CITY PLAN COMMISSION
MARSHFIELD, WISCONSIN
MINUTES OF FEBRUARY 19, 2008

PUBLIC HEARINGS (7:00 PM)

1. Conditional Use Request by John & Lora Bahr/Young At Heart LLC to establish an Adult Family Home in their residence at 301 North Schmidt Avenue, zoned "R-3" Residential. The applicants are requesting an exception to Section 18-81(1)(a) of the Municipal Code; the 2,000-ft spacing requirements for community living arrangements. The proposed Adult Family Home would be located approximately 1,800-ft from an existing facility at 212 Columbus Drive.

   (Note: Prior to the Public Heating, a petition from the residents of the Forest Ridge neighborhood was presented to the Plan Commission Secretary. A copy of the petition is attached to the minutes.)

   - Zoning Administrator Curtiss wanted to clarify that the public hearing is to consider an exception to the spacing rule for an adult family home for disabled persons at 301 North Schmidt Avenue and another proposed adult family home, again an exception to the spacing rule, for disabled persons at 3100 Popp Avenue. That is the purpose of this public hearing.

   - Mayor Meyers asked that comments be limited to three minutes each.

   - John Kruse, 806 East 19th Street, Business at 113 West 2nd Street, retained by John & Lora Bahr, who own and operate the Young At Heart LLC. I wish to point out that with the exception of my clients and their 8 month old son the four residents that would reside in this home are disabled as defined by the Americans With Disabilities Act as well as the Federal Housing Amendments Act. This is not a half way house or rehabilitation center but a facility that provides long term assistance to its residents in a residential setting. As I am sure Mr. Hutchinson will tell you, the City of Marshfield must comply with the ADA and FHAA to the extent that the zoning ordinances create an obstacle to the accomplishments of the purposes of the ADA and the FHAA. Those ordinances are preempted by Federal Law. The City of Marshfield, under both the ADA and the FHAA has an obligation to make reasonable accommodations to allow disabled persons to live in all of the residential neighborhoods in the City of Marshfield. My clients are seeking this reasonable accommodation by requesting the conditional use permit. It is important for you to understand that the City cannot restrict where disabled people live to one or two neighborhoods. All neighborhoods are open to people who are disabled to reside in. Disabled individuals have an absolute right to that. Now this request is reasonable in that it does not impose any financial or administrative burdens on the City. The disabled residents do not drive vehicles. You are not going to have an increase in traffic. Mr. Stroik will tell you that there has been no evidence of any additional crime or police calls associated with any of the nine existing adult family homes in the City as well as the 15 CBRF's located in the City. The purpose of R-3 residential zoning remains unchanged should this conditional use be granted in that adult family homes resemble families in all senses of the word except that these parties are unrelated. Adult

family homes are necessary in that the disabled persons residing in them cannot live in a residential setting independently. In order to live in a residential setting they require assistance with the activities of daily living that only an adult family home or other group homes provides. Ms. Susan Ackerman of the Wood County Unified Services will shortly tell you that there is a significant need for additional adult family homes in the City of Marshfield. She will further go on to tell you that the residents of these homes are non-violent. These are simply disabled individuals who need assistance to live in a residential setting. Unless this request is granted disabled individuals will further not have an equal opportunity to live in all of the residential neighborhoods in the City of Marshfield because of their need for assistance. The FHAA prohibits local governments from applying zoning in a manner that will give disabled people less opportunity to live in certain neighborhoods than people without disabilities. The spacing ordinance that the city adopted was based on Section 62.23 of the Wisconsin Statutes. It is interesting that the spacing ordinance, the 2000 feet, was to prevent the City from congregating all of the disabled housing in just a few select neighborhoods. People have a right to live in all neighborhoods in the City. It was designed to spread those adult family homes out. If you take a look at the map that Ms. Curtiss provided for you, you will notice that there are clusters already, in fact, my house is in the middle of I think eight group homes in the City. They have all been shoved into the southeast corner of the City. The people living in Forest Ridge also have the opportunity to have a group home located there. I want to emphasize, this ordinance was not designed to allow neighborhoods to deny access to housing to disabled people. I believe that the neighbors that are here opposing this are good and decent people as several of the Plan Commission members who served when I served on here years ago recognize that whenever these things come up you get a certain amount of people coming out, they are afraid there will be sexual predators, drug addicts, and people who will hurt their children. The bottom line is that this is basically an unfounded fear and all you have to do is take a look at what has happened with all of the adult family homes that already exist in this city. You don't see those problems. I believe that after the neighbors have experienced living next to a group of disabled individuals they will not have these same fears. Developmental disabilities are not catching. Individuals with dementia are not catching. This is a situation that the city has an absolute obligation under both the ADA and FHAA that they are required to give disabled individuals an equal opportunity to live in all neighborhoods. Thank you.

- Steve Lipowski, Attorney with Ruder Ware of Wausau, WI, and I have been retained by several of the neighbors in the Forest Ridge Subdivision to speak in opposition to the Bahr's application for conditional use request this evening. As was stated previously, Wisconsin Statue 62.23 provides and ordinance 18-81 also provides for a distance separation requirement between CBRF's, adults family homes and similar facilities. The purpose of 62.23 is to prevent the undo congregation of these types of facilities in residential neighborhoods. It is to preserve the residential character of those neighborhoods, not just for the benefits of people like my clients and other neighbors but also for the residents of those CBRF's and facilities themselves to live in truly residential neighborhoods not institutional neighborhoods as the legislature put it. Ordinance 18-81 specifies a 2,000 foot distance separation requirement. The Wisconsin Statutes provide a 2,500 foot separation requirement or such lesser amount as may be defined by a municipality in its ordinances. The city has reviewed this matter previously, drafted an ordinance that selected something less than 2,500 feet distance separation requirement. It wasn't one foot or 1,800 feet, it was 2,000 feet.

