such service pursuant to §33-1C of this Code shall call the meeting to order and preside until the Committee selects one of its members to preside for that meeting.

[Added 3-5-2002 by Ord. No. 2002-1708; amended 8-18-2009 by Ord. No. 2009-1976]

GOVERNING BODIES # 311

July 30, 1987

Summary - GOVERNING BODIES # 311

Affirms prior opinion concluding that the authority to make rules governing the setting of the common council's agenda is vested in the council by sec. 62.11(3)(e), Stats.

City Attorney John W. McNamee

City of Boscobel

P.O. Box 87

Fennimore, WI 53809

Dear Mr. McNamee:

You recently asked a question regarding setting the common council agenda. You explain that an alderman placed a matter on the agenda for consideration by the council at its next meeting. The mayor reviewed the agenda prior to its publication and removed the item placed on the agenda by the alderman. You ask "Can the Mayor control what is put on the agenda for the Common Council's meetings?" You give your opinion that the mayor cannot, since this would enable him to block council action by not permitting it to be voted upon by the council. You furthermore observe that sec. 62.09(7)(a), Stats., states that the corporate authority of the city is vested in the mayor and the common council.

In my opinion, the common council may determine the method for setting its agenda. If the common council has not exercised this authority, the mayor, arguably, may overrule the request of a particular alderman to place something on the agenda. However, the mayor would not have the authority to remove something from the agenda if the council, at a meeting, had directed that it be placed there. A discussion follows.

Section 62.11 provides certain minimal requirements regarding the time of meetings, quorum and voting requirement. This provision also states, in sub. (3)(e), that "the council shall in all other respects determine the rules of its procedure." As a prior opinion of this office, Governing Bodies # 292 (enclosed), states, the common council does have the authority to determine its rules of procedure, which could include the method of setting the agenda.

It therefore appears that the answer to your question might be found in your city's ordinances. If the answer is not there, then I am not certain how a court would rule. Certainly it would make more sense for the council to adopt an ordinance or bylaw and specify the procedure than it would to take the matter to court. Nevertheless, the legal issue is interesting. **I am inclined to think that in the absence of an ordinance or bylaw, the mayor very likely would have the power to set the agenda.** I say so because the mayor is the presiding officer of the council, sec. 62.09(8)(b), and the mayor has the duty, under the open meeting law, sec.

Common Council agenda setting

November 1, 2011

Page 3

19.84(1)(b) and (2), to give notice of the subject, time and place of the meeting. This duty under the open meeting law is an example of one of the mayor's duties or powers; note that these duties and powers do not have to be exercised at a meeting. In contrast, an alderman can exercise his or her authority only at a duly authorized meeting. I therefore doubt that a single alderman could order the clerk or the mayor to place an item on the agenda, unless, of course, such authority had been granted to the individual alderman by the council. However, I should add that the common council would at a meeting be able to direct that certain items be placed on the agenda for the following meeting. In such a case, the mayor would not have authority to remove these items. Feel free to contact me if you have further questions.

Sincerely,

James H. Schneider

Legal Counsel

JHS:5202:ber

Enclosure

cc: city clerk

GOVERNING BODIES # 326

August 9, 1991

Summary - Governing Bodies # 326

Concludes that since the village board determines its rules of procedure, it may prescribe the method for setting its agenda. See also Governing Bodies # 292 and # 311.

You have requested our opinion on the question of who controls the content of the agenda for village board meetings. You indicated that the question has arisen because the village president asserts that he has authority to delete agenda items presented by other trustees. You appear to hold the view that the board controls the content of the agenda.

In my opinion the village board may determine the method for setting its agenda. However, if the board has not exercised this authority, the village president, arguably, may overrule the request of a trustee to place a matter on the agenda. Following is a brief discussion.

While sec. 62.11(3)(e), Stats., expressly provides that the common council determines the rules of its procedure, there is no similar provision in ch. 61 (the village charter) with respect to the village board. However, the board has ample authority to determine its rules of procedure under sec. 61.34(1), the home rule statute. See also McQuillin, Mun. Corp., sec. 13.42 (3rd Ed.). Since the board may determine its rules of procedure, it may prescribe the method for preparing its agenda. See page 40 of the League's The Conduct of Village Board Meetings (enclosed). We have concluded in two prior opinions, Governing Bodies # 292 and # 311 (enclosed), that a common council's authority to determine its rules of procedure includes the power to determine the method for setting its agenda.

