

**MINUTES  
CITY OF БЕLOIT BOARD OF APPEALS  
Meeting of February 9, 2021**

A Meeting of the City of Beloit Board of Appeals was held on Tuesday, February 9, 2021, in The Forum of Beloit City Hall, 100 State Street. Chairperson John Petersen called the meeting to order at 7:00 PM.

**1. Roll Call**

Director of Planning & Building Services Drew Pennington called the roll. Present were: Dustin Gronau, John Petersen, David Baker, Felipe Rodriguez, and Kara Purviance Hawes.

**2. Approval of the Minutes of the November 10, 2020 Meeting**

Mr. Baker made a motion to approve the November 10, 2020 Minutes as submitted. Ms. Hawes seconded the motion. The motion passed unanimously, roll call vote.

**3. Public Hearings (Appeal or Variance Requests)**

- a. Appeal of Administrative Decision filed by Beloit Health System and Timothy M. McKeveit of the Director of Planning & Building Services/Zoning Officer's New or Unlisted Use Determination Under Section 6.1.6 of the Zoning Ordinance to Allow an Ambulatory Surgery Center operated by Rockford Orthopedic Associates, Ltd. d/b/a Orthollinois as a permitted use in an M-2, General Manufacturing Zoning District at 1350 Gateway Blvd.

Mr. Petersen read a statement announcing that the purpose of the meeting is to consider procedural matters and scheduling of the substantive hearing in the future.

Attorney Tim Feeley, representing the applicants, described his objections. Mr. Feeley argued for retaining the right to choose a contested case hearing. Mr. Feeley requested a ruling from the Board on whether the 2000 Rules of Procedure still apply, and whether the applicants can have additional time to decide whether to elected a contested case hearing. Mr. Feeley stated that the Rules were provided to him on January 26, 2021, after the appeal had been filed with the City.

Attorney Richard Yde introduced himself as counsel to Mr. Pennington, the City's Zoning Officer. Mr. Yde stated his argument that Orthollinois be allowed to participate in the hearing, whether a contested case or not. Mr. Yde also stated that the Board reserves the right to decide whether a contested case is granted if one is requested.

Attorney Jan Ohlander introduced himself as counsel to Orthollinois. Mr. Ohlander stated his agreement with Mr. Yde's assertion that Orthollinois should be allowed full participation, and stated concern about granting any additional time to the applicants.

The Board members were polled by the Chair and did not have any questions.

Mr. Petersen, Mr. Feeley, and Mr. Yde discussed and attempted to clarify the specifics of Mr. Feeley's objections. Mr. Feeley and Mr. Yde debated whether the Rules were intended to apply to this type of appeal where the applicant is not the property owner.

Mr. Petersen stated his belief that the 2000 Rules of Procedure are still in effect. Ms. Hawes requested that Mr. Feeley repeat the timing of the application and Rules disclosure, and he did so.

Mr. Petersen summarized the questions before the Board as follows:

First Question: Are the 2000 Rules of Procedure still valid & effective and will they be followed in this case?

Second Question: Can the applicants have one additional week to decide whether to request a contested case hearing?

Mr. Rodriguez stated that the appeal should proceed as a contested case but that no additional time should be granted. Ms. Hawes stated her agreement with Mr. Petersen that the 2000 Rules are still valid. Mr. Baker stated that precedent should be followed. Mr. Gronau stated that the current Rules of Procedure should be followed. Mr. Petersen summarized the consensus of the Board.

Mr. Petersen asked Mr. Feeley if he wanted one additional week to decide whether to elect a contested case hearing, and he confirmed.

Mr. Petersen requested a roll call vote on whether to allow one additional week for the applicant to decide whether to request a contested case hearing. Attorney Michael May, the Board's Attorney, asked Mr. Petersen to clarify exactly what the Board would be voting upon. Ms. Hawes asked Mr. May to explain the timing implications of a one week extension and Mr. May explained the possibly timing implications.

Mr. Rodriguez expressed his opposition to granting an additional week. All of the other Board members expressed their preference for granting the applicants an additional week to request a contested case hearing. By a

vote of 4-1, the applicants were given an additional week to decide whether to elect a contested case hearing.

