

**TOWN OF DELAFIELD
PLAN COMMISSION MEETING
Tuesday, December 1, 2015**

Members present: T. Oberhaus, L. Krause, E. Kranick, B. Cooley, C. Dundon, G. Reich
Member absent: P. Kanter
Also present: T. Barbeau, *Town Engineer*, 12 citizens

First order of business: Call to Order and Pledge of Allegiance

Chairman Oberhaus called the meeting to order at 7:02 p.m. and led all in the Pledge of Allegiance.

Second order of business: Approval of the minutes of November 3, 2015

**MOTION BY MR. KRAUSE, SECONDED BY MS. DUNDON, TO APPROVE THE MINUTES OF THE NOVEMBER 3, 2015 PLAN COMMISSION MEETINGS.
MOTION CARRIED.**

Third order of business: Communications (for discussion and possible action): None

Fourth order of business: Unfinished Business: None

- A. Charles and Nicole Dickenson, W288 S290 Elmhurst Road,
Re: Consideration and possible action on a request for a Conditional Use Permit under Section 17.05 5. AO. Riding Academies or Commercial Stables to operate a Commercial Stable at W288 S290 Elmhurst Road.

**MOTION BY MS. DUNDON, SECONDED BY MR. REICH, TO REMOVE THIS ITEM FROM THE TABLE.
MOTION CARRIED.**

Engineer Barbeau explained that the Dickenson's are requesting a Conditional Use Permit (CUP) to operate a Commercial Stable under Section 17.05 5. AO, Riding Academies or Commercial Stables. The property is currently zoning A-1 Agriculture and contains 9.68 acres (gross) and 8.86 acres (net). Commercial Stables are conditional uses which may be permitted in the A-1 zoning district. There are a number of pre-determined conditions in Section 17.05 5. AO., which need to be met prior to issuance of the CUP and are noted within the CUP document. No new information has been submitted or requested from the owners since the public hearing.

The Plan of Operation has been incorporated into the CUP as conditions of the permit. Engineer Barbeau prepared the CUP and the Dickensons have reviewed it. There is a 5 year review period required.

Engineer Barbeau recommended that the Plan Commission recommend approval of the CUP to the Town Board incorporating any comments from the Plan Commission about the specific language in the CUP.

**MOTION BY MR. REICH, SECONDED BY MR. COOLEY, TO APPROVE THE CONDITIONAL USE PERMIT (CUP) FOR CHARLES AND NICOLE DICKENSON TO OPERATE A COMMERCIAL STABLE AND TO RECOMMEND APPROVAL OF THE CUP TO THE TOWN BOARD.
MOTION CARRIED.**

- B. Benjamin Kaufman, W280 N1939 Prospect Avenue (CTH SS),
Re: Consideration and possible action on a request for a fence height increase.

**MOTION BY MR. KRANICK, SECONDED BY MS. DUNDON, TO REMOVE THIS ITEM FROM THE TABLE.
MOTION CARRIED.**

Engineer Barbeau stated that the property is located at the southwest corner of Oakton Road and CTH SS. Over the past year or so, new ATC monopole towers were installed within the ATC easements south of Oakton Road. A substantial amount of work was performed on the Kaufman property which included the removal of the old tower, vegetation and an old 6' high board-on-board fence. The fence was located south of the former tower as shown on the aerial photo. The new fence was extended along Oakton Road, approximately 16 feet off the pavement, west of the new monopole and then southerly to reconnect to the existing fence located in the front of the Kaufman house. The new fence, installed by ATC, measures 8 feet tall from the top of the boards (assuming that the posts will be cut off) to the ground. Two particular codes apply to this situation: **17.06 4. B. 4 and 17.06 4. B. 6.**

ATC has provided a proposal to keep the fence where located, but they will landscape along the fence. Engineer Barbeau has reviewed the plantings with R.A. Smith's landscape architecture staff. There is an area in the fence set aside with no landscaping to be used as an access to ATC's easement. The landscape shrubs and trees will be planted at an initial height of 6 feet. The proposed plan includes installing 20 inch high raised planting beds along the bottom of the fence. In the area adjacent to the gas company vaults, a 1 foot high wood planting bed would be constructed for the planting of ivy.