In Governing Bodies # 311 the League's legal counsel discussed the question of whether in cities the mayor may control the content of the agenda in the absence of an ordinance or bylaw governing how the agenda must be prepared. **He concluded that in the absence of an ordinance or bylaw, the mayor likely would have the power to set the agenda.** His reasons for reaching this conclusion were that the mayor is the presiding officer of the council and therefore has the duty, under the open meetings law, sec. 19.84(1)(b) and (2), to give notice of the subject, time and place of the meeting. This duty of the mayor need not be exercised at a meeting. In contrast, an alderman is able to exercise his or her authority only at a duly authorized meeting. See Governing Bodies # 308 (enclosed).

As you noted in your letter, the village president is the presiding officer of the board, secs. 61.24 and 61.32, and therefore has the duty under the open meetings law to give notice of the subject, time and place of the meeting. **It therefore appears that if the village board has not adopted an ordinance or bylaw governing the preparation of the agenda, the village president would have the power to overrule the request of a Common Council agenda setting**

trustee to place an item on the agenda. However, while it is true that the village president may conceivably delete agenda items presented by individual trustees, he or she may not remove items which the board specified at an earlier meeting should be placed on the agenda for the following meeting.

GOVERNING BODIES # 368

Frequently Asked Questions: Answers from the League's Legal Staff

January 31, 2000

Summary - GOVERNING BODIES # 368

8. Governing Bodies - Parliamentary Procedure. Who has authority to establish governing body meeting agendas?

The common council in cities and the village board in villages may determine the method for setting the governing body's agenda. **If the common council or village board have not enacted an ordinance, resolution or otherwise established a policy governing how the body's meeting agenda is prepared, the mayor or village president, arguably, may overrule the request of a particular governing body member to place something on the agenda. However, the mayor or village president would not have the authority to remove something from the agenda if the council or village board, at a meeting, had directed that it be placed there.** The basis for this conclusion is that the mayor and village president are the presiding officers of the common council and village board, respectively. The mayor and the village president have the duty, under the open meeting law, sec. 19.84(1)(b) and (2), Stats., to give notice of the subject, time and place of the meeting.

Certainly, a common council and a village board could, at a meeting, direct that certain items be placed on the agenda for the following meeting. In such a case, neither the mayor nor the village president would have authority to remove these items. See League legal opinions Governing Bodies 311 and 326 for more information on this topic.

COUNCIL ACTION REQUESTED

As the Common Council may determine appropriate.

AGENDA CONTROL AND PRESIDING OFFICERS

Daniel Olson, Assistant Legal Counsel

Although agendas are not required by any state law, many governmental bodies, by custom or procedural rule, use them. They are commonly published to satisfy the meeting notice requirements of the Wisconsin Open Meetings Law. They also serve important practical purposes by providing a structure that facilitates efficient and effective use of meeting time and curtails unproductive distractions by individual members of an assembly.

Agenda issues are generally low-key matters for local government officials and their legal counsel. Agenda control is one notable exception. Given the widespread use of agendas, agenda control could be viewed as a key means for reallocating authority in cities and villages. Accordingly, agenda control issues carry significant potential for generating high levels of local government conflict or dysfunction.

The agenda control question is commonly raised when a mayor, village president or other presiding officer seeks to assert dominance over the

agenda of a governmental body or exclude a particular member from agenda access. Inevitably, this circumstance will raise questions about presiding officer power to set or control the agenda.

In League opinion Governing Bodies 292, the League responded to this issue and concluded that a mayor's status as presiding officer does not confer any power to determine rules of procedure. Interestingly, a contrary conclusion, without reference to the earlier opinion, was reached in League opinion Governing Bodies 311. Given this inconsistency and the regularity of the issue, this comment considers it in more detail than either of these legal opinions with a focus on the agenda control power of mayors and village presidents under state law, commonly employed rules of parliamentary procedure and delegation by local ordinance or rule.

DOES STATE LAW GRANT A MAYOR OR VILLAGE PRESIDENT AUTHORITY TO SET A CITY COUNCIL OR VILLAGE BOARD AGENDA?

