

**TOWN OF DELAFIELD  
PLAN COMMISSION MEETING  
Tuesday, May 20, 2014**

Members present: T. Oberhaus, P. Kanter, M. Tagtow, B. Cooley, G. Reich, E. Kranick

Members absent: C. Dundon

Also present: T. Barbeau, *Town Engineer*, E. Larson, *Town Attorney*, C. Duchow, *Supervisor*, John Mann, *Consultant*, Brian Fischer, *Architect*, K. Smith, *Lake Country Reporter*, 13 citizens

**Public Hearing:** Prior to the start of the scheduled Plan Commission meeting there will be a public hearing in front of the Plan Commission to solicit public input on a request for a Special Exception due to erroneously permitted work, as regulated in Section 17.10 5.5 of the Town of Delafield Zoning Code, for Paolo and Renee Ongaro, owners of the land located at N41 W29131 Prairie Wind Circle South. The Plan Commission meeting will begin immediately following the conclusion of the public hearing. Chairman Oberhaus called the public hearing to order at 7:02 p.m.

Town Attorney Eric Larson stated tonight's hearing is an Evidentiary Hearing, not a Public Hearing. Since this is the first time the Town has had this type of hearing, he discussed how the Ordinance involved was created to allow owners to make a case regarding open space calculations, questions they have on open space topics relating to their property, and to find out if special exceptions could be made for their property if an error was made.

The Plan Commission must create written findings and make a recommendation to the Town Board regarding whether a special exception should be granted. In many cases, this will mean directing the Town Clerk or the Town Attorney to prepare a document for consideration at the next meeting, with the Plan Commission providing sufficient direction to allow the document to be prepared. The direction should give particular attention to the three issues in the ordinance:

1. Permit Error.
2. Preservation of Property Rights.
3. No Substantial Detriment.

Findings need to be made on these three items whether they are proved or not proven. During the Hearing, the Plan Commission will hear sworn testimony from the petitioner. The Plan Commission has the authority to recommend that conditions be placed on the grant of any special exception.

Attorney Larson presented the Plan Commission members with instructions for the Hearing Format.

Mr. Kanter raised objection to the petition presented by Paolo and Renee Ongaro saying it is deficient based on the following:

- 17.10.5.5A 1.a. The petition shall include all of the following....A plat of survey (shall be included which).... shall bear the date of the survey which shall be within one year of the application for the special exception."

Mr. Kanter stated the Plat of Survey from Cornerstone Land Surveying, LLC is dated the 21<sup>st</sup> day of January, 2013 and the letter requesting the special exception is dated April 15, 2014. So the petition is not within 1 year as the Ordinance mandates it shall be.

- Regarding Subsections 1. c. and d. Mr. Kanter stated he has no idea what the issue is or what the complaint is. The petition needs to provide "A detailed written description of the existing development or use, and the conditions for which the special exception is sought" and "Any further information as required...." Since this information has not been provided Mr. Kanter stated this is not right or fair to the Plan Commission since we (members) have no ability to prepare or know what additional information we may need.
- Section B.1. Permit Error. Mr. Kanter stated this Section shows what the proof needs to be. Plan Commission members have no idea what the issues are or what the approval was. Therefore, there is no way for us to judge whether the permit was issued in conformity with the plans and the permit. Going blind into a hearing is not the way to do this. He believes the petition is deficient.

**Mr. Kanter moved to dismiss this petition and that the petition be denied. Ed Kranick seconded the motion.**

Attorney Larson's initial thought was to allow the Plan Commission to adjourn this petition to the next meeting stating that if you deny it we're not following the ordinance determination.

The Petitioner's Attorney James McAllister stated the Evidentiary Hearing is needed and a better alternative is to adjourn to allow petitioner to supplement the information.

Mr. Kanter responded that in a court of law no trial would proceed to trial without a proper motion which sets forth the information. Tonight to dismiss or deny doesn't preclude the petitioner filing a proper petition in the future date and time.