While conditional use permits are possible and certainly 18-81 envisioned that process, that is why we are here tonight. It doesn't mean that there are not legitimate planning and development goals that are supported both by the state legislature's position in 62-23 and also by this city's ordinance under 18-81. I ask that if the exception to this requirement is granted in every case then what is the purpose for the rule. Have you not eviscerated the protections that were afforded again by the state legislature and by this city? There has also been discussion this evening about the Fair Housing Act Amendments and concerns about the requirement that this application must be granted under Federal Law. It is true, the FHAA's require a reasonable accommodation, they do not require, and case law makes it clear, city's are not required to forfeit their discretion in determining what is and is not a reasonable accommodation. Reasonableness may include consideration by municipalities of the extent to which the accommodation would undermine the legitimate purposes and effects of existing zoning regulations. It may also include the consideration of whether alternatives exist to accomplish these benefits more efficiently. As I have stated previously, I believe, my clients believe strongly, and many other neighbors here tonight believe strongly that the planning and zoning goals that were set forth in the Wisconsin Statues and the city ordinances would be severely undermined if we start from the proposition that the exception must be granted in every case and the rule never followed. Secondly, I do believe also there are alternatives. It has been suggested that there is high demand for these facilities as you will see in a moment as other statements from those here to support the opposition to this application will show and has been in the packets that you received as Plan Commission members from my clients here this evening, there is already a concentration of these types of facilities in Marshfield that is three times the state average on a per 1,000 population basis. When you see the map you will see also there are concentrations and applicant's counsel admitted the same, there are concentrations of these already in this city. To suggest that denial of an application would somehow prevent someone from living in a residential neighborhood is to ignore those facts. I appreciate the time. I respect the request to keep things short. I have a number of other clients and neighbors who will speak to the issues.

- Tom Wiskerchen, 208 North Schmidt Avenue. I am a lifelong resident of the City of Marshfield and have lived in this subdivision with my wife and daughters since 1993, in fact my children represent the third general of Wiskerchen's that have lived in this subdivision. The focus of my comments this evening involve Item No. 3(c) of the decision criteria as listed in the City of Marshfield's Municipal Code Chapter 18-32 for conditional use standards. Item 3 identifies the importance of services to the community as one of the six criteria used when making a determination on an application for conditional use. The assisted care industry is a competitive one as adult family homes have entered the marketplace at a rate faster that the populations they serve. Adult family homes in Wisconsin total 4,294 beds or 0.8 beds per thousand people. In contract, Marshfield's adult family home bed to people ratio stands at 2.4 per thousand people, which is three times higher than the state average. As a result, vacancy rates in Marshfield based adult family homes and the closely related CBRF's presently stand at approximately 25%. Nationally this average is around 9%. Since 1995, adult family homes in Wisconsin expanded from 216 to 1,049. This represents a 16% annual average growth rate. Meanwhile, Wisconsin's general population expanded at an average rate of just under 1%. Taking this one step further, Wisconsin's population of people 65 years and older grew by just 2/3's of 1%. Another measure of how well supply is matched with demand within the assisted living industry can be found in the

Wisconsin Department of Quality Assurance's State of the State Annual Report. In 2006, the last year in which information is available, 352 assisted living homes were newly licensed in this state. That same year, 323 assisted living centers closed their doors. In other words, for every 10 of these businesses that opened, nine closed up. This turned rate of 92% was up substantially from the year before when it was a still high 75%. Where do all these numbers and information come from – sources include the Wisconsin Division of Health and Family Services, the Wisconsin Bureau of Assisted Living, the Wisconsin Department of Quality Assurance, the US Census Bureau, MACCI – our local chamber, conversations with local adult group home operators, the National Center for Assisted Living and the Wisconsin Assisted Living Association. I realize I have just compiled a lot of numbers here, but based on these facts of this industry at this time, they add up to the following summary. Marshfield has become saturated with adult family homes with some neighborhoods as mentioned earlier have served as virtual clusters of them. This is just a blown up map, each red pin identifying either an adult family home or a CBRF. Vacancy rates are significantly higher than the national average. The present population's needs are more than adequately served by the city's existing adult family homes and CBRF's. There is no marketplace data to suggest that more bed capacity in Marshfield is needed. The near term estimated population growth is less than 1%. Based on this information it is difficult to understand the need to grant an exception in order to accommodate an addition to an industry that is extremely competitive and appears to have adequate capacity. I believe a decision to deny this request can be made based on these economic and demographic facts. Forming decisions today based on facts will serve us well in helping to build up on the strengths that Marshfield prides itself in. The Forest Ridge Subdivision has withstood the test of time, has become an exceptional place to live and play. Please help us now to insure that this past integrity is preserved for residents today and those yet to come. Thanks very much.

- John Bahr, 301 North Schmidt Avenue, I am licensed to run an adult family home for long term care, not rehab. My wife, 8 month old son and I live in a home where we would take care of four disabled residents who cannot live independently and need assistance with their activities of daily living. The individuals are referred to us by social workers and Unified Services and anyone referred cannot have a hint of violence.

- John Hayes, 300 North Schmidt Avenue, I have lived there with my wife and three children for almost 17 years. I would just like to address the issue of what has come up as the potential safety concerns because this is a reason that the commission can consider not to grant an exception. While it is one thing to say that there have not been any violent episodes or trouble with existing facilities, that is not to say that there couldn't be in the future if we are not vigilant and diligent at assessing these situations. The issue we have of concern is the fact that the license that is granted to this facility allows for the care of people of advanced age, developmental disabilities, physical disabilities, alcohol and drug dependence, emotional disturbance and mental illness. When you apply to run a home like this you check off on your application what type of patients you want to have in your facility and then the state licenses you. The state does not require specific training for any of these types of diagnoses. They require 15 hours of training in a general broad fashion and then you can be licensed to any of these categories as well as the state allows other categories which this facility is not licensed for such as pregnant women, correctional clients, terminal illness, traumatic brain injuries and AIDS. The point is though that while Mr. Bahr in his letter to his neighbors said

