

Memo from Ken Charneski Jan 27, 2026

Given the activities that have taken place since the October 20 Plan Commission decision on the Milestone application, I have concerns about a fair and unbiased appeal taking place today.

The appeal proceeding requires several elements to be established before it can proceed in a fair manner

1. Objective, unbiased reviewers.
2. The information regarding the facts and evidence exactly as the Plan Commission had available at the time it made its determination.
3. An accurate representation of the ordinance and other law that the Board is required to apply the facts to.
4. The reasoning of the Plan Commission in coming to its decision and which the Board is reviewing.
5. A transcript of the Plan Commission meeting is a standard reasonable expectation in order to conduct a competent, intelligent review of the meeting.
6. Determination of ex-parte communication, which means no discussion about the issue outside of the meeting itself.
7. If one party is represented by legal counsel then all should have that opportunity, in order to be a fair proceeding.

We have **item 3**, which is the 5 criteria stated in ordinance 520-121 that we must apply the facts to.

We have in **item 4 the reasoning** of at least one Plan Commission member, and *Navis v Door County 2021* affirms "reasoning need not be embodied in a written decision as long as it is reflected in a transcript of the proceedings."

The court in *Stojan Coralic, DBA the BrewHouse v Milwaukee Common Council 2011* confirms that committee members are determined to be in agreement with the findings unless they indicate otherwise on the record. The denial letter sent to Milestone summarizes the findings.

In **item 2**, we **HAD** the untainted facts and information to review the decision, until Milestone sent their "position paper" with tons of **new information that the Plan Commission did not have**, and which flies in the face of standard ethical conduct in an appeal process. Even if we were later told to disregard it, effect of **skewing the objectivity of the Board. has already happened**. This should be **declared a mistrial** by the Board, and **deferred to County Circuit Court** to be determined under a certiorari action.

For **item 1**, We have a need to determine the **objectivity of the Board members**. There is generally a **presumption of objectivity**, unless shown otherwise. *Wisconsin v. Gudgeon 2006* explains that lack of objectivity in a decision maker is a "structural error" which is as bad as denying legal counsel, and fundamentally denies due process rights.

In this case, item 1 ties in with item 7 and item 6.

Item 7 relies on **legal representation for an even playing field**. Milestone of course has had a very vigorous, aggressive legal advocacy for their interests.

Plan Commission has been **offered no representation or advocacy** whatsoever by me Davel or Joling. If we had been, I would not need to be writing this now.

Attorney VanderWall agreed to be the **Village attorney** until we found a regular village attorney. They reminded the village **to find a new law firm ASAP** because VanderWaal was very busy and wanted to move on.

The Village **hired Municipal Law** firm in the last week of November.

On December 17 I inquired about the status of the Village/VanderWaal separation, and Mr Joling replied that he was sticking with Vanderwaal for this particular CUP item "to save on costs".

Over the months, VanderWaal has billed the Village about \$3000 for work dealing with the Milestone CUP. On Nov 3 he had a **1.5 hour meeting** with Mr. Joling, Davel, and Wegner regarding the Milestone CUP.

It is very concerning to me that the Village Board as VanderWaal's "client", has **never been informed of any of what was discussed** behind those closed doors.

Mr Valderwaal has sent his opinions of other issues (the speed limit issue is the only one that comes to mind), but for \$3000 spent through December, (not counting recent meetings) the Village Board has **not gotten one word** of legal advisement to support the Plan Commission decision, or to guide the Village Board.

Instead it appears that Mr. Vanderwaal is supplying material, as weak as it is, promote Milestone's position.

So, due to Mr. Joling's sole decision of keeping on a lawyer that he has a long association with, and denying a request for having our new, objective law firm take a look, I think it is reasonable to conclude that the Village and the Plan Commission are going into this appeal meeting without **any effective advocate or legal counsel**.

Item 6 Ex-parte Discussion and a Heavy Bias.

Two days after his meeting with Vanderwaal, on November 5 after a small meeting at the village hall and when everyone else had left, Mr. Joling handed me a blue folder with a circuit court case involving a CUP for a campground along with the other materials that were emailed to the Board on November 12th. He advocated for the Milestone CUP approval for the sand mine as being growth and development that we need. He said he had talked to the lawyer, and he urged me to review the material in the folder.