Attorney Larson says the petitioner would have to start over with a new fee and a proper application. Clearly the petitioner doesn't have a proper survey. This clearly is not a valid petition. The procedures do not contemplate that everything would be settled this evening. It is up to the Plan Commission to decide whether or not to continue with an Evidentiary Hearing on this matter. He hopes in the future these things will be caught.

Mr. Oberhaus questioned whether all information had to have been provided before the Hearing or if it just has to be presented at the Hearing.

Engineer Barbeau stated he may not have understood how this hearing would go. The Plan Commission is not as strict as a court of law. The Survey is more than 1 year old. He anticipated the petitioner and her attorney would be making their case orally. He stated that it helps to have the form of the procedure so he can consult with Attorney Larson in the future.

Attorney McAllister stated the landowner had flown from Dallas, TX, where she now resides. Postponing presents a hardship on the landowner who is being denied property rights to sell her property due to the fault of the Town. He stated the situation was becoming adversarial this evening. They're ready to present the evidence. A complaint in civil court puts the Town on notice as to what the complainant seeks.

Mr. Reich stated that no one tonight is adversarial and wants it on record that he takes offense at Attorney McAllister's implication. This situation tonight is due to a lack of preparation on Attorney McAllister and the Petitioner's part.

**The vote on the motion to dismiss and deny this petition failed 3-3** with Mr. Reich, Mr. Tagtow and Mr. Kanter voting for the motion and Mr. Oberhaus, Mr. Cooley and Mr. Kranick voting against the motion.

Mr. Kanter made a motion to table this item for 2 weeks to allow the Petitioner to prepare a proper presentation/materials and to amend the petition. Mr. Reich seconded the motion.

Mr. Oberhaus asked for clarification on whether or not the Petitioner could testify this evening.

Mr. Reich stated the Plan Commission doesn't have the right to override the statute. One element failed, so the totality of the ordinance says it's not able to be discussed – therefore there can be no Hearing. Information should be before the Plan Commission prior to the presentation since members can't prepare properly for the issue to determine what to grant an exception on. He doesn't know what questions to ask for in testimony or if the elements were sufficient to ask the Town Board to grant the exception.

Attorney Larson also responded to Mr. Oberhaus by stating that clearly this is not a valid petition. The procedures do not contemplate that everything would be settled this evening. He is concerned since the reason for denial is the 1 year requirement discussed earlier because we want to know what's out there and when neighboring property owners are noticed they're entitled to know this as well. There may be a burden here, but there's no way for the person to know it would be resolved tonight anyway. He recommended voting in favor of the motion. This way all parties will know what participants are expected to know ahead of time. It's up to the property owner to decide if she needs to be here.

Attorney McAllister stated: We don't have the petition and interested parties don't have it either. It requires sworn testimony. He asked for clarification: Will the chair recognize rules of evidence? Do I need the surveyor here and the Homeowners Association President?

Mr. Larson responded that hearsay may not be weighed heavily. He can't guarantee the outcome; it's up to the Plan Commission.

Engineer Barbeau asked for clarification as to whether or not the Town needs to renotify property owners within 300 ft. of the property. Attorney Larson states that if the item is tabled and the date and time of the next Hearing were announced at this meeting it is not necessary to renotify those citizens. Those who

received the notice for tonight’s meeting had an opportunity to attend this meeting and to hear when any future meeting will take place.

Attorney McAllister asked for a further adjournment on this petition since the petitioner could not attend the meeting in two weeks. He suggested 30 days. **Mr. Kanter amended his motion to table the item until July 1 at 7 p.m. Mr. Reich seconded the amended motion. The motion carried 5-1** with Mr. Kranick voting against it.

The public hearing closed at 7:38 p.m.