that he considers mental illness to be the early stages of Alzheimer's and dementia, his facility is not actually licensed for Alzheimer's and dementia. The state has no specific set criteria for these diagnoses so you can kind of put anyone into any category I guess but the well understood in the medical community definition of mental illness has to do with patients with chronic serious psychiatric illnesses, schizophrenia, bi-polar illness, depression, obsessive compulsive disorder, anxiety, things to that nature. The bottom line is that if beds need to be filled, there is a broad range of patients that could be put in this facility that may not be appropriate to be housed directly adjacent to a park where children are close by. People who potentially have unpredictable or erratic behaviors if they are non compliant with medication, and unpredictable things can happen. To be in the home with a child trying to take care of four disabled adults with different types of diagnoses I think is potentially dangerous. I think that that is a valid concern as to the appropriateness of the type of patient that could be housed in this location. There also could be concerns about the safety of the residents as well. There are no sidewalks in this area and one of the advertised attractions is the park and the bike path which is several blocks away. Patients like this out walking the street in order to get to these areas is potentially a danger to them as well. I think there are safety concerns that we have to keep in mind and to just say that these facilities have been safe therefore that is not a concern I think is just not good enough. We think that this is an unnecessary risk in this location where children are at the park and we would ask that you not grant the exception. Thank you.

- Susan Ackerman, 1611 North Hume Avenue, employed by Wood County Unified Services and has managed three of the county run group homes. We have adults with developmental disabilities and we are currently at capacity and I often do received phone calls from people in regard to placing individuals so I feel there is a need for more of these homes in the area. We just don't have the resources at this point to place them. I think a lot of it is a matter of education about what types of disabilities people have and that they are integrated into the community. Assisted living is for people who have a disability where they cannot live independently. They need help with daily activities, their daily living skills. The people who run the group homes are – they get referrals and then they are able to make assessments to decide whether this person fits into their lifestyle and fits into the group home or type of facility they are running. Adults that are a danger to themselves or others generally are not going to be placed in the community, they are going to be placed in a different type of facility. I won't speak to the level of supervision because that is something that I probably shouldn't speak to. We run CBRF's which are very similar licensing as the adult family homes. The bottom line is that we never know when a loved one of ours is going to develop a disability whether that is mental illness or a physical disability or drug or alcohol issue and at that point we would be looking for options in the community so that they wouldn't have to live in some sort of institution. I believe that this request is something positive for the community. Thank you.

- Lisa Boero, 500 North Schmidt Avenue. My husband and I have two small children, a five year old and a two year old so I am going to talk a little bit about the concerns we have regarding safety. Just so that you have a sense of my background, my husband and I moved to Marshfield on the coldest day of the year last year, but despite the very, very bitter cold we were very impressed with the warmth of the people we met in this neighborhood and in Marshfield in general. We moved from St. Louis which is a much larger, more urban area, in

fact it has been named the murder capital of the world or the United States, the city of St. Louis has, because it has a lot of problems. We chose Marshfield because we wanted to get away from some of these issues and we wanted a safe place for our kids and we were really impressed with the small town atmosphere of Marshfield and we felt that there was such a great community here, we were instantly drawn to it. We chose to buy a house in the City of Marshfield and specifically in the Forest Ridge neighborhood because of the great park that is at the center of this neighborhood and because of the bike path that runs through it. It also seemed very quiet and residential which after living in a large urban area is a good thing especially if you have little kids. We wanted our kids to grow up with some of the freedoms I remember as a kid growing up in a small town. That ability to bike around the town with your friends or walk over to the park on your own or to play basketball or soccer or whatever to just hang out and be a kid. That ability to be a kid is disappearing all over the United States and we had hoped that here in Marshfield we would get a little bit of it back. I may be an idealist but the City of Marshfield has a similar aspiration for the people who live here and for the children who live here and I think that aspiration is identified in some of the criteria that the City Commission can use in making a determination on variance and specifically I am talking about Section 18-32(3)(d) – that section states that the City must look to the protection of the current neighborhood uses in order to make a determination about whether or not they grant a variance and in this case I want to talk about the neighborhood uses of the park and the bike trail and how those uses are going to be infringed upon if this variance is granted. The Forest Ridge Park, the bike trail, these are really the jewels of this neighborhood. We have people coming from all over the neighborhood and also from all over the west side to use these facilities because they are so great. The park has got playground equipment for little kids but it also has a basketball hoop and a lot of open space for pickup games and basketball or soccer. Kids bike from all over the place on the west side to meet up with their friends and hang out. They use the bike trail, they are on their bikes, they are on their roller blades, I can't tell you how many times I have gone down that trail and there is some kid coming at you the other direction from some part of that trail. These are really great resources and I think in granting this variance they would really infringe on the children's ability to use them. Let me tell you why I feel this way. The Bahr's want to open an adult family home. They have talked a lot and their attorney has talked a lot about disabled individuals but they requested a license for certain client groups and they advertised for certain client groups and that client group mix that they advertised for and said that they wanted to take included persons with emotional disturbances, persons with mental illness, persons with drug or alcohol addition, they say we are not running a rehab, well you advertise for persons with drug and alcohol additions you are probably going to get persons with drug and alcohol addictions. I might add that the client mix they advertised for and that they have been talking about is a particularly volatile one as John talked about this is a group that is not particularly good at taking their medication, not particularly compliant, not particularly rational when it comes to making decisions. I might add that they have talked about persons with Alzheimer's, that is actually not a category they signed up for so I am not really sure either they are confused about their own categories they have signed up for or something is going on here. The fact remains that they have the licensure to be able to take all these client groups and they have actually advertised for all of these client groups. The fact that they are now changing their story and telling us well we didn't really mean that we meant this other group – to be honest with you as neighbors we don't really believe it at this point, we don't really have a lot of confidence in what they are telling us because this is the