There is no state law that explicitly grants a mayor or village president power to set the agenda of their respective governing body. Accordingly, the next question is whether such power might be inferred from some statutory authority, which is precisely what was suggested in the Governing Bodies 311 opinion.

Governing Bodies 311 addressed whether a mayor can control what is

put on the agenda for common council meetings. It concluded that a common council's authority under Wis. Stat 62.11(3)(e) to "determine the rules of its procedure" does encompass "the method of setting the agenda." However, it further stated that in the absence of a common council rule, "the mayor very likely would have the power to set the agenda." The opinion writer reached this conclusion "because the mayor is the presiding officer of the council, sec. 62.09(8)(b), and the mayor has the duty, under the open meeting law, sec. 19.84(1)(b) and (2), to give notice of the subject, time and place of the meeting." The opinion did not provide any analysis of either statute.

Governing Bodies 311 rightly noted a mayor's statutory presiding officer and open meetings law notice powers in response to the question asked. They are the only state laws that reasonably invite examination for implied mayoral agenda control authority. However, a close analysis of the presiding officer statutes for mayors and village presidents as well as the notice duties imposed on them by the open meetings law shows that they do not grant mayors or village presidents any authority to set the agenda for a city council or village board.

PRESIDING OFFICER STATUTES

Section 62.09(8)(b) of the Wisconsin Statutes provides that "When **present** the mayor shall preside **at** the meetings of the council." [Emphasis added.] Similarly, section 61.24 states that

"The village president shall preside at all meetings of the board." [Emphasis added.] And, section 61.32 further states that "The president shall preside at all meetings of the village board when present." [Emphasis added.] Accordingly, the power to preside is plainly stated as a power exercised by a mayor or village president "when present" and "at" a meeting of their respective governing body.

The term "present" is defined as "being with one or others or in the specified or understood place: **to be present at a wedding.**" [Emphasis in original.]¹ Therefore, the phrase "when present" means that the presiding officer power of mayors and village presidents exists only when they are with the city council or village board in meeting. The power does not exist in any non-meeting circumstance, such as pre-meeting agenda development.

The meaning of "at" supports this conclusion. The word "at" is a preposition that, among other uses, is "(used to indicate presence or location): **at home, at hand.**" [Emphasis in original.]² Thus, the meaning of "at" also indicates that presiding officer authority vested in mayors and village presidents by state law requires a concurrent presence with their city council or village board for the exercise of the power.

The plain language of secs. 62.09(8)(b) and 61.34 establish that the statutory authority granted to mayors and village presidents by the legislature to "preside" is a power that exists only during a meeting of a city council or village board. It is authority confined

to the period during which the body is conducting a meeting and secs. 62.09(8)(b), 61.24, and 61.32 do not grant any power to mayors or village presidents over pre-meeting activities such as agenda development or access. Therefore, the presiding officer statutes do not provide any support for the contrary conclusion suggested in *Governing Bodies* 311.

The conclusion that secs. 61.34 and 62.09(8)(b) do not grant mayors and village presidents power to set the agendas of their respective bodies outside of a meeting is also consistent with a common understanding of presiding officer duties. In *Robert's Rules of Order, Newly Revised* (10th ed.) (RONR), a set of procedural rules that have been widely adopted by Wisconsin city councils and village boards, the duties of a presiding officer are listed as follows:

- 1) to open the meeting at the appointed time, by taking the chair and calling the meeting to order, having ascertained that a quorum is present; 2) to announce in proper sequence the business that comes before the assembly or becomes in order in accordance with the prescribed order of business, agenda, or program, and with existing orders of the day; 3) to recognize members who are entitled to the floor; 4) to state and to put to vote all questions that legitimately come before the assembly as motions or that otherwise arise in the course of proceedings (except questions that relate

to the presiding officer himself in the manner noted below), and to announce the result of each vote; or, if a motion that is not in order is made, to rule it out of order; 5) to protect the assembly from obviously frivolous or dilatory motions by refusing to recognize them; 6) to enforce the rules relating to debate and those relating to order and decorum within the assembly; 7) to expedite business in every way compatible with the rights of members; 8) to decide all questions of order, subject to appeal — unless, when in doubt, the presiding officer prefers initially to submit such a question to the assembly for decision; 9) to respond to inquiries of members relating to parliamentary procedure or factual information bearing on the business of the assembly; 10) to authenticate, by his or her signature, when necessary, all the acts, orders, and proceedings of the assembly; 11) to declare the meeting adjourned when the assembly so votes or — where applicable — at the time prescribed in the program, or at any time in the event of a sudden emergency affecting the safety of those present.³