Engineer Barbeau stated that the location of the previous fence was well inside the property owner's property boundary on the north side of his house, blocked by vegetation. He is not in favor of allowing an 8 foot high fence. The request to berm up around the bottom of the fence is a false way of trying to meet the code and sets a bad precedent. Others have previously requested and been denied the ability to do the same. He would prefer to see the same landscaping but have the fence only extend 6 feet from the existing ground.

Regarding Section **17.06 4. B. 4.** Engineer Barbeau's recommendation is to approve the request to have a fence greater than 3 feet along the two front sides of the house (CTH SS and Oakton Road), with the condition that the fence be no more than 6 feet high from the existing ground grade currently at the site. Regarding Section **17.06 4. B. 6** he recommends that the Plan Commission deny any structure greater than 6 feet in height since it does not meet the setback requirements of the district that it is located in.

Plan Commission members commented that the fence looks like it's leaning and that it looks like an embattlement.

Jim Olson, real estate manager for ATC, responded that the fence is leaning because the weather caused ATC to stop work on the project. They will straighten the fence and reinforce it with concrete.

Paula E. Brunner, N19W28044 Golf View Ct., stated that since ATC removed the original fence and cut the trees and shrubs headlights from passing and turning cars shine into her home. She wonders if the 8 foot high fence can remain as is until the shrubs grow. She would like the fence to be allowed to stay and to be landscaped. The orange construction fence ATC has left is an eyesore. She didn't see her neighbors or have headlights shining into her home prior to the ATC work. She states that the value of her home has gone down due to what ATC did. She enjoys her home and yard but now has had no privacy since ATC took down the trees and shrubs on May 11.

Mr. Kaufman stated that the problem is mainly when cars turn southwest at the corner of Oakton and Hwy. SS. He presented photos of what the area looked like prior to ATC's work and noted that trees and brush were only cut on the south side of Oakton and not in front of St. Anthony's Church. He presented a letter from Randy and Amy Wiseman, W279N1948 Prospect Ave. (Hwy. SS) who live directly across from Mr. Kaufman. The Wisemans "have no issues with the fence being eight feet tall....(and) feel the height of this fence is necessary for him to regain....privacy." He has shown the Wisemans the landscape drawing of what is proposed by ATC and "feel that will look a lot better than what was there before."

Plan Commission members commented that they don't see how the fence hurts anyone. It gives residents privacy and the landscaping will help restore the rural look of the Town. This is an exceptional circumstance. It is unfortunate the Town has to deal with something that ATC did without much thought. What ATC did made

the area look bad; the clear-cutting of trees wasn't necessary; the delay on the bike trail and the damage done there is upsetting. The Town needs to help residents resolve this problem. Although a 6 foot fence is what is allowed and would look better, the 8 foot fence will help the residents involved and will help their property values. The raised planting beds will help reduce the look of the fence and the fence will disappear in a few years behind the vegetation.

Tom Girman, senior environmental project manager at Stantec, said the advantage of placing the raised beds/mound next to the fence is to help the trees survive.

MOTION BY MR. COOLEY, SECONDED BY MR. REICH, THAT WHILE THE PLAN COMMISSION CONTINUES TO RECOGNIZE THE TOWN'S ORDINANCES REGARDING FENCE HEIGHT, IT ALSO RECOGNIZES THAT, DUE TO THIS UNIQUE SITUATION CREATED BY A UTILITY OVER WHICH THE TOWN HAD NO CONTROL AND DUE TO THE TOWN'S DESIRE TO PROTECT BOTH THE PRIVACY AND VALUE OF HOMES WITHIN THE TOWN, THE PLAN COMMISSION GRANTS THE VARIANCE AND ALLOWS THE FENCE HEIGHT INCREASE AS REQUESTED BY MR. KAUFMAN AND AMERICAN TRANSMISSION COMPANY WITH THE REQUIREMENTS THAT THE FENCE, SHRUB PLANTING BEDS, AND RAISED PLANTING BEDS AS PROPOSED IN THE LANDSCAPE PLAN DATED NOVEMBER 2015 BY STANTEC BE COMPLETED BY THE END OF DECEMBER 2015 AND THE PLANTINGS, PROPOSED IN THE SAME PLAN, BE COMPLETED BY JUNE 1, 2016.