exact opposite of what they themselves in their own advertising in their own program statement have advertised for and have asked for. This is the thing, the Bahr's are up here because they did not properly investigate the ordinances. They bought this house, they want to set up this business but they need a variance to do it. They have not apparently budgeted for appropriate staffing. We were told that in their program statement they say that there is going to be somebody there as an administrator all day every day and then there is going to be an administrative assistant, well at the open house they held they told us no actually it is going to be Mr. Bahr and he is going to be there with all four residents plus the 8 month old child. Again, this is an inconsistency that does not inspire confidence in the neighborhood. They have also indicated in their program statement that their clients must be mobile because the house is not set up for wheelchair access and given the staffing level that we have been told is going to happen I think there is a distinct possibility that you may have people who they are taking care of that may get out the door and start wandering around and are going to be wandering the road because there are not any sidewalks for them to go to. I just want to paint a scenario – you have a client that gets away from you, they are walking down the road, they walk to the bike path, there are all sorts of secluded areas on that bike path, how long is it going to be before you can find that person, is that person going to have injured themselves or other people, perhaps a child, who knows. These are serious practical considerations that the neighborhood has had to think about in terms of this variance. I might also just add another note, we have not been told as neighbors about traffic concerns. Someone brought this up to them at the open house and they said no one visits these clients. That is what we were told about traffic. There has been no discussion about these practical concerns that the neighbors have. I might add that the Bahr's have advertised and touted both the park and the bike path as assets to their business, to their clients and in their brochures they have talked about how they are going to make extensive use of these things. They have also at their open house been unwilling to say that they are going to live long term in the house. They may just as easily tomorrow decide they are going to have someone manage this client base because it's too tricky and then they can move out and live someplace else that is more tranquil, more easy to manage. OK so bottom line what does it mean that they are now requesting a variance at 301 North Schmidt, with the client mix that they have actually requested licensure for and advertised for. It means that the Bahr's think it is appropriate for our children and the children of every family that uses that park or the bike trail that it is appropriate for those children to have the burden of dealing with this particular client mix. That means that children who don't have any idea about the Bahr's business, don't have any idea about the client mix, may not understand the concerns of the clients, may not even understand what is going on are going to be left to deal with and to handle appropriately persons who are addicted to alcohol or drugs, persons who are mentally ill, persons who are emotionally disturbed and any other issues, these things can all be in combination. This is the concern. My concern is that the children of Marshfield are going to be the persons who have to bear the burden of the Bahr's own inappropriate request for licensure in terms of the client mix, their own poor planning about staffing, their own poor choice of location right next to a City park. It is not going to be us it is going to be our kids that are going to have to deal with it and I know that the City of Marshfield and that you as Plan Commissioners care about your children and want them to be safe and want them to be secure and that is why we have Section D in the criteria so that you can take a look at neighborhood uses and make a determination based upon that and I am asking respectfully that you deny a request for variance under 18-81 based on that particular criteria. Thank you very much.

- Phyllis LeMoine, she and her husband own the group home at 212 Columbus Drive, and this brings back lots of bad memories for me because 12 years ago I had to do the same thing the Bahr's are doing tonight for a group home that we started at 800 South Drake Avenue. I am just going to give you my experiences in the past 12 years and go from there. We had the same problems, the neighbors were up in arms at 800 South Drake. We had to do the same thing we are doing tonight and I can tell you now that those same neighbors volunteer for us, they buy us groceries when we need them to, they are very supportive of us being in the neighborhood. When we decided to open up Drake House II at 212 Columbus Drive which was more than 2,000 feet away from Drake I, so we did not have to go through this process, we had some concerned neighbors that called us and asked us what was going to happen and what type of client groups we were going to take and the same sort of thing. Again, we have the Easter Bunny from next door come over and give our residents gifts and candy at the holidays and we have their children come and Christmas carol for our residents. They are very, very supportive of us being there. I don't know what else to tell you about the client groups that you are so concerned about. I have not checked all the client groups on my license but I can tell you that if I wanted to change that I could do that by a phone call with the State and get a re-application and do it, it would not take much. I have had people with mental illness, I have had emotionally disturbed people, alcohol in the past, a recovering alcoholic in the past and have never had a problem with any danger in the community for anybody's children or family member. We have a CBRF, we don't live in the home with the residents. The Bahr's are living in the residence and why in the world would you take in somebody that you think would be a danger when you have your own child in the home. Think about it. For the bike path, that is great, I have a man in a motorized wheelchair that loves to go on the bike path, that is wonderful, he loves it and he doesn't even live next door to it. The other point is if the Bahr's would have purchased a home on the next block, this would be a moot point. If it was a little bit more north and a little bit more east from 212 Columbus Drive we would all not be here tonight so I just ask that you keep that in mind. Experience speaks for itself and I have 12 years of it in this business and taking care of people in a residential neighborhood and we have not had a problem. Thank you.

- Paul Van Den Heuvel, I live at 106 South Schmidt Avenue with my wife and children and I am speaking against the request. I have heard a number of comments tonight from those favoring the granting of the conditional use permit as well and the variance and one argument that was just raised is that if it was a few hundred more feet away it would be a moot point but it is not so it is not a moot point. I think we have to ask as a community what is the purpose of laws, what it the purpose of ordinances. Should we just go ahead and state that you can't locate a business in a particular area but if someone comes to us with a good story or has made a mistake and started building on a property and such we should just go ahead and grant them a variance. We talk about reasonableness, Attorney Kruse brought up that particular argument that there is a reasonable expectation here that you must go ahead and grant this particular request. Well I know as an attorney myself that doesn't necessarily carry a lot of water. The bottom line here is the homeowners in this area have a reasonable expectation too and that is that their duly elected representatives enforce the laws of the community. If we are talking about what is reasonable we have an ordinance in this community that is 20% more favorable than that dictated by the state so if we want to make a reasonableness argument here clearly this is a reasonable ordinance here and granting an