Notably, all of these duties concern matters during a meeting. None of the duties refer to or suggest any presiding officer authority outside of a meeting of the assembly. Therefore, like the

Agenda Control
continued on page 374

1. *Random House Dictionary of the English Language*, 1529 (2d ed. 1987).

2. *Id.* at 129.

3. *RONR*, pp. 433-436.

Agenda Control
from page 373

plain language of secs. 62.09(8)(b), 61.24 and 61.32, the common understanding of presiding officer authority does not include any power to control the agenda of an assembly outside of a meeting at which he/she presides.

OPEN MEETINGS LAW NOTICE AUTHORITY

The State of Wisconsin recognizes the importance of having a public informed about governmental affairs. Accordingly, the legislature declared in the Wisconsin Open Meetings Law that:

In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.⁴

To implement this policy, the law imposes two basic requirements. First, every meeting of a governmental body

must be preceded by public notice as provided in Wis. Stat. sec. 19.84.⁵ Second, all business must be conducted in open session unless an exemption to the open session requirement applies.⁶

The law gives the "chief presiding officer of a governmental body or such person's designee" responsibility and authority for providing the public notice the law requires.⁷ In *Governing Bodies* 311, the opinion cited this duty in support of the conclusion that a mayor has power to set the agenda of a city council in the absence of a contrary ordinance or rule.

The open meetings law specifies that the meeting notice provided by the presiding officer "shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof."⁸ The issue then is whether the duty to "set forth the . . . subject matter" of a meeting includes the power to set the agenda.

The phrase "set forth" is defined as "to give account of; state; describe."⁹ In contrast, the term "set" is defined as "to determine or fix definitely" or "to

establish for others to follow."¹⁰ Thus, the plain language of the open meetings law only vests a presiding officer with authority to describe an agenda, not establish one.

Interpreting the phrase "set forth" to not grant agenda setting power to a presiding officer is consistent with the context of the language. The duty to "set forth" the "subject matter" of meeting is stated in relation to the "form" of the notice.¹¹ This duty obligates the presiding officer to provide "subject matter" notice that is sufficiently specific to inform the public.¹² Therefore, the context of the phrase "set forth" links it to specificity of the agenda, not control of it.

The plain language interpretation that the open meetings law notice duty does not vest any power to set the agenda is also consistent with legislative intent. As noted, the legislature enacted the open meetings law to further the public's right to information about its government.¹³ The law does not even require that a governmental body use an agenda.¹⁴ Accordingly, the law does not state or reasonably imply in any provision that a purpose of the law is the allocation of agenda power in municipal government or the control of subject matter discussed at a city

4. Wis. Stat. sec. 19.81(1).

5. Wis. Stat. sec. 19.83(1).

6. *Id.*

7. Wis. Stat. sec. 19.84(1)(b).

8. Wis. Stat. sec. 19.84(2).

9. *Random House Dictionary of the English Language*, 1751 (2d ed. 1987).

10. *Id.*

11. Wis. Stat. sec. 19.84(2).

12. *See State ex rel. Buswell v. Tomah Area School District*, 2007 WI 71, para. 22, 301 Wis. 2d 178, 732 N.W.2d 804 (noting that "whether notice is sufficiently specific will depend upon what is reasonable under the circumstances" and discussing factors to be considered).

13. Wis. Stat. sec. 19.81(1).

14. The Wisconsin Attorney General noted very shortly after the open meetings law was enacted that the notice requirement in 19.84(2) "does not require a governmental body to utilize a detailed agenda." 66 Wis. Op. Att'y Gen. 143, 144 (1977).

council or village board meeting. Instead, the stated policy of the law is to make sure that the public knows what these and other governmental bodies intend to discuss. Thus, the open meetings law does not reflect any legislative intent to address, and is therefore not concerned with, who has power to control the agenda of a city council or village board.¹⁵

Does *Robert's Rules* grant a mayor or village president authority to set a city council or village board agenda?

