



**MINUTES**  
**PLAN COMMISSION**  
**City Hall Forum - 100 State Street, Beloit, WI 53511**  
**7:00 PM**  
**Wednesday, November 18, 2020**

**1. CALL TO ORDER AND ROLL CALL**

Meeting was called to order at 7:00 PM. Chairman Weeden, Commissioners Robson, Ruster, Toral, Finnegan, Haynes, Ramsden, and Councilor Preuschl were present.

**2. MINUTES**

**2.a. Consideration of the minutes of the September 23, 2020 Plan Commission meeting**

A motion was made by Commissioner Ruster, seconded by Commissioner Haynes to approve the minutes, as submitted. Motion carried, roll call vote.

**3. PUBLIC HEARINGS**

**3.a. Consideration of a Conditional Use Permit to allow an office use in a M-2, General Manufacturing District, for the property located at 1350 Gateway Boulevard**

Julie Christensen, Community Development Director, presented the staff report and recommendation.

Commissioner Weeden opened the public hearing. Julie Christensen indicated that the City has received numerous written comments from Beloit Health System employees and volunteers, approximately 74 e-mails. They were all sent to the Plan Commission prior to the meeting.

Tim Feeley, attorney representing Beloit Health System, outlined the zoning requirements related to clinics, hotels, and hospitals. He explained that the applicant is contending that the ambulatory surgery center is an allowable conditional use within the M-2 zoning district. He believes that that use is not supported by the City's Zoning Ordinance and that granting a conditional use permit for this use would be in violation of the ordinance.

Mr. Feeley stated that the Plan commission needs to determine if the proposed use is actually permitted as a conditional use in the M-2, Manufacturing District, and even if it is a permitted conditional use if there is substantial evidence that all the conditions required to be met under the ordinance are met.

Mr. Feeley referred to a letter that was submitted, under Tim McKeveatt's name earlier that day. He provided an overview of his interpretation of the Zoning Ordinance related to conditional use permits. He mentioned that ambulatory surgery centers are not specifically outlined in the use table. Therefore, the City may perform a similar use interpretation. In this case, the use is an ambulatory surgery center with overnight stays. This is for cases where because of the invasiveness of surgery, the person needs additional medical care and cannot be discharged. This meets the definition under the City's ordinance as an inpatient stay. It appears that staff relied on the exception standards under the Hospital definition. They then concluded that as long as they did not always stay overnight, a medical clinic may include an overnight stay. They believe that that is an error by staff. He went on to say that the most restrictive provision should be applied, which was not done in this case. Office uses are defined as activities that take place in an office setting and indicated that the examples listed include medical clinics. He read the definition of medical clinics and pointed out the medical clinics do not include inpatient care. He explained that there is nothing in that definition that includes operating rooms, recovery rooms, surgical staff, general anesthesia, or overnight stays where the patient can be monitored. When you apply the more restrictive definition, an ambulatory surgery center is neither an office nor a medical clinic under the ordinance. He then handed out a print-out of data from Orthollinois that stated that the surgery center is located on the same campus as the main Rockford clinic building. Therefore, Orthollinois is acknowledging on their website that a clinic is different from an ambulatory surgery center.

Tim McKeveatt, 2318 Boulder Lane, President and CEO of Beloit Health System, read the letter he submitted earlier to staff. In that letter, he asked that Plan Commission deny the Conditional Use Permit for the proposed Orthollinois Surgery Center, based on the impact it would have on the community if the Health System were forced to reduce staff due to this this facility being approved. He also argued that approval of the surgery center would be in violation of the Zoning Ordinance. He argued that the surgery center would target more lucrative commercial insurance patients over Medicare/Medicaid patients.

Tim Feeley, attorney for Beloit Health System, explained that an ambulatory surgery center is not listed in the use table and that they must compare this use to what is in the use table, and that a hospital is the use that is most similar to this use. He explained that this is an office/clinic use that includes surgeries and/or overnight stays. The definition for clinics in the Zoning Ordinance does not include inpatient care. He argued that the overnight suites do not meet the definition of motel or hotel.

Chairperson Weeden mentioned that Pablo Toral and Judy Robson had joined the meeting during Mr. Feeley's presentation.

Mr. Feeley went on to explain that he does not feel that City staff provided substantial evidence for the required criteria in the Zoning Ordinance in order to approve a conditional use permit.

Dr. Roger Kapoor, 1975 Pebble Drive, Senior Vice President of Beloit Health Systems, explained that he was concerned that doctors would be performing surgical procedures that could require potential stays in an office. He felt that the surgical procedures should be in a hospital setting where the patient is safest and have access to all necessary medical services.

