

**TOWN OF DELAFIELD BOARD OF SUPERVISORS MEETING**  
**August 11, 2015**

**Members Present:** L. Krause, P. Van Horn, C. Duchow, E. Kranick, R. Troy  
**Others Present:** P. Kozlowski, *Fire Chief*, T. Barbeau, *Town Engineer*, John Mann, *Mannedge*,  
8 Citizens

**First order of business:** Call to Order  
*Chairman Krause called the meeting to order at 7:00 p.m.*

**Second order of business:** Pledge of Allegiance

**Third order of business:** Citizen Comments  
*There were no citizen comments.*

**Fourth order of business:** Approval of July 28, 2015 Town Board Minutes  
**MOTION MADE BY MR. KRANICK, SECONDED BY MR. TROY TO APPROVE AS PRESENTED.**  
**MOTION CARRIED.**

**Fifth order of business:** Action on vouchers submitted for payment:  
A. Report on budget sub-accounts and action to amend 2015 budget

B. 1) Accounts payable; 2) Payroll  
Accounts Payable

**MOVED TO APPROVE PAYMENT OF CHECKS #56075 TO #56118 IN THE AMOUNT OF \$162,708.02 AND CHECK #56052 TO POBLOCKI PAVING IN THE AMOUNT OF \$24,680.00**

Payroll

**MOVED TO APPROVE PAYMENT IN THE AMOUNT OF \$38,731.44**

**MS. DUCHOW/MR. KRANICK. MOTION CARRIED.**

**Sixth order of business:** Communications (*for discussion and possible action*)  
A. None

**MOTION MADE BY MR. KRANICK, SECONDED BY MS. DUCHOW TO TAKE ITEM 8A OUT OF ORDER. MOTION CARRIED.**

**Eighth order of business:** New Business

A. Request from Patrick DiStefano, N27W29999 Maple Avenue, for an exception to Section 9.14(1) of the Town of Delafield Code

*Engineer Barbeau stated that Mr. DiStefano is proposing to remove an existing house and build a new residence on Maple Avenue, just west of the Jolly Fisherman curve. He received a number of approvals from Waukesha County, including a Conditional Use Permit for land disturbance. The Town Plan Commission reviewed the proposed grading and drainage plans and recommended approval to Waukesha County with conditions. When Mr. DiStefano submitted plans to the Town building inspector, it was determined that the minimum 15 foot setback requirements were not met. Section 9.14 (1)(9) of the Town Code allows for application of exception or modifications before the Board.*

*Patrick DiStefano provided a plat of survey of his proposed house labeled Exhibit "A". He is requesting an exception from Section 9.14 (1)(b)(2). From the north lot line, the proposed home is currently 14.81 ft., 14.73 ft. from the west lot line and 13.99 ft. from the east lot line. The exception is very small on the north and west lot line setbacks and just over 1 ft. for the east lot line setback. Mr. DiStefano has complied with all county requirements. The demolition was scheduled to occur a few*

weeks ago. The foundation was supposed to be poured this week. He does not believe that this exception creates any police or fire safety issues. His proposed home complies with all other requirements of Section 9.14 re: minimum building standards. He has been working on this project for approximately 18 months, has been in continual contact with the Town Engineer and was never made aware of the Town Code 9.14 requirements for minimum 15 ft. setbacks.

Exhibit "B" reflects that the existing home does not comply with the shoreland setback, floodplain setback or side setback on the west. The home, as it is today, is located 8 inches from the neighbor to the west, the garage is in the middle of the Maple Avenue right-of-way, is too close to the road and the retaining wall is over the lot line and over the neighbor's property to the east.

Exhibit "C" identifies the exceptional circumstances, preservation of property rights and absent of detriment.

Mr. DiStefano stated that he did not ask his neighbors to the east and west to attend the meeting, but he presented commentaries identified in Exhibit "D". He has been working on the proposed grading plan with his neighbor on the east.