**First order of business:** Call to Order and Pledge of Allegiance  
*Chairman Oberhaus called the meeting to order at 7:38 p.m. and led all in the Pledge of Allegiance.*

**Second order of business:** Unfinished Business

- A. Thomas and Polly Kranick, owner, by Cory O’Donnell, Neumann Properties, Inc., agent, (tabled 5/6/14)  
Re: Consideration and possible action on a request for a Residential Planned Unit Development  
Conditional Use permit on parcels known as Tax Key Nos. DELT 0763-983 and DELT 0764-997.

Mr. Kranick recused himself from the meeting.

Engineer Barbeau, Mr. Neumann and Attorney Larson commented on the phasing of the development. Attorney Larson commented that this type of phasing is fairly common especially now since financing is more difficult for developers. He explained the process but said the Town does not have to allow it. To protect the Town, if the developer doesn’t own the land, the property owner needs to be on all the documents for as long as the developer doesn’t own the property. Each phase must have a separate letter of credit and needs to fully comply with Town ordinances as well as meet the cumulative green space requirement of 50.8%. Mr. Neumann will submit the detailed plan indicating the order and size of each phase. (In general: Phase 1 includes the 6 acre park parcel, 36 home sites, 2 storm water retention ponds and the 13 acre parcel to be preserved; Phase 2 will be 26 homes and the remainder of the storm water retention ponds; Phase 3 completes the development and may take place at the same time as Phase 2.) The CU permit will be issued jointly to Mr. Neumann and the Kranicks. If any other developer had to come in they would need to go back through the CU process with the Town of Delafield. An additional family member (Polly) in Seattle, WA, will be included in sign-offs. The Town will receive the necessary documents regarding power of attorney. The April 8 overall plan (concept plan) is the one to use for green space calculations.

Plan Commission members determined changes in the CU Draft need to be made as follows:

Page 2 Item D

*The Developer and Property Owners shall enter into an agreement ....all required improvements, financial guarantees which shall be in the form of a Letter of Credit and agreements with the Town per phase.*

Page 2 Item E, line 3:

Replace the word “may” with “might” only purchase and develop....

Page 3 Item E continued:

...shall contain a minimum of *50.8% open space*....The combination of phase 1 and 2 shall contain a minimum of *50.8% open space*.

Neumann on D – developer and property owners shall enter into agreements....

Item P:

Strike P and include it in D above.

In all appropriate places in the document the words “per phase” will be added to the CU.

Engineer Barbeau and Attorney Larson were directed to review and draft the CU.

Mr. Neumann clarified that his company will own the 13 acres of open property until such time as it is deeded to a particular conservation group.

Attorney Larson and Engineer Barbeau also indicated that a deed restriction will specify fractional ownership of common property in the development. In addition, the Town will be protected from a partially completed subdivision through the wording of the CU since the plans are made for all three phases. Any issues regarding the development will be brought back to the Town for approval or changes.

The preliminary plat is submitted and is being reviewed by Engineer Barbeau. The Plan Commission will see the deed restrictions and the preliminary plat. Attorney Larson explained that the Town is not a party to the deed restrictions. The Town has the right but not the obligation to enforce things relative to Town Code.

**Mr. Cooley made a motion to table this item until we see the CU document in final form. Mr. Reich seconded the motion. The motion carried.**

This item will be brought back June 3 dependent on County comments. Otherwise it will be addressed on June 17.

**Mr. Cooley motioned to remove Agenda Item 2B from the table and bring it to the floor. Mr. Reich seconded. The motion carried.**

B. Town of Delafield, (tabled 5/6/14) Re: Consideration and possible action on a request for a Conditional Use permit to construct and operate a fire station and Town hall on lands located at the southeast corner of Maple Avenue and Silvernail Road, known as the Sports Commons.

John Mann explained a connecting road from the Town Hall parking lot to the skateboard park parking lot is the biggest change in the plans. Traffic will enter from Maple and continue one way on the downhill road to the second parking area. There will be a walking path on the side. The Skateboard Parking lot will be restriped to direct traffic counterclockwise.