Dr. Jamie Frantz, Orthopedic Surgeon, Beloit Health System, stated that he would be one of the doctors that would be called if there was an emergency call in the middle of the night for one of these patients staying in the overnight suites. He explained that he would not have access to the patient's records, which would make it much more difficult in this type of emergency. He said that there would be a risk to the patient and community as a result.

Dr. Andrew Dean, Medical Director for Beloit Health System, 2114 W Lawn Ave, Madison, Wisconsin, stated that he thinks the conditional use permit should be denied. He read the letter he submitted earlier to City staff. He indicated that he feels that these types of surgeries should be performed in a hospital setting where it is safest for the patient.

Dr. Leo Egbujiobi, Section Chief of Department of Cardiology and Beloit Health System Board member, read the letter that he submitted to City staff. He indicated that allowing this for-profit entity to open a facility in Beloit will result in a negative financial impact to the Health System, and they may have to reduce services to the community as a result. He indicated that he believes that it is in the best interest of patients to have immediate access to emergency care should a patient code. He asked that Plan Commission deny the conditional use permit.

Jim Van De Bogart, 2091 Collingswood Drive, stated that Orthollinois does not fit the definition of an office use. It's not a clinic; it's not an office; it is a mini-hospital. If it's going to be a hospital, it should following all the requirements other hospitals have to follow. He indicated that if the City allows them to come into Beloit, they will cherry-pick the patients with the best insurance from Beloit Health System and then if something goes wrong, expect Beloit Hospital to handle the emergency issues. This approval would cripple the health care's system financial ability to provide services in Beloit. He said that Plan Commission should deny because it undercuts what we currently have in Beloit. He said that it should be denied because it will be detrimental to the community.

Ian Linnabary, Attorney with Reno & Zahm, LLP, representing Orthollinois, introduced Dave Mikos and Don Schreiner. Dave Mikos, 1111 22<sup>nd</sup> Street, Suite 315

Oak Brook, IL, President and CEO of Anderson Mikos Architects, explained that an ambulatory surgery center is not a mini-hospital, that it is an office-based surgery program with four operating rooms and 16 recovery spaces, concentrating on total joints and spine. The project site includes a lot of natural space but also provides parking in excess of code. It will meet all state and federal requirements for a stand-alone ambulatory surgery center. He stated that they will meet all of the findings of fact and other ordinance requirements.

Don Schreiner, CEO for Orthollinois, provided an overview of the history of the company, which is 50 years old. He explained that they offer the latest state-of-the-art techniques focusing on specific areas of the body. They recruit the best doctors in the country and are a premier provider of care in Northern Illinois. He stated there are patients who come from all over the country. In terms of the overnight suites, they give the patient the option to stay overnight, if needed, after surgery. This is a separate area from where the procedure is performed. They take a variety of patients, including Medicare and Medicaid patients. Ambulatory surgery centers are a growing area in the medical field throughout the country. It allows patients to have surgery on an outpatient basis. The Beloit facility will meet the needs of their increasing practice in Northern Illinois, including Chicago and beyond. It allows them to move joint replacement and spine procedures from Rockford, with the patient having the option of an overnight stay. It is not required stay, but an option for the patient. It is medical tourism, and they draw from a larger area, since it gives them the ability to allow overnight stays.

Commissioner Robson wanted to know what kind of surgeries will be done at the Beloit Orthollinois surgical center. Mr. Schreiner stated they want to split the surgeries up between the two locations, with the Beloit location having total hip and knee joint replacements and spine procedures. It is limited in the spine area. 15-20 types of procedures will be performed at this facility, and they will have transparent pricing.

Commissioner Robson asked if the clinic is certified to take Medicare and Medicaid patients, and if Orthollinois will be paying property taxes. Mr. Schreiner stated if approved, they would get certified in Wisconsin for Medicare and Medicaid, but they are currently certified for Medicaid in Illinois. In regard to property taxes, he indicated that they will be paying property taxes.

Chairperson Weeden asked what Orthollinois would do if complications were to happen and they needed emergency care and how would they address the concern about Beloit Health System not having any records on the surgeries performed or any other information on the patient. Mr. Schreiner responded that he was going to have Ian Linnabary answer those questions.

Ian Linnabary, Attorney with Reno & Zahm, LLP, representing OrthoIllinois, stated that as a global prospective as an ambulatory surgery center, they have a track record of over 12,403 surgeries in the last three years in Rockford. Out of the 12,403 surgeries in Rockford, the ninety day revision rate is .19% and transfer rate is .2%.