MOTION CARRIED.

Fifth order of business:

New Business:

- A. Nancy Jablonski, W284 N4160 North Shore Drive,
Re: Consideration and possible action on a request for a Home Occupation Permit for the preparation and sale of pet treats.

Engineer Barbeau stated that Ms. Jablonski is proposing to prepare and sell pet treats out of her home. She has submitted a narrative indicating that she meets all of the criteria for a Home Occupation. He recommended approval of the proposed Home Occupation in accordance with the plan of operation submitted with the application.

MOTION BY MR. KRAUSE, SECONDED BY MR. COOLEY, TO APPROVE NANCY JABLONSKI'S REQUEST FOR A HOME OCCUPATION PERMIT FOR THE PREPARATION AND SALE OF PET TREATS. MOTION CARRIED.

- B. Kathleen Seiberlich, N64 W31151 Beaver Lake Road, Hartland, WI
Re: Consideration and possible action on a request to approve a Certified Survey Map to split land into two parcels at W290 N3159 Hillcrest Drive.

Engineer Barbeau stated that the Seiberlich property is currently 10.4 acres in size. The zoning map shows that the property consists of a northerly portion that is zoned A-3 and a southerly portion that is zoned A-2; however, he has not been able to find the ordinance to confirm the zoning change or the location of the line between the two zonings. Both proposed lots contain C-1 Upland Environmental Corridor Overlay District lands. Lot 2, the southerly 6.15 acre parcel being created, contains 2 outbuildings and a residence.

The lot meets the open space and maximum accessory building requirements of the A-2 zoning district. The buildings meet the required offsets. The setback for the small shed and barn on the site is 9.3 and 8.4 feet respectively from the right-of-way line and are legal nonconforming. The setback for the residence is 36.6 ft. which meets the County's setback (the house is in the County Shoreland Jurisdiction). Portions of both lots are in the Primary Environmental Corridor (PEC) which coincides with the Town's C-1 district. Section 17.04 5. P.5. requires that all building and land disturbance shall be limited to the area outside the C-1 lands. Sheet 6 of 6 states the PEC restrictions and includes a note that states that the construction of buildings is prohibited in the PEC except with the approval of Waukesha County and the Town of Delafield. The current parcel is in the

Lake Pewaukee Sanitary District (LPSD). They have indicated that a sewer lateral is available outside the roadway to connect to the LPSD system.

Engineer Barbeau has reviewed the CSM for technical adherence to the Town code and State Statutes and the document meets those requirements. He recommends approval subject to any conditions and requirements from Waukesha County and the Lake Pewaukee Sanitary District.

Keith Kindred, SEH, Inc., explained the request. He would like approval of the right-of-way, dedicating 33 ft. from the former property line so that the road doesn't encroach on the property. He stated that Lost Creek Subdivision dedicated less.

Engineer Barbeau said, since this property is partly in the Shoreland District, the County would require a 5 acre minimum for any request to divide the property again. Restrictions relating to the Primary Environmental Corridor would also impact that type of request.

**MOTION BY MR. KRAUSE, SECONDED BY MR. REICH, TO RECOMMEND TO THE TOWN BOARD THE APPROVAL OF THE CERTIFIED SURVEY MAP TO SPLIT THE LAND AT W290N3159 HILLCREST DR. INTO TWO PARCELS AND TO APPROVE THE DEDICATION OF A RIGHT-OF-WAY TO THE TOWN EQUALING 33 FT. FROM THE FORMER PROPERTY LINE.
MOTION CARRIED.**

- C. Schoenstatt Sisters of Mary, W284 N404 Cherry Lane
Re: Consideration and possible action on a request for a sign variance to allow an off premise sign and to allow the sign to be in the Town right-of-way.