additional conditional use permit against that does not seem to make sense in terms of maintaining the character and safety of the neighborhood. I don't doubt the need for these homes whatsoever in the community and I think if you talked to a lot of people in our subdivision they would agree that there is a need. Clearly, state law, federal law acknowledges that need. We don't have any kind of concerns relative to the fact there are people who have drug issues and alcohol issues and the like as a general proposition but more so we have a concern as to whether the City should be granting variances against its own ordinances when we are faced with this set of facts here. We know that the Bahr's have stated that they are going to use to home for a certain purpose, we are now hearing different things tonight. There seems to be a number of questions as to the background in licensure as well as their own particular background which I will leave for the council and for the zoning committee to consider. What I do want to talk a little bit more about is what we experienced this past summer in terms of safety in our community. A number of us moved to Marshfield expecting that this was a safer community and our neighborhood was targeted with a whole string of burglaries and as it turned out that background of that particular individual was that he had a drug issue. We are concerned and I know I heard a number of people mention, I came from the Milwaukee area myself, if you wanted this type of climate for your neighborhood, well you could live in a bigger city. We don't. We chose to live in Marshfield because it is a great place to live, it's safe, it's a nice community, it's relationship based and we don't want to put the community in the position, our neighborhood in another position here by the granting of this particular variance in which the character of the neighborhood and the safety of the neighborhood is further called into question so I ask that you give consideration to your own variances here and your own laws which you should be granting. I do know that the City of Marshfield a few years ago in the Town of Lincoln matter, zoning matter on Lincoln Road argued against the granting of variances for a couple of properties there and they argued in particular that this would denigrate the character of the surrounding neighborhoods including the very neighborhood we are talking about this evening. I would ask that the City of Marshfield now consider what should we be doing with our own laws. We should be enforcing them. What kinds of expectations do homeowners have when they move into an area?

- Carol Carter, 1113 West Onstad Drive, for 17 years I worked as a social worker for Wood County Department of Social Services. One of my duties there was adult group home coordinator for northern Wood County. In 1993 I left Social Services to run my own group home, Oakview Home CBRF at 208 West 25th Street. In the 14 years my husband and I owned Oakview, I am proud to say that we had not a single problem with our neighbors but only the greatest support from them. When we expanded from 8 to 9 residents every homeowner on the block including both sides of 26th Street signed a petition backing our application for a change in our permit. In October of 2006 we sold Oakview to pursue other opportunities after operating it for 14 years. In February of this year, I was told by a neighbor that John and Lora Bahr intended to open an adult family home at 301 North Schmidt, about 1-1/2 blocks from my house. The buyers had previous experience as live in caretakers of an adult family care home. I called their former employer and also a group home personnel trainer who had worked with them on various stages of certification, which there are quite a bit and that 15 hours I don't believe is correct. Both had nothing but good report on the Bahr's ability, training and character. I next visited the Bahr's home and was impressed with the remodeling they had done and with the Bahr's themselves. I explained

my experience in the foster care business and we talked for an hour about group homes of various types, the elderly as group home clients and the integration of group home clients into a neighborhood. I understand that the neighbors are uncomfortable with the idea that they are coming in. I believe that their concerns arise with an unfamiliararity with the philosophy, mission, conduct and impact of group homes. After talking with the Bahr's and touring their facility I do not believe that the four elderly or developmentally disabled clients the Bahr's plan to bring into their house will pose any risk to the neighborhood or to his children. For this conclusion I do not think that there can be any better guarantee than the fact that the Bahr's themselves have an 8 month old child to raise and protect. It is my professional and personal opinion that one John & Lora Bahr are fully qualified to operate an adult family home and that the house at 301 North Schmidt is fully equipped to operate and that an adult family home at this location poses no undue risk to the neighborhood or its residents and that the ordinance requiring 2,000 feet between group homes has been so frequently waived or ignored that it is no longer has practical function or validity, that in view of the above four conclusions, all objections including those citing the 2,000 foot separation ordinance should be set aside and that the Bahr's application for a use permit should be granted without condition, prejudice or qualification. Thank you.

- Mary Masuda, 512 North Schmidt Avenue, two blocks north of home in question and my husband is Jonathon Forncrook. We have no children and to be honest I have not even gone to the park. I did take a ride to take a look at the park. We have many friends that have a lot of children – they roam the streets very freely and there is a concern in that people up beyond North of Ives do not know about the situation and they are also concerned as well. I know the City notifies in terms of some of the public hearings whatnot is it 100 feet or 200 so I think there is still some education in need in that I was still last night talking to people about this because they did not know about it. I am concerned about the safety issue so based on that I am requesting that you deny the exception in terms of this space issue. As I talked more with people I found that the situation was getting grayer for me. I think I went into Bonnie Curtiss to get a sign permit and I basically had two questions to ask her in relation to this issue and probably 90 minutes later I came out. I realized it is a very complex issue. I didn't know the difference between a CBRF and a licensed adult home. An hour before I came I realized I was looking at the wrong document because it was talking about certified adult homes. It is not that simple. What I am realizing in terms of the licensing, it comes from the state and I feel it is inadequate. I am a dietician and it took me five years to train for that. Things that I can't do at the hospital in terms of assessing the client is required in this license in terms of a care plan assessments as to when they should go to the hospital just various things that I can't do in a hospital. We can't address that here. What I am concerned about in terms of the Bahr's is I have to believe that their intentions are well meant. The wife I know is a therapist for the son of one of our friends and they are very comfortable in having them into their home and she had no reservations about her so in association with that I am going to presume that John is also sincere of what you had wanted to do in terms of care of clientele that needed assistance. Based on that my concern is even if we took out all the questionable clients, the mentally ill, definitely the alcohol and substance abuse addicted people, my concern is how well he would care for even the elderly clientele and that is based on the fact that he did not apply for a building permit, he did not check into any of the codes associated with opening such an establishment so that leads me to whether he did that intentionally or just didn't think about it. Any time you open up such a business you have to

check into everything, see what you need to do, talk to people, what do I need to do, just look into every factor that might affect the viability of your business. Based on that I am feeling that if he those are simple things you need to do but the fact that he didn't even look at that I am just wondering how well he is going to take care of the patients. I have nothing against this type of facility but I think there is a problem at the state level with the licensing. I think there are issues with all just the establishing the space or maybe there is going to be no more space issues I don't know it is still a very complex arena but at this point the ordinance is in place in terms of the distance and so I am requesting the denial based just on that distance at this point in time. Thank you.

