



**Shorewood**

**MEMORANDUM**

**Village Attorney's Office**

Nathan J. Bayer  
William P. Dineen

**TO:** Plan Commission

**CC:** Planning Director

**FROM:** Nathan Bayer, Village Attorney

**DATE:** May 27, 2021

**RE:** Addressing issues raised in letter submitted by attorney Joe Cincotta on behalf of the East Capitol Neighborhood Association, UA

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The purpose of this memorandum is to analyze for the Plan Commission issues raised by attorney Joe Cincotta in a letter he directed to the Village Clerk on May 24, 2021, on behalf of the East Capitol Neighborhood Association.

For context, on February 23, 2021, the Plan Commission heard and granted a request for a special exception related to parking from Catalyst Partners. In its April 13 and May 4, 2021 meetings, the Shorewood Board of Appeals addressed an appeal of that decision by the Neighborhood Association and ultimately remanded the matter back to the Plan Commission for further findings. The matter has been set for a special meeting of the Plan Commission on June 1, 2021. Attorney Cincotta then submitted his letter on May 24, raising objections to certain aspects of the process.

**WIS. STAT. §62.23 AND VILLAGE CODE §525-23 and §535-25 ARE INAPPLICABLE, AND DO NOT REQUIRE ADJOURNMENT OF THE JUNE 1 PLAN COMMISSION MEETING OR ANY ADDITIONAL NOTICE**

Attorney Cincotta asserts that Wis. Stat. §62.23(7)(de) and Village Code §525-23 and §535-25 require additional time and notice before the Plan Commission can address Catalyst's remanded application for a special exception related to parking. For the reasons discussed below, this is an incorrect statement of the law.

Wis. Stat. §62.23(7)(de) was created in 2017 by Wisconsin Act 67. The overall purpose of the Act was to prevent municipalities from denying conditional use permits to applicants that meet, or agree to meet, any reasonable requirements and conditions specified in the relevant ordinance or imposed by the Plan Commission. However, the statute only applies to requests for "conditional use permits" or requests for "special exceptions" *that specifically relate to a "use" of a property.* By

way of example, Village Code §535-27 specifically defines conditional commercial “*uses*” to include operation of things like animal hospitals, bookstores, drive-in or drive-through businesses, funeral homes, and gas stations.

Catalyst has not sought a permit from the Plan Commission asking to “conditionally use” property in a manner that is otherwise prohibited by existing zoning. The properties it seeks to develop at 2418, 2420, and 2428 Capitol Drive are all zoned “B-3,” and multifamily units are already a permitted use therein. Rather, Catalyst seeks a special exception that would adjust the ratio of required parking spaces per dwelling unit, as applicable to an *existing allowed use*.

Attorney Cincotta’s reliance on sections 535-23 and 535-25 of the Village Code to support his arguments concerning the appropriate “review,” and allegations of improper “notice,” are misplaced and inapplicable. Those provisions are contained in Article V of Chapter 535, which is titled “Conditional Uses.” Both of those sections plainly apply only to applications seeking a “conditional use permit.” As discussed above, Catalyst is not seeking such a permit, but rather a “special exception” to the required parking ratio.

**THE EAST CAPITOL NEIGHBORHOOD ASSOCIATION IS NOT A “PARTY” TO THE  
PLAN COMMISSION REMAND PROCEEDING**

Attorney Cincotta’s letter appears to presume that the Neighborhood Association he represents is a “party” to the June 1, 2021 Plan Commission proceeding. It is not. Consideration of Catalyst’s application is not a contested matter where the Neighborhood Association has any inherent right to offer opening statements, closing arguments, or call witnesses.

While attorney Cincotta and the Association members may of course attend the meeting and participate as any other citizen, they do not have any inherent right to participate as a party. The Association is not the applicant with a special exception request before the Commission. The chair of the meeting may take public comment as she sees fit and deems appropriate during the meeting. The purpose of the Plan Commission meeting on remand is to follow the guidelines as laid out by the Board of Appeals and make a final decision on Catalyst’s application.

**RECUSALS**

Attorney Cincotta’s letter makes some general allegations that members of the Plan Commission must recuse themselves. Because no specific evidence or authority was offered in support of this contention, it is difficult to address. As such, I offer some general comments concerning conflicts of interests/recusals are discussed below.

Wis. Stat. §19.59 is the state statute containing the “Code of ethics for local government officials.” Generally, it prohibits officials from acting on a matter in which a financial interest exists for themselves or a family member. Although there is no Village Code corollary, by way of example, §155-21 prohibits a Board member from voting on a matter “in which he may be personally interested other than as a citizen of the Village.”

Absent any financial or personal interest in Catalyst’s application, members of the Plan Commission should participate in the June 1 meeting, and vote, if they determine they can act as fair and impartial decisionmakers and properly apply the Village Code.