The Schoenstatt Sisters currently have an off-premises sign located at the southwest corner of Northview Road and Cherry Lane. The sign has been there for a long time (the Town has no information as to when it was originally permitted). The sign and posts that hold up the sign are in poor condition and the Schoenstatt's want to completely remove the sign and posts and install a new sign with new posts. The new sign would be a two-sided, metal sign with a blue reflective material for vehicles to easily see at night. The existing sign posts create a frame that is approximately 9 ft. tall and 7 ft. wide; the sign itself is 2 ft. by 6 ft.

Section 17.08 addresses signs and the sections related to this particular issue are as follows:

- 17.08 2. states, "It shall be illegal for a sign to be erected, constructed, repaired, altered, located or maintained in the Town except as provided in this chapter.
- 17.08 7. D. 3. Prohibited Signs, includes "off-premise signs"
- 17.08 7. F. Location Requirements, 2. Signs Prohibited Within or in Proximity to Limits of any Street or Highway, "No sign shall be erected, placed, located, or maintained within the limits on any street, road or highway. Street road or highway limits includes all the dedicated right-of-way, encompassed travelled portion of the street, road or highway, the shoulders, ditches and adjacent dedicated areas."

The Schoenstatt's would like the off premises sign to remain in its current location primarily to direct visitors to the facility. Based on a survey from Jahnke & Jahnke, the existing sign falls within the Town right-of-way and is approximately 1 ft. from the property line. The resident at the southwest corner of Northview Road and Cherry Lane has indicated his objection in a letter to the Plan Commission to allowing the sign to remain where it is currently located.

Engineer Barbeau is not aware of any other signs in the Town that are both off premise and in the Town right-of-way. The request for a variance is allowed in accordance with Section 17.08 13. with the intention of allowing flexibility in sign regulation while fulfilling the purpose (see preamble to Section 17.08) of the ordinance. Although applicants can request a variance from any provision or requirement of the chapter, the criteria for sign variances include area enhancements and site difficulties. Since the request is for an off

premise sign, these two criteria, don't seem to apply. It is up to the Plan Commission to decide if the request has merit.

A letter from Blake and Brittney Nelson, W285N1019 Cherry Ln., requests that the Schoenstatt signage be removed from the Town's right-of-way since it *"looks un-kept and could potentially hurt the value of our property, as well as become an issue when/if we sell....the sign is aesthetically unpleasing....there should not be a sign for a business in our nice neighborhood. To our knowledge, this sign does not have a required permit nor shall it be currently issued one as it goes against many of the town's codes."*

Engineer Barbeau explained that the Nelsons live in the last home built on Cherry Lane. The sign has been located in this place over 35 years. The sign ordinance was updated in 1998 but he doesn't know what was in place prior to that. Ms. Dundon said the current sign predates the Town's sign ordinance and believes the sign should be grandfathered.

Plan Commission members commented that they would like the property owner and the Schoenstatt Sisters to come into agreement on this. The sign was in the location when the Nelsons purchased their property but the Sisters have not adequately maintained the area. The sign is considered important from a public safety standpoint. It is directional for informational purposes to aid visitors, predates the sign ordinance, minimizes potential traffic safety issues in an area where site distance is difficult, and serves the greater purpose of ensuring traffic flows well. The neighbor's requests are important. The sign should look nice. Maintenance of both the sign and the area around it must be done by the Sisters. Metal posts are not acceptable – nicer posts are required and they should be wrapped in a material other than a "green post". Sister Joan stated that she understood the requirements. Adding "Town of Delafield" to the sign as is required on other signs put up in the Town was discussed.

MOTION BY MR. REICH, SECONDED BY MS. DUNDON, TO APPROVE THE SCHOENSTATT SISTERS REQUEST FOR A SIGN VARIANCE TO ALLOW AN OFF PREMISE SIGN AND TO ALLOW THE NEW SIGN TO BE IN THE SAME LOCATION WHERE ONE CURRENTLY IS PLACED IN THE TOWN RIGHT-OF-WAY. THE SIGN IS APPROVED AS PRESENTED AND DOES NOT REQUIRE "TOWN OF DELAFIELD" TO BE ON IT. THE TOWN ENGINEER MUST SIGN-OFF ON THE POSTS SELECTED PRIOR TO USE. THE SCHOENSTATT SISTERS MUST MAINTAIN BOTH THE SIGN AND THE SURROUNDING AREA. MOTION CARRIED.