Many Wisconsin city and village governing bodies have adopted *Robert's Rules of Order* to guide their meetings. Accordingly, in the absence of some other explicit rule, it might be asked whether these rules vest a presiding officer with control over the agenda of a city council or village board that has adopted *Robert's Rules of Order*. The answer is no.

Robert's sets forth a fairly detailed list of duties to be performed by presiding officers, which have been mentioned.¹⁶ None of the listed duties even remotely suggest any presiding officer authority to set the agenda for the assembly. In fact, the rules provide two methods for agenda development that demonstrate agenda control belongs to the assembly or body, not its presiding officer.

The first method under *Robert's* is to introduce a matter under the "New

Business" portion of the standard order of business described in the rules. The method is described as follows:

After unfinished business and general orders have been disposed of, the chair asks, "Is there any new business?" Members can then introduce new items of business or can move to take from the table any matter that is on the table, in the order in which they are able to obtain the floor when no question is pending, as explained in 3 and 4. So long as members are reasonably prompt in claiming the floor, the chair cannot prevent the making of legitimate motions or deprive members of the right to introduce legitimate business, by hurrying through the proceedings.¹⁷

Thus, under *Robert's*, every member of a body has authority to add an item to the agenda during a meeting by introducing the item for discussion under the "New Business" heading.

However, introducing a matter for discussion at a meeting of a city council, village board, or any other Wisconsin governmental body under a generic "New Business" agenda item is contrary to the Wisconsin Open Meetings Law since such subject matter designations, by themselves, do not satisfy

Agenda Control
continued on page 376



THE OPEN
MEETINGS LAW
DOES NOT REFLECT
ANY LEGISLATIVE
INTENT TO
ADDRESS, AND IS
THEREFORE NOT
CONCERNED WITH,
WHO HAS POWER
TO CONTROL THE
AGENDA.



15. The Wisconsin Attorney General has further stated that "The purpose of the [open meetings law] is not to interfere with or limit the power of a governmental body to carry out its statutory duties." *Id.* at 144-145. Accordingly, a presiding officer would be ill-advised to use the open meetings law notice requirements as a tool to thwart the exercise of power vested in a city council, village board or any other governmental body.

16. *RONR*, pp. 433-436.

17. *RONR*, 349.

Agenda Control
from page 375

the specificity requirements of the law.¹⁸ Accordingly, although allowed under *Robert's*, this method cannot be used in the manner described in the rules at any meeting of a local government body since it is contrary to higher legal authority. Nonetheless, it does illustrate that *Robert's Rules* do not vest agenda authority in the presiding officer.

The second method for developing an agenda under *Robert's* is the use of orders or orders of the day. An order of the day "is a particular subject, question, or item of business that is set in advance to be taken up during a given session, day, or meeting, or at a given hour, provided that no business having precedence over it interferes."¹⁹ Orders of the day can be special orders or general orders.²⁰ Special orders are those that "are made with the stipulation that any rules interfering with its consideration at the specified time shall be suspended" subject to some exceptions. Orders adopted without such stipulations are general orders.²² Notably, a special order motion requires a two-thirds vote in favor for adoption.²³ A general order motion is approved by a simple majority.²⁴

Robert's indicates that a special order or general order motion can be introduced whenever business of its class or new business is in order and nothing is pending.²⁵ However, like the first method, unless a meeting notice includes a subject heading indicating that the body will be considering mo-

tions for special or general orders, and the proposed orders are sufficiently identified, this *Robert's* procedure also appears to present notice problems under the open meetings law due to lack of specificity. But, like the first method, the use of special or general orders for agenda development expressly provided in *Robert's* demonstrates again that, under those rules, the authority to set the agenda belongs to the body, not the presiding officer.

CAN A CITY COUNCIL OR VILLAGE BOARD GRANT ITS MAYOR OR VILLAGE PRESIDENT AUTHORITY TO SET A CITY COUNCIL OR VILLAGE BOARD AGENDA?