- Jan Landwehr, mother of Lara Bahr, grandmother of their son, and I appreciate everybody's concern. Actually I was watching grandbaby and just needed to stop down – I don't know if this helps anybody's feelings or thoughts but my background is a Licensed Practical Nurse and I worked 20 years on a surgical floor and then I worked in Ministry Home Care and I have always had a fondness for geriatric nursing and so it was just wonderful and did a lot of traveling and currently I am working at the clinic and it is wonderful and I just want to clarify as far as intentions I don't know if I would say well meant as well as well meaning at this point and I guess basically that is one thing I have always been proud of my kids and my daughter my oldest daughter works with autistic children and Lora has worked at the day care and is working with her she is a senior line therapist and but I've got to say I have two wonderful son-in-laws and John's background whether he can I myself being in home health had seen some questionable settings and with concerns I have been in homes and with John's wonderful, wonderful care, he might not have the nursing background but I would trust any of my family relatives to his care. He is so compassionate that for this is off the track but for 13 years he has helped with the MDA camp. These are kids that are so disabled you couldn't believe they were there for a week. They had volunteer nursing that had these kids on respirators. To give that week for 13 years is totally amazing. As far as kids, I understand, I've got five grandkids and I have been in their home to the previous gentleman and a little bit apprehensive with the residents until I got to know them. We all have different personalities. I work with people who don't have children and are not particularly fond of and that is OK we have to protect our kids but my other four grandkids have been over to their place and their previous place and we can't deny that the elderly love some of them not all some of them love children. One of the previous residents when he would see their little boy Keenan he would always say Hi Sweetie, Hi Sweetie. I didn't plan on showing up here but I just wanted to reassure as Grandma these residents knowing how John has worked in this with the past residents. He would be great. I would just like for people whichever way this goes I am rooting for them obviously but whichever way it goes maybe the community has lost something. Thank you.

- Kevin Kummer, 1105 West Ridge Road, my wife and I moved onto Ridge about five years ago and my concern is my children. I have an 11 year old daughter and a 7 year old son. We frequently use the park. My daughter is just to the point now where we are just able to send her on her way. Go ahead with your friends, take your cell phone, don't talk to strangers, call us if you need anything. I am not questioning intentions or what people want to do and I think it is great that the Bahr's are wanting to help people, I don't want to sound like the bad guy here but to have something like that next to the park, I am worried about that one statistic, that one time, we can say we have had no bad cases or experiences or cases that

have gotten out of hand. I don't want it to be my child or anyone's child for that matter that happens to be that one time that this one patient was out of control. With that being said, we have a variance that is being asked for, the rules state the 2,000 feet. I think the rules are put in there to protect people. I don't think they are meant to be broken in this situation and I just ask that you do the right thing when you consider your decision. Thank you.

- Chris Wiskerchen, 208 North Schmidt Avenue. In investigating our uncomfortableness with this situation we went online and did a little of our own research. There have been some character issues raised here tonight and I would like to discuss those. We found some very disappointing information online and I have hard papers to back everything up that I say tonight. Once upon a time there was a gentleman named John R. Gasiciel and we have proof that he is now today John R. Bahr. April 13, 2006 is the date that he changed his name. He has now come into my neighborhood pretending to be someone he is not and he wants to open an adult family home and have drug addicted people and other types of character groups in my neighborhood. Prior to his name change, he pled guilty two different times for possession of drug paraphernalia. The first was June, 2002 and the second was December, 2004. In between these charges he was cited four …

- Mayor Meyers interrupts Chris Wiskerchen. I appreciate the point you are trying to make, but, first of all, the character of the individuals who have the license is a state issue and the license has been issued. The issue we are listening to this evening refers specifically to making an exception to the zoning for this neighborhood to put an adult center in a residential neighborhood. I don't think we need to get into personalities.

- Chris Wiskerchen. So basically they can tell about how wonderful he is but I can't tell about the past.

- Mayor Meyers. Well, basically do you have information you want to share and want to share it with some of the commission you are more than welcome to but it is not pertinent to – I don't know when people come up here what they are going to talk about but when we start to get into personalities I don't think I have to allow it. If you object to that, then so be it, then you can trade places with me. Folks, it is a delicate situation here. I wish everybody had an opportunity to present everything that they prepared for but I think when we start getting into personalities whether it is for or against. This is the emotional part of an issue like this but you are going to find that the Plan Commission has to react to what is in black and white and what is best for the neighborhood and considering the information that we are going to get from City staff as the regular part of the meeting. It gets difficult when we get emotional about it so I prefer we abstain from that.

- Steve Lipowski. I just want to clarify that Mrs. Wiskerchen brought up those comments and facts strictly in response to the discussion of the character issues that were brought up by the applicant or in support of the applicant. I just want to clarify that for the record.

- Mayor Meyers. I am not critical of bringing it up it is just that I don't think we need to address it as part of the hearing for the conditional use permit. It is a state licensing issue and if you have concerns about that I suggest that you contact the state. They are the ones who issued the license and that is in place already.