Mr. Linnabary stated the ambulatory surgery centers are not mini-hospitals. They provide limited types of procedures. With a surgery center, they enter into transfer agreements with hospitals. Beloit Health System has a level 1 emergency room, which is not ideal for transferring patients from their facility. OSF in Rockford has a level 3 emergency room, so they would most likely have a transfer agreement with them. If time were of the essence, in the unlikely scenario that it would happen, they would rely on the fine men and women at Beloit Health System to take those transfers. However, they would be rare, if they happened at all.

Mr. Linnabary agreed with the staff interpretation under the Zoning Ordinance of their use. He commented that a lot of the concerns submitted earlier and heard during the public hearing were about the overnight stays. He explained that all of the procedures are outpatient. The overnight stays are for the convenience of the patient, giving them an option for a place to stay before going home. They look like hotel rooms and operate like hotel rooms. Because the physicians are so well-regarded, they attract patients from all over the country. This is just an option that the patients can take advantage of. If the surgery is so invasive that it requires an overnight stay, then the surgery should be done in a hospital, and they would not be performed at the ambulatory surgery center.

Mr. Linnabary provided an overview of the growing market for ambulatory surgery centers and why they have become more popular. He went on to explain that they don't fit nicely in the City's Zoning Ordinance, which is typical in most communities they work in. These types of facilities generally end up locating in office settings because they are most compatible with that type of use. From the outside, you cannot tell that surgeries are taking place inside the building. It looks the same as any other office building.

He explained that an ambulatory surgery center looks nothing like a hospital. He outlined Wisconsin state law related to hospitals. Ambulatory surgery centers do not meet the majority of the requirements of a hospital. He went on to explain that state law adopts the federal law that defines an ambulatory surgery center.

Mr. Linnabary gave his interpretation of the City's Zoning Ordinance and said that he felt that the staff made the right decision, that the ambulatory surgery center meets the definition of a medical clinic in the ordinance. He agreed that an ambulatory surgery center is not specifically called out in the ordinance, but that he felt the use category that most closely matches their use is an office use.

He indicated that competition is good for consumers; it gives other choices to residents. In addition, it adds tax base and brings jobs to the community. Mr. Linnabary wanted to wrap up with evaluation of the eight criteria. He explained that he felt that he has demonstrated that they will meet all eight criteria with their testimony during the public hearing. He provided testimony as to how they meet the first criteria in the Findings of Fact. He explained that he did not believe that competition with the Beloit Health System would put a financial strain on them. He said that they have worked cooperatively with other hospitals and have not had any issues. The community will benefit from having more choices.

Regarding the second criteria, they have not received any complaints from neighbors. They have prepared a traffic impact study, which shows that there would be no impact from their use. Regarding the third criteria, they believe that their surgery center is consistent with the comprehensive plan, and the building will be a quality building constructed in conformance with all City ordinances. Regarding the fourth criteria, they feel that their development is consistent with the comprehensive plan and will be consistent with the park. Regarding the fifth criteria, they will be using quality materials, and it will be a comparable design with what is already in the business park. Regarding the sixth criteria, any additional infrastructure will be constructed at the developer's costs. Regarding the seventh criteria, the parking exceeds the ordinance requirements, the traffic impact analysis shows no negative impact, and they will be upgrading the driveway that they will share with Morse Electric. Regarding the final criteria, they will comply with all local requirements.

Tim McKeveitt, Beloit Health System, commented that they had another physician, Dr. Wong, who wanted to testify but couldn't make it in person. Tim Weeden explained that the City had received the letter from Dr. Wong.

Commissioner Weeden closed the public hearing.

Commissioner Robson explained that she was looking at the Zoning Ordinance related to the first criteria, whether the proposed use would be detrimental to or endanger the public health, safety, and welfare. She indicated that they will be doing significant surgeries at this facility. Concern has been raised that if a surgical patient would need to be transferred, there is no plan for how those transports would occur. She feels that there is no continuity of medical care between Orthollinois and Beloit Health System. She believes that a patient could be in dire straits if something serious happens. If it's a real emergency, they will have to go to Beloit Health System, and Beloit Health will not know anything about the patient. She doesn't think that this is in the best interest of the community or good public health. She explained that the Commission received e-mails from medical staff, and she feels that this meets the standard of substantial evidence under the law. She indicated that she thinks this request would violate the Zoning Ordinance and is reluctant to support this request at this time.