Ms. Duchow asked Mr. DiStefano if he was aware of the setbacks when he prepared to build his home. She asked how long this code has been in existence, and was there a 10 ft. setback requirement before the ordinance was adopted. Engineer Barbeau stated that it was adopted in 11/14, and there has always been a 15 ft. setback requirement in the RL District.

Mr. Troy directed attention to Mr. DiStefano's letter re: the survey issue and starting the process all over. Mr. DiStefano stated it was determined that the 1<sup>st</sup> survey drawn up was incorrect.

Chairman Krause questioned the entire width of the lot. He asked Mr. DiStefano if it would be a tremendous issue to change the plan, as he is so close to the minimum setback requirement. This is not a small home and allowances could be made. Mr. DiStefano stated that it would be very costly and add time constraints.

Mr. Kranick stated that we are talking about 1.38 ft. on the east side and then a couple inches from the west and a couple inches from the road. If the home is going to be demolished, he would like to see this as compliant as possible.

Dustin Hutter, N27W29978 Maple Ave., stated this his property looks directly at the subject location. He would rather look at a house that is more consistent with others and believes that this would help property values.

Mark Augustine, Landmark Engineer Services, stated that if we made this sight compliant with all setback requirements, the envelope for the building would not be conducive to build. The house currently is less than 2 ft.; however, there is not enough room to move the house one way or the other to allow for the shore setback. The majority of the home on the east and west is compliant. The proposed plan allows for removal of the detached garage to allow storage space for a boat. The May 1<sup>st</sup> version of the plan was in front of the Plan Commission for public hearing. It's in line with the other houses in the area, is an improvement to what is already out there and an improvement to emergency response access issues. They are within the County minimum allowable setbacks of 12.7 ft. and 25 ft. from the established right-of-way.

Attorney Val Anderson took the Town Board through the Findings of Fact re: Section 9.14 (9). He stated that all three standards must exist in order to grant the exception. He stated that the Board needed to decide, as a judicial body, if circumstances or factors apply.

1. Exceptional Circumstances: Section 9.14 (9)(a)

Ms. Duchow stated that the applicant has met this case and feels that the following reason applies:

*“The home is intended to replace an existing residence. The existing residence is nonconforming regarding shore setback, floodplain setback, side yard, offset, shore offset and floodplain offset, and the attached garage is nonconforming to the road setback. The proposed new construction will more fully comply with applicable laws”.*

*Mr. Troy agrees that the applicant has met the case for exceptional circumstances. He is concerned that some of these boxes are too specific. While he has serious doubts as to Section 9.14, it is the Town’s code. He would be concerned that some of these may provide a precedent. The last box is the most vague allowing the exception based on the totality of the circumstances. Any of the other ones by themselves may not be sufficient to allow it, based on the fact that Mr. DiStefano has worked with the County and the Town did not inform him of the requirements until two weeks ago. This may protect the Town in going further with other cases.*

*Mr. Kranick stated that the applicant has met the case for exceptional circumstances and agrees with Mr. Troy in choosing the last box. Mr. Van Horn concurred.*

*Chairman Krause agreed with comments made by the Board, but stated that ignorance of the law/rule is not an excuse. This has been before the Town for quite a while, and someone could have stepped up. He informed Mr. DiStefano that an applicant does not prepare a final set of plans, take them into the building inspector and get a permit. That’s not the way the process works. As all members are in agreement, the exception circumstances were met in this case. Attorney Anderson stated that the record would reflect the reasoning by the Town Board for this decision.*

## 2. Preservation of Property Rights:

*Mr. Van Horn stated that the rules should have been known, as they have been in effect for a long time. He is of the opinion that it has not been met.*

*Mr. Kranick believes that it is met in this case because the proposed new construction will provide a substantial improvement to the neighborhood, by removing a less conforming structure and constructing a more conforming structure.*

*Mr. Troy believes that it is met in this case and that the structure will preserve the property rights of the owner and adjoining property owners.*