Given the constraints on agenda development under *Robert's Rules* imposed by the Wisconsin Open Meetings Law and that neither state law nor *Robert's* vests a presiding officer with authority to set an agenda, a city council or village board might consider a local ordinance or rule establishing an agenda setting procedure. The ordinance or rule might reflect the *Robert's* New Business method and allow any member of a city council or village board to add a new business item to an agenda subject to a filing deadline and a reintroduction constraint (i.e., no reintroduction of same or similar item within 30 or 60 days). A rule or ordinance might reflect the *Robert's* "order" method for agenda development and allow any member of a body to file a proposed order subject to the same kinds of limits imposed on New Business, which would then be subject to a vote of the whole body before

placement on a future agenda for full consideration and debate. Some consideration might also even be given to an ordinance or rule simply granting the mayor or village president agenda control, which necessitates some reflection on the rule-making authority of city councils and village boards and other relevant legal rules.

The McQUILLIN treatise on municipal corporations states:

The charter or a statute applicable may prescribe rules for the government of the proceedings of councils, municipal boards, etc., and oftentimes the organic law provides that the council or representative body may adopt its own rules of action. The council may abolish, suspend, modify or waive its own rules.²⁶

Wisconsin law expressly follows this general rule for cities. Section 62.11 establishes minimal guidelines for time and openness of meetings, quorum and voting. For all other procedures, sub. (3)(e) provides: "The council shall in all other respects determine the rules of its procedure."

Like sec. 62.11, sec. 61.32 establishes some basic procedural rules for village board meetings. However, while sec. 61.32 implies some authority to adopt village board bylaws, there is no express provision comparable to sec. 62.11(3)(e) in the general charter law for villages. Nonetheless, the broad general grant of powers to villages

18. See Wis. Stat. 19.84(2); and see *Wisconsin Open Meetings Law Compliance Guide*, Wisconsin Dept. of Justice, 12 (2010) ("Purely generic subject matter designations such as 'old business,' 'new business,' 'miscellaneous business,' 'agenda revisions,' or 'such other matters as are authorized by law' are insufficient because, standing alone, they identify no particular subjects at all.") [Citations omitted].

19. *RONR*, 353.

20. *RONR*, 353-355.

21. *RONR*, 353.

22. *RONR*, 354.

23. *Id.*

24. *RONR*, 354-355.

25. *RONR*, 354-355.

26. 4 McQUILLIN MUN. CORP., sec. 13.42 (3d ed.).

set forth in sec. 61.34(1) unquestionably gives village boards the power to establish procedural rules not already provided by statute.

As to sec. 62.11(3)(e), League counsel stated in *Governing Bodies* 292: "Absent any explanatory language to the contrary, this broad grant of authority reasonably confers on the council the power to determine all rules for procedure in setting an agenda." There is no reason why the same conclusion should not be made as to village boards. Accordingly, the more significant agenda rule-making issue is what limits there might be on the use of rule-making power by a city council or village board to adopt an ordinance or rule that delegates agenda control to their mayor or village president.

Whenever a city council or village board considers a delegation of power, delegation of powers principles must be considered. One oft-cited rule is that a legislative body, such as a city council or village board, may not delegate any of its legislative powers without explicit authorization from the legislature.²⁷

Legislative power is defined as:

The lawmaking powers of a legislative body, whose functions include the power to make, alter, amend and repeal laws.²⁸

Thus, legislative power is the power to promulgate a law.

There is no reasonable question that an ordinance or rule adopted by a city council or village board is a law with legal binding force. Therefore, an ordinance or rule that delegates power to control the agenda of a city council or village board to the mayor or village president, is an exercise of legislative power.

None of the foregoing provisions that authorize city councils or village boards to establish local laws that govern the procedures for such bodies expressly authorize the delegation of this power to a mayor, village president or anyone else. Accordingly, a city or village ordinance or law that grants a mayor or village president agenda control power by such authority cannot delegate legislative power.

The *Village of Little Chute v. Van Camp*²⁹ case provides a useful illustration of an impermissible delegation of legislative power. It involved a local ordinance which stated:

All saloons in said village shall be closed at 11 o'clock P.M. each day and remain closed until 5 o'clock on the following morning, unless by special permission of the president.

After a trial court found Van Camp, a village resident, guilty of violating the ordinance, he challenged the conviction on the grounds that the ordinance improperly delegated legislative power to the village president. The appel-

late court agreed with Van Camp and stated:

In the present case the ordinance by its terms gives power to the president to decide arbitrarily and in the exercise of his own discretion when a saloon shall close. This is an attempt to rest legislative discretion in him, and cannot be sustained.