The Plan Commission discussed the parking proposal, grading of the property, and signage. Mr. Kanter stated the upper level (Fire Department) door should be open on meeting nights with the Fire Department area locked so that the public could use the handicapped parking and some parking spaces and access the meeting space by using the elevator and stairway. Fire Chief Kozlowski expressed concerns since spaces need to be available for firefighters. Parking during voting is a concern for the Town Clerk, especially during winter months and for large elections. Mr. Kanter suggested looking into alternate voting locations for large elections. Engineer Barbeau stated Highway Superintendent Roberts requested curbs be added to the paved areas to prevent erosion and keep traffic on the roadways.

Engineer Barbeau has reviewed the plans, has all of the information needed, and states the site plan is acceptable. There will be a lot of grading. The CU states a storm water management plan is required for Waukesha County. Four dry ponds are indicated, the landscape plan is reasonable, the building colors, electrical plan, and lighting plan meet requirements.

The Commission members discussed lighting. **Mr. Reich made a motion to put a light at the Fire Station entrance. Mr. Cooley seconded the motion. The motion failed 2-3** (Mr. Reich and Mr. Cooley vote for; Mr. Kanter, Mr. Kranick and Mr. Tagtow opposed; Mr. Oberhaus abstained).

Fire Chief Kozlowski stated flashing lights for the Fire Station have not been included due to the budget.

**Mr. Reich made a motion to put in a curb on one side of the one way driveway and a raised sidewalk with curb on the other side of the driveway. Mr. Tagtow seconded. The motion carried 5-1 with Mr. Kranick voting against the motion.**

The Plan Commission determined it was not permissible for to go forward without the green space issue being resolved. **Mr. Kanter made a motion and Mr. Reich seconded to table this item until the next meeting. The motion carried.**

**Mr. Kanter made a motion and Mr. Reich seconded to move on to new Business Item 3C. The motion was approved.**

A public hearing will be held on this item next Tuesday prior to the Town Board meeting.

C. Town of Delafield, Re: Consideration and possible recommendation to the Town Board on a request from the Town Board to amend Section 17.04 5. N. 5. D. of the P-1 Park and Recreation District to allow for a reduction of the open space to 60% pursuant to a conditional use for public and semi-public buildings and uses on public lands.)

The proposed amendment lowers the open space required in a P-1 district to no less than 60% which is less than the current 90% for open space. Mr. Kanter gave the background of open space for public parks. The fire station drove the timing of this amendment but it is not only applicable to this situation. Future parkland may involve tennis courts, basketball courts, etc. to balance recreational opportunities within the Town. These may need more hard surfaces than the 90% open space requirement would allow. The public has a right to build public improvement for the public good on public property.

Attorney Larson stated the proposal allows a CU to be granted to reduce the open space for P-1 land. Engineer Barbeau stated there will be 85% open space for the Town Hall/Fire Department and Sports Commons Park.

Mr. Reich requested that the draft CU permit incorporate Attorney Larson’s language that zoning requirements say 90% but allows us to reduce it to no less than 60% based on a judicial use of the P-1 land.

**Mr. Reich made a motion to recommend to the Town Board that this ordinance be adopted. Mr. Kranick seconded the motion. The motion passed 4-2.** Mr. Kanter and Mr. Oberhaus opposed the motion.

The construction bidding process is moving parallel to this CU process

**Third order of business:** New Business

A. SummerStage of Delafield, Re: Consideration and approval of a monument sign at the entrance of Lapham Peak State Park on CTH C.

Engineer Barbeau stated the criteria for this sign was met. It is a permanent, internally lit, 2-sided sign opposite the park sign. SummerStage is not associated with the DNR and is a Delafield non-profit group.

**Mr. Reich made a motion to approve the sign. Mr. Tagtow seconded. The motion was approved**

**Fourth Order of Business:** Adjournment

**Motion made by Mr. Tagtow, seconded by Mr. Cooley, to adjourn at 9:28 p.m.. Motion carried.**

Respectfully submitted,

Lauren Beale  
Deputy Clerk/Treasurer

Minutes approved on: June 3, 2014