Commissioner Robson explained that the business park's mission is to create jobs. This facility will not create jobs. Doctors will come in from Rockford and then leave. She explained that it would only potentially create jobs for nurses, medical assistants, or receptionists. She indicated that the Commission had received an e-mail from Bonnie Wetter, a financial consultant, who indicated that we will lose jobs at Beloit Health if we approve this application.

Motion made by Commissioner Finnegan, seconded by Commissioner Ruster to approve the conditional use permit.

Commissioner Ramsden expressed his agreement with Commissioner Robson. He is concerned about what would happen if an emergency were to happen in the evening with no medical staff around to help. He feels that it could cause a fatality. He feels that it is a safety issue.

Commissioner Finnegan explained that the data presented show that only .2% of the patients are transported. They have been doing this for many years, and he doesn't agree with denying someone the right to come into our community because we are concerned that .2% of the cases could result in a fatality. He thinks that people need to have choices in health care. He explained that we are getting an opportunity to have a choice, and if Beloit Health System is concerned that this will undermine their operation before it's even here, that concerns him. Based on that, he doesn't have much faith in Beloit Health System.

Chairperson Weeden said that this is a very tough call. He indicated that he had read the memo that came from Mr. McKeveitt and the attorney. He said that he is wary and sympathetic to the issues raised by Beloit Health System. However, it is not the Plan Commission's role to regulate competition in the community or to get involved in different reimbursement rates. He said that he will support the motion but does not feel good about it. He thinks there are some holes in the argument about the overnight stays. He indicated that Plan Commission's role is much narrower than people in the community believe.

Commissioner Robson discussed competition and said that there is no competition in health care. She asked when was last time that you could get a cost estimate for health services. You go to the doctor. He tells what you need to have done, you get it done, and the insurance pays. You might be more limited with Medicaid. She stated that in this case, this for-profit operation limits the amount of Medicaid patients that they will take. They will take insurance from the commercial insurance patients. Our hospital will be left with the poor or the uninsured. We don't want to take anything away from the hospital that might cause the hospital to close.

Commissioner Finnegan said that he shops around for health care. He is self-employed and has an \$11,000 deductible. He is having an MRI done, and he received an estimate from Beloit Health and Forest City. The best price was for Forest City, so that is where he will be going. He said that Chairperson Weeden is correct that that it is not Plan Commission's role, but he also believes that they meet the requirements, so he will be supporting the motion.

Commissioner Weeden said that the action before the Plan Commission is a conditional use permit. Orthollinois could go to any commercial zoning district in the City, and Plan Commission would not have role in the decision. The Plan Commission is here to review the conditional use permit for an office in a manufacturing district.

Commissioner Ruster expressed concern with how many procedures don't require an overnight stay. That doesn't seem realistic. She expressed concerns that if someone has a need during the night, no one is there to help them.

The motion to approve the conditional use permit failed (3, 3), roll call vote.

#### 4. REPORTS

##### **4.a. Consideration of a two-lot Certified Survey Map (CSM) for the property located at 1435 E Broad St**

Julie Christensen, Community Development Director, presented the staff report and recommendation.

Motion made by Commissioner Ruster, seconded by Commissioner Ramsden to approve the CSM. Motion carried, roll call vote.

##### **4.b. Consideration of an Extraterritorial one-lot Certified Survey Map (CSM) for the property located at 3129 S Madison Rd in the Town of Beloit**

Julie Christensen, Community Development Director, presented the staff report and recommendation.

Motion made by Commissioner Ruster, seconded by Commissioner Ramsden to approve the CSM. Motion carried, roll call vote.

##### **4.c. Consideration of an Extraterritorial one-lot Certified Survey Map (CSM) for the property located at 2647 S Nye School Road in the Town of Beloit**

Julie Christensen, Community Development Director, presented the staff report and recommendation.

Motion made by Commissioner Finnegan, seconded by Commissioner Robson to approve the CSM. Motion carried, roll call vote.



5. **STATUS REPORT ON PRIOR PLAN COMMISSION ITEMS**

Ms. Christensen explained that the City Council approved the sign ordinance amendment to allow temporary signs on pedestrian bridges. The next Plan Commission meeting is scheduled for December 9, 2020.

Commissioner Ruster asked about the Rakuten sign, and Commissioner Ruster asked about the Qdoba sign. Ms. Christensen indicated that the Rakuten sign met code, and that she would have Drew send information on the approved sign for Qdoba.

6. **ADJOURNMENT**

Motion made by Commissioner Robson, and seconded by Commissioner Ruster. Motion carried, roll call vote. Meeting adjourned at 9:15 PM.