The legislative discretion vested in the village president by the Little Chute ordinance followed from the lack of an identifiable standard for the exercise of the "special permission" power of the village president.³⁰ This omission meant the exercise of legislative power by the Little Chute village board was incomplete and granted the village president the legislative authority to determine the purpose or policy to be achieved by the law. It granted the village president power to make law.

An ordinance or rule that grants a mayor or village president power to set the city council or village board agenda is also an incomplete exercise of legislative power. Such an ordinance or rule, like the ordinance adopted by the Little Chute village board, would impermissibly vest the mayor or village president with legislative discretion to determine what purpose or policy the agenda ordinance or rule should serve. This discretion would allow the policy preferences of the mayor/village presi-

Agenda Control
continued on page 378

27. See *State ex rel. Hammermill Paper Co. v. La Plante*, 58 Wis.2d 32, 80, 205 N.W.2d 784; see also 2A McQUILLIN MUN. CORP., sec. 10:43 (3rd ed.) ("The rule is well settled that legislative power cannot be delegated by a municipality unless expressly authorized by the statute conferring the power.")
28. *Black's Law Dictionary* 810-11 (5th ed. 1979).
29. 136 Wis. 526, 117 N.W. 1012 (1908).
30. The Wisconsin Supreme Court has stated that the "serious questions raised by the problem of delegation relate normally to the absence of standards" to guide the exercise of delegated power. *Wisconsin Solid Waste Recycling Authority v. Earl*, 70 Wis. 2d 464, 235 N.W.2d 648, 666 (1975).

Agenda Control from page 377

dent to be considered and those he/she opposes to receive no consideration, even if supported by a majority of the membership. In effect, such discretion could be used to completely control the exercise of all of legislative powers of a city council or village board.

The particular limitations that might be imposed by a city council or village board on any agenda authority it grants to a mayor or village president are too numerous to detail in this general review of agenda control. Moreover, any limitations will undoubtedly reflect the unique preferences in each municipality. However, the effectiveness of the limitations imposed by the ordinance or rule can be considered in relation to a basic question: Does the ordinance or rule grant the mayor/village president discretionary authority to

determine the subject matter of the city council or village board agenda? If the answer is yes, the ordinance or rule has transferred legislative discretion to the mayor/village president and is an impermissible delegation of legislative power.

CONCLUSION

Although not required by the open meetings law, a good agenda can produce the specificity the law requires. And, a well-planned agenda will also facilitate the efficient conduct of business by keeping the body on track and preventing grandstanding or other unhelpful conduct by members.

The widespread use of agendas in cities and villages means agenda control is an important issue in these communities. Whoever holds the power to determine the items on an agenda, can

exert substantial control over the exercise of local government power.

While neither state law nor *Robert's Rules* grant the presiding officer of a Wisconsin governmental body any authority to set the agenda for the body, a city council or village board, pursuant to its authority to establish rules of procedure, including rules for developing an agenda, might vest some agenda setting power in the mayor or village president. However, the delegation of such agenda authority must not violate legal rules that prohibit the delegation of legislative power. Accordingly, an ordinance or rule delegating agenda authority to a mayor or village president may not grant any discretionary authority to determine the subject matter of the agenda.

Governing Bodies 391

Vision to Reality . . .

Sustainably
Creatively
Responsibly
Collaboratively
Authentically

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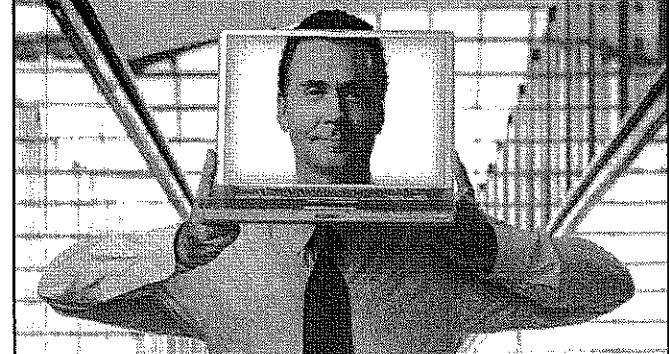


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