Mr. Feeley summarized his objection to the designation of Orthollinois as a party to the substantive appeal proceedings in the same way as the applicants and the City. Mr. Feeley argued that Orthollinois does not have a vested property right because they do not have a permit.

Mr. Yde, representing the City, stated that Orthollinois is the real party in interest since their development has been affected by the appeal. Mr. Ohlander agreed with Mr. Yde, and noted that the Board's Rules of Procedure contemplate parties in interest presenting evidence and that all of the Board's decisions directly affect Orthollinois' rights to develop the property.

Mr. Yde stated that the Board's proceedings will determine whether Orthollinois has rights to develop the property, and therefore they should be designated as a party to the proceedings. Mr. Ohlander stated that Orthollinois' rights would be prejudiced if they cannot present their evidence to the Board as a party in interest.

The Board members were polled and did not have any questions.

Mr. Petersen asked Mr. Feeley if it was accurate that his objection was basically to establish the applicants and City as the sole parties in the matter, and Mr. Feeley confirmed while stating his allegation that the Zoning Officer took the decision out of the hands of elected officials. Mr. Petersen asked Mr. Yde to respond, and Mr. Yde stated that the sole question before the Board is whether the proposed surgery center is a new or unlisted use. Mr. Yde stated that if the Board finds the proposed surgery center to be a new or unlisted use, then they must uphold the Zoning Officer's decision. Mr. Ohlander stated that Orthollinois is the real party in interest because the Board is determining their rights to develop.

Mr. May, the Board's attorney, informed the Board of Section 62.23(7)(e)(5) of the Wisconsin Statutes, which governs how the Board operates. Mr. May explained that the effect of the filed appeal is that Orthollinois cannot move forward with their development at all, and that therefore their rights are being impacted by the proceedings in his opinion.

Mr. Petersen made a motion to uphold the applicant's objection to the designation of Orthollinois as a party to the proceedings. Seconded by Mr. Gronau. The motion failed 1-4, roll call vote. Mr. Petersen was the sole vote in favor of his motion to uphold the applicant's objection to the designation of Orthollinois as a party to the proceeding.

Mr. Yde reiterated that the only question before the Board is whether the proposed surgery center is a new or unlisted use. Mr. Yde asked the Board not to consider evidence of the impact of the surgery center upon the applicant. Mr. Feeley argued that the City did not object by the deadline. Mr. Feeley and Mr. Yde debated whether the City's objection was timely. Mr. Ohlander stated that Mr. Yde is not raising an objection, but rather a point of order. Mr. May noted that a formal objection should have been raised earlier, but noted his general agreement with Mr. Yde on the basic question to be addressed by the Board at the substantive hearing.

Mr. Baker stated that the substantive hearing should determine whether the use is new or not. Mr. Petersen stated that the Board will wait to determine the evidence question until the substantive hearing.

Mr. May noted that the parties can be preparing their cases immediately, and suggested that witnesses and documents should be submitted no later than February 25, 2021, and that objections should be filed by March 2 or 3, 2021 before the hearing scheduled for March 9, 2021. Mr. Petersen and the attorneys discussed the schedule. The Board agreed with the proposed dates discussed by the attorneys and approved the following schedule:

February 16, 2021: The applicant is to notify the parties and Board if it requests a contested case hearing.

March 1, 2021: All parties are to file a list of proposed witnesses, exhibits, and other submissions to the Board.

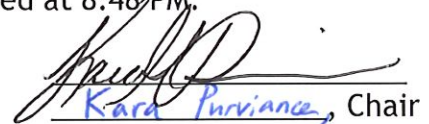
March 4, 2021: Parties are to file any objections to witnesses, exhibits, and other submissions to the Board.

March 9, 2021: The substantive Board of Appeals will begin at 3 PM via video conferencing. The Board shall allocate 2 hours to the applicants, and 2 hours to be shared by the City and Orthollinois, followed by 1 hour of rebuttal by the parties. The Board reiterated that time limits would be enforced.

Mr. Petersen made a motion to recess and refer the hearing on the appeal until the following Board of Appeals meeting. Ms. Hawes seconded the motion. The motion passed unanimously.

#### 4. Adjournment

Mr. Baker made a motion to adjourn. Ms. Hawes seconded the motion. The motion passed unanimously. The meeting adjourned at 8:48 PM.

  
Kara Purviance, Chair