- Dennis Stemen, 1212 West Blodgett Street. I am about 2 houses away from the subject and I think the main issue, we have all talked about a lot of emotional things here, but the main issue is the client mix – the residents that are going to be here. This group for the most part doesn't have any control and if it is four little old ladies in there and that is all that is ever going to be in there I don't know that anybody or very few would have an objection to that. I am not going to take my full three minutes. I have been in that neighborhood about four years. Our teenage daughter went to college last year so she is gone but I know of 13 other teenage daughters or females within probably 500 feet of that house. If we don't have any control over the residents in that house I think there is a big risk there. The other thing in case you are not real familiar with the layout, this park that we are talking about is not a couple of blocks away, it is next door bordering the property. The bike path that we are talking about is about a block and a half away. Again, as one of the other neighbors said, I am sure most of the time we will be fine, but if it is that one time, these 13 young ladies live there 24 hours they don't get to go away they can't drive away and they are going to be subject to unknown people living there, people with potentially problem past. I am sure some of you have daughters and I know how you would feel in that situation. That's it.

2. Conditional Use Request by Kathy Dieck to establish an Adult Family Home in her residence at 3100 Popp Avenue, zoned "R-2' Residential. The applicant is requesting an exception from Section 18-81(1)(a) of the Municipal Code; the 2,000-ft spacing requirement for community living arrangements. The proposed Adult Family Home would be located approximately 1,000-ft from existing facilities at 3013-3017 West Mann Street.

   - Nancy Finley, 3008 Huetter. Our property is about 500 feet from the proposed adult family group home. I know some comments were brought up tonight about young children and having exposure to the people who would be living in a place like this and I can't think of a better mix than having our youth learn from the experiences of residents of such a home. I am excited about the positive impact this could have on our neighborhood.

   - Roy Cook, 3107 Popp Avenue. I would like to ask the committee what does a conditional use permit mean.

   - Bonnie Curtiss, Planner/Zoning Administrator. It is a special exception process considered for certain requirements so stated and provided within the ordinance. Some reference to that as a variance has been provided here tonight it may be dis-similar in a dimensional aspect but it is a special exception that would be considered to be granted regarding some requirement in the code.

   - Roy Cook. Then that is almost spot zoning isn't it.

   - Bonnie Curtiss. No, sir. Spot zoning is actually dealing with changing the land use itself from residential one category residential to another category residential or from residential to commercial.

   - Roy Cook. Well with Kathy's that would be commercial.

- Bonnie Curtiss. Regardless of any profit making status, an adult family home is a residential use. A residential use, a single family and an adult family home is permitted in residential districts.

- Roy Cook. In my book it is not but how would this affect the taxes. Are our taxes going to be higher or lower? You gentlemen don't have to answer that question, I know the answer. It could affect our valuation also when we might want to sell our home. The next one is – I am representing the ones out on Popp and I talked to 8 or 10 people in the block on both sides and they all said absolutely no we don't need that. We are residential single family and we do not need a business like that. In plain words, six months from now I could ask for a conditional use to put in a barber shop. It all depends on what the people think. We all said no and we hope it stays no.

- Kathy Dieck, 3100 Popp Avenue. I am the one applying for the variance. Adult family homes are exactly that, they are a home, they are allowed to be in a residential area, the only changes to the house can be ramps to make it ADA approved, otherwise my house maintains the same look as it always has had. In regard to the CBRF that is 1,000 feet north of my home it is not part of our subdivision, it is in a whole different area across from Mann Road. You do have satellite images in from of you as far as you can see that we have our subdivision and then across from Mann Road is where the CBRF's are and then the trailer park is back in there also. As far as total number of adult family homes in a community that part cannot be restricted according to the paper work that I received from Bonnie. If we are looking at numbers, it was either last month or the month before, the Harmony House received approval by this council to do a RCAC and a CBRF next to Tiny Tiger's and that actually exceeded the CBRF bed capacity for the City and they had a very strong feasibility study showing the strong need for this type of housing in this community. The fact that we have a wonderful clinic here, wonderful health care system does draw people from other communities here when they are looking for a place to live. When they are at a more elderly stage in their life or when they need more medical treatment they want to be closer to the clinic. Family members look at that also. There is still a need in Marshfield for these types of homes. The license I applied for was for the frail elderly and physically disabled and that is all that I am applying for. I love my neighborhood and I love my neighbors – they are wonderful warm loving people. To hear one of my neighbors say that the whole neighborhood doesn't want it – that I find very hard to believe because all I have heard from various neighbors is positive comments and positive feedback on what a wonderful thing this would be for our neighborhood and for myself. That is all I have to say. Thank you.

- Paul Van Den Heuvel, 106 South Schmidt Avenue. I will just say one comment as it relates to this request also. There really is a connection between them and there is a connection with the granting of these prior variances too. There is a reason why we have that map looking the way that it does too. Clearly, again federal and state law allow for these types of residences to exist. Again, the question before the council is do the other citizens, the tax paying citizens of Marshfield have a reasonable expectation that this City will enforce its ordinances and be sparing with the granting of conditional use permits and variances or is the City going to send out a message that perhaps you should be locating in other communities because you cannot count on the character of your neighborhood being retained. That is all the comments that I have. Thanks.

MEETING

Meeting called to order by Chairman Meyers at 8:24 PM in the Council Chambers of City Hall Plaza.

PRESENT: Mayor Meyers, Dan Knoeck, Trish Siegler, Dave LaFontaine, Diane Wolf and Dave Korth
ABSENT: Sharon Witt
ALSO PRESENT: Aldermen Hansen, Buttke, Feirer, Feddick and Wagner (arrived at 7:39 PM); City Attorney Hutchinson**;** City Administrator Brehm**;** Planning & Economic Development Director Miller; Planner/Zoning Administrator Curtiss; Sara Wiersma; and others.

PC08-06 Motion by Korth, second by Siegler to recommend denying the Conditional Use Request by John & Lora Bahr/Young At Heart LLC to establish an Adult Family Home in their residence at 301 North Schmidt Avenue, zoned "R-3" Residential.