I said I would, and he called me a couple days later on Nov 7 for a 20 minute call in which he talked about how long the Asphalt plant had been here and **how we have to support long term businesses like this**, again referring to "**growth and development**" for the Maple Ridge area and how the **residents there "will have to go"** sooner or later if they don't like it. More or less the cost of progress.

I told him that the material in the packet was nothing at all of value, expressed dismay that this was **what "our" lawyer was providing**, and that I thought he was talking to the wrong lawyer. Since this one appeared to be an advocate to approve CUPs in other cases, and obviously biased to that point of view.

He asked for the case law that I mentioned at PC, and I said I would get it to him. **This is what I provided to the Board on Friday.**

Going back to me Dec 17 email about the new lawyer, Mr Joling followed up with an email on Dec 18 that said in part:

"Regarding Milestone I find interesting is that we don't seem to want to listen to attorneys until **we're up to our eyeballs in litigation** given the past history of this Village especially that since 2018. I would think maybe **we need to take a different approach on how we do things**. Also, given the fact that you apparently are privy to some laws or statutes with regards to conditional use permits that you cited during the planning commission meeting, I'm wondering what those are that further solidifies your stance. To date you have not provided me with that information.

Yes I too can read statutes."

So, according to that statement, **someone has convinced Mr Joling that somehow the village will**

be sued unless we approve the CUP, and that Mr VanderWaal has not mentioned any of the information in my report that supports CUP denial.

His email goes on:

"I also note your use and citing of the interest or concerns of the taxpayers. What so many times seems to be void around here is **what about the taxpayer who's property it is that they want to sell or develop?** And again I ask you what is your vision for the Village going forward?

Where is it you envision **development and growth** in the village?"

"...maybe we need to at least take a look at our ordinances or zoning requirements and **make changes** to better **facilitate development and growth**. And that probably isn't going to happen in always being in a reactive state rather, **we need to be a little more proactive on these matters.**"

As I showed in my Friday report, **none of Mr Joling's talking points are based on fact, nor do they apply to the criteria in the ordinance.**

Threat of litigation, favors for big business, disregard for current residents, concern for the land-seller's profit, and the misconception that a sand mine in place of actual construction is "growth" or "development" all fit with a **preconception that is biased and not at all impartial** going into the meeting.

In *Marris v. City of Cedarburg 1993* the court ruled that the **chairman's comments showed that he pre-judged the case with an impermissably high risk of bias**, which denied the plaintiff of due process.

The *Marris* court also said:

"In this case no statute or ordinance governs disqualification of a board member."

"We need look only to the characteristics of the proceedings to determine whether the decision-maker must be impartial. In this case the Board must make **factual determinations** about an individual property owner and **then apply those facts to the ordinance**. We conclude that common law notions of fairness require an impartial decisionmaker under these circumstances."

"In this case, where established criteria direct the Board's fact- finding and decision- making, Marris should expect that a decision will be made on the basis of the facts and the law. **If a Board member prejudices the facts or the application of the law, then Marris's right to an impartial decision-maker is violated.**"

Mr. Joling has openly stated his **bias** against the current ordinance criteria, **sympathy** toward CUP applicants, and **prejudgement** going into the appeal, all being based on non-applicable information. This is abundant evidence that Mr Joling represents **an impermissably high risk of bias**, and that he **cannot apply the ordinance objectively to the facts**.

According to the *Marris* court, Mr Joling needs to recuse himself from this appeal.

On the other hand, Mr. Joling want's me to recuse myself because I have "already made up my mind". The Marris case says that familiarity alone with an issue is not a cause for recusal. I have consistently held to the facts and applied them to the criteria. This is not considered to be a "bias" by the Marris court, which instead was dealing with a non-factual, hostile bias by the chairman. Which is the defining characteristic of not being able to fairly determine the facts or to apply them to the law.

Item 5 A transcript. Mr. Joling also denied this request as "too expensive", even though it is generally a basic, necessary component of a competent appeal review.

Given the last minute nature of Milestone's "position paper", and even later notice of Mr. Joling's recusal email, I have no more time to finish this up.