- D. Lloyd Williams, Tabernacle Cemetery
Re: Consideration and possible action on a request for a review of sales or exchanges of parcels between adjoining landowners on lands adjacent to the Tabernacle Cemetery located on Bryn Road, approximately 770 feet south of Hermie Lane.

The Williams family desires to donate land to the Tabernacle Cemetery in order to allow the cemetery to expand in the future. The additional land would allow the driveway to be encompassed into the cemetery property. The additional land consists of a 0.49 acre parcel located south of the existing cemetery lands and a 0.01 acre triangular parcel of land that contains the entrance driveway to the cemetery. The creation of the adjoining parcels does not require a CSM or subdivision plat.

Under Section 18.11 of the Town Code, all exchanges or sales of adjoining property must come before the Plan Commission for review prior to the sale or exchange. The requirement is to review it in light of State Statutes 236.45 (2) (am) (3), which reads, "The sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes required by this chapter or other applicable laws or ordinances."

This is the first time that the Plan Commission has had to review a property such as this. In reviewing applicable code, Engineer Barbeau noted that the resulting lot has to be legal and conforming. In this case, the

lot is not conforming. The area requirement for A-1 is 40 acres and cemeteries are allowed only under a Conditional Use Permit. Mr. Williams desires to donate the land to the cemetery prior to the sale of his land, slated for late December. Based on the language in the code, the Plan Commission cannot create a nonconforming lot and time will not allow the lot(s) to become legal and conforming. However, Mr. Williams would like consideration due to the transaction deadline. The Plan Commission meeting offers him an opportunity to discuss options with the Plan Commission. Engineer Barbeau explained that even if the property is added, the cemetery is still below 40 acres and has no Conditional Use Permit.

Rhon Roberts and Mr. Williams, representing Tabernacle Cemetery, explained the history of the cemetery and why this would be beneficial. The cemetery is a member of the Wisconsin Association of Cemeteries, is still independent, and does not pay tax. It is the cemetery for a church which was located on that property, burned down and moved to a location on Elmhurst, and later disbanded. Descendants of those buried there, some of whose families were members of the church, have continued to maintain the cemetery. Area residents continue to purchase grave sites there. Cemeteries which are no longer maintained by others become the property and responsibility of the municipality in which they are located. This land donation will make a non-conforming parcel larger and, therefore, closer to conforming. It would increase the size of the cemetery and allow the possibility of a better access road into the cemetery. The purchaser won't donate the land to the cemetery so it needs to be moved prior to the sale. They would follow through on the CUP after the sale and are requesting that the Town approve moving the property line.

Keith Kindred, SEH, Inc., explained that those involved in the sale of the Williams' properties are planning to dedicate the road right-of-way in this area and are proposing the owners use a quit claim deed to transfer the property to the cemetery. State Statute says the transfer is allowed as long as it does not create a non-conforming parcel. The property is already non-conforming and nothing new is being created. But the Town has a rule requiring that the Plan Commission look at the land transfer. They would like Town approval. Before any new development happens in the cemetery, the cemetery representatives will need to come back for a CUP. So that the sale can proceed and the land transfer take place, the Williams families are asking that the Town approve and sign the quit claim.

Mr. Reich stated the Town needs to follow the set procedure which takes time.

**MOTION BY MR. REICH, SECONDED BY MS. DUNDON, TO TABLE THIS ITEM.
MOTION CARRIED.**

Sixth order of business: Discussion: None

Seventh order of business: Announcements and Planning Items:

Next meeting - December 15, 2015

An auction of the Williams dairy herd and things from their farm will take place on December 12.

Eighth order of business: Adjournment

**MOTION BY MR. REICH, SECONDED BY MR. KRAUSE, TO ADJOURN AT 8:26 P.M.
MOTION CARRIED.**

Respectfully submitted,

Lauren Beale
Deputy Clerk/Treasurer

Minutes approved on: January 5, 2015