- City Attorney Hutchinson. I am going to attempt the focus the Committee on what I think the law says about …. The Fair Housing Amendment Act (FHAA) and the Americans With Disabilities Act (ADA) both come into play. The courts have reviewed these, they have examined the State Statutes 62.23 which set the 2,500 foot distance requirement. Cases that I have seen have all rejected that rule. Essentially what they do is they conclude that if you are dealing with housing for people with disabilities you are going to have to comply with the FHAA, the ADA. Attorney Lipowski is correct, that doesn't mandate that you must grant the exception but it does mean that you must meet the requirements arising under those two acts. I am going to try to tell you what those requirements are. First of all, the applicant must request a reasonable accommodation, basically requesting the exception to the 2,000 foot distance requirement brings it into play. You then evaluate whether that request is reasonable and necessary to afford an equal opportunity to housing for persons with disabilities. More specifically, you need to contrast the cost to the City with the cost to grant the exception. If it is reasonable in the contrast, in other words if doesn't cost the City substantial funds and I cannot quantify substantial funds then you meet the reasonableness test. A moment ago Bonnie Curtiss presented and indicated to the Plan Commission that there are no noted increased costs for Police or Fire protection, traffic burden in the neighborhood, suggesting that the applicant has met the first part of the test in that their request is reasonable. Is it necessary? Necessary goes to the question of giving disabled people an equal opportunity to residential housing that you and I have today. To go into a neighborhood and live in a particular house of your choice. Admittedly, they cannot live in a house alone – the result of their disability – many of them cannot even afford the house – they need the care – nevertheless they have the right to occupy a home in a residential neighborhood. The courts have consistently held that the 2,500 foot distance requirement under State Statute is unreasonable, unenforceable if in fact it impairs or impedes compliance with the FHAA and the ADA. One of the other requirements in order for this to be reasonable is that it does not defeat the purpose behind the Statute when they created it and it has been brought out in Attorney Kruse's presentation that the purpose behind this was to

avoid congregating or accumulating if you will numerous adult family homes community living arrangements within a concentrated area and not having them scattered throughout the community. That was the purpose behind it. It does not appear to me that placing a home at 301 North Schmidt would defeat the purpose of keeping these scattered throughout the community. I would like to quote for you many of the comments have gone to the concerns about the health and safety of your children and I am going to quote from the United States Court of Appeals 7th Circuit, the jurisdiction of which this City is subject to, its Oconomowoc Residential Programs vs. the City of Milwaukee and what the judge said in that speaking on behalf of a panel of judges, "The City however cannot rely on anecdotal evidence of neighbors opposing the group home as evidence of unreasonableness. A denial of a variance due to public safety concerns or concerns for the safety of the residents themselves cannot be based on blanket stereotypes about disabled persons rather than particularized concerns about individual residence. Generalized perceptions about disabilities in unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion." Unless you have further questions I would recommend that the motion before the Plan Commission not be approved. I would also point out to you that not withstanding everything that everyone has said, including myself, the Plan Commission does have the discretion to approve an exception under Subpart D of 18-81(1) I believe. I will open it up to questions.

Siegler withdrew the second on Motion PC08-06.

PC08-07 Motion by Korth, second by Wolf to recommend denying the Conditional Use Request by John & Lora Bahr/Young At Heart LLC to establish an Adult Family Home in their residence at 301 North Schmidt Avenue, zoned "R-3" Residential.

Discussion continued and the Plan Commission heard from the following:

- Attorney John Kruse
- Attorney Steve Lipowski
- Amber Miller, Director of Planning and Economic Development
- Bonnie Curtiss, Planner/Zoning Administrator

PC08-08 Motion by Korth, second by Wolf to call the question.
Meyers voted 'No', LaFontaine, Korth, Siegler, Wolf & Knoeck voted 'Aye' Motion Carried

Meyers voted 'No', LaFontaine, Korth, Siegler, Wolf & Knoeck voted 'Aye' on Motion PC08-07 Motion Carried

PC08-09 Motion by Siegler, second by Wolf to recommend denying the Conditional Use Request by Kathy Dieck to establish an Adult Family Home in her residence at 3100 Popp Avenue, zoned "R-2' Residential.
Meyers voted 'No', LaFontaine, Korth, Siegler, Wolf & Knoeck voted 'Aye' Motion Carried
PC08-10 Motion by Wolf, second by LaFontaine to recommend modifying the Conditional Use Permit for a "Group Day Care Center" at 1033 South Adams Avenue; specifically to consider modification of the visual screening requirement to require a 6' visual screen along the south side yard only in the form of opaque fence.
Motion and Second were withdrawn

PC08-11 Motion by LaFontaine, second by Wolf to recommend tabling the request to amend the Conditional Use Permit for a "Group Day Care Center" at 1033 South Adams Avenue; specifically to consider modification of the visual screening requirement until the next City Plan Commission meeting or until the weather permits gathering more detail on the elevation of the existing and proposed fence.
All 'Ayes' Motion Carried

PC08-12 Motion by LaFontaine, second by Korth to recommend approval of the extraterritorial final plat of Nick's Pleasant View Estates, a 12-lot subdivision located in the Town of Lincoln on the west side of Pleasant Road, south side of CTH 'Y'.
All 'Ayes' Motion Carried

PC08-13 Motion by LaFontaine, second by Siegler to recommend referring Ordinance No. 1116 – Temporary Structure Regulations to the Board of Public Works for their consideration.
All 'Ayes' Motion Carried

The item pertaining to Signs in the Public Right of Way was referred to a future meeting.

PC08-14 Motion by Siegler, second by Wolf to appoint Dave LaFontaine as a non-elected member of the Plan Commission to the CIP Committee.
Dave Lafontaine stated that he disagrees with Common Council action taken regarding this process to remove staff from the CIP Committee and requests that he not be appointed to this Committee.
Motion and Second were withdrawn.

PC08-15 Motion by Siegler, second by Wolf to appoint Dave Korth as a non-elected member of the Plan Commission to the CIP Committee.
All 'Ayes' Motion Carried

Motion by LaFontaine, second by Korth that the meeting be adjourned at 9:50 PM.
All 'Ayes' Motion Carried

Daniel G. Knoeck, Secretary
CITY PLAN COMMISSION