*Ms. Duchow and Chairman Krause agree that it has been met in this case.*

**MOTION MADE BY MR. KRANICK, SECONDED BY MR. TROY THAT THE BURDEN OF PRESERVATION OF PROPERTY RIGHTS HAS BEEN MET IN THIS CASE FOR THE REASONS DISCUSSED. MS. DUCHOW – AYE, MR. TROY – AYE, MR. KRANICK – AYE, MR. VAN HORN – ABSTAINED, MR. KRAUSE – AYE. MOTION PASSED 4-1.**

## 3. Absence of Detriment

*Ms. Duchow believes that it has been met in this case because the requested exceptions differ very slightly from what they need to be. The west lot line is just an easement, and now it is on the lot line, so it is an improvement. The existing garage located on the road is dangerous.*

*Mr. Troy believes that it has been met because the exception is consistent with the purpose of the ordinance. The ordinance is based upon the health, safety and welfare of the town and its residents. It was drafted not only under the zoning policy or ordinance basis, but under a police power basis.*

*Maintenance of health, safety and welfare is the essence of the police power of the Town. This exception is consistent with the purpose of this ordinance.*

Mr. Kranick, Mr. Van Horn and Mr. Krause agree that it has been met, and they also agree with Mr. Troy in that it is consistent with the purpose of this ordinance.

The determination, based on discussion of the applicant's request for exception, is granted.

Chairman Krause stated that we will take Item 8B out of order. Mr. Kranick recused himself.

**Eighth order of business:** New Business

B. Consideration and possible action on Plan Commission's recommendation to approve the final plat for Woodridge Estates II

Engineer Barbeau stated that this is the balance of the 44 lots that are being developed at this time. The necessary changes recommended by the Plan Commission, as well as Engineer Barbeau's comments and those of the County and State were incorporated. It is not likely that the final plat will be recorded until the improvements are completed. The Plan Commission recommended approval based on all changes being incorporated into document.

**MOTION MADE BY MR. VAN HORN, SECONDED BY MS. DUCHOW TO ACCEPT THE PLAN COMMISSION'S RECOMMENDATION TO APPROVE THE FINAL PLAT FOR WOODRIDGE ESTATES II. MOTION CARRIED.**

**Seventh order of business:** Unfinished Business

A. Consideration and possible action on disposition of Fire Station #1 (tabled 7/28/15)

**MOTION MADE BY MR. KRANICK, SECONDED BY MS. DUCHOW TO REMOVE FROM THE TABLE. MOTION CARRIED.**

Engineer Barbeau stated that Mr. Siepmann provided him with a quote of less than \$25,000 for disposition of Fire Station #1. This does not include asbestos removal or final restoration. He and Mr. Siepmann are recommending the following: 1. The Town mark the boundaries of each lot so potential buyers can determine what they are purchasing; 2. Hire a broker and place a sign with the lot configuration on the site; 3. Work with Waukesha County tax listing to assign a third tax key number to the parcel; 4. Hire an appraiser.

Ms. Duchow is in favor of demolishing the property, cleaning up the sight and hiring a broker.

Mr. Troy questioned whether or not this is a conflict of interest if we are approving plans and developing the land. Would it be reasonable to try to sell "as" is for 6 weeks and after that move on?

This land is in the County shoreland and is zoned residential. The rezoning would be out of the Town's control.

Mr. Kranick is of the opinion that it is important to include a town representative to manage this project. The contractor who is providing the quote could consider hiring a sub to remove the asbestos. We could ask the broker to come in to present us with some proposals and then get the property appraised.

**MOTION MADE BY MR. TROY, SECONDED BY MR. VAN HORN TO APPROVE AUTHORIZATION OF AN APPRAISAL OF THE OLD FIRE STATION #1 ON MAPLE AVENUE TO REFLECT TWO PROPERTY VALUES: 1. PROPERTY SOLD "AS IS" WITH CURRENT ZONING; AND 2. PROPERTY WITH STRUCTURE REMOVED, THE PAVING REMOVED AND LOT IN SALEABLE CONDITION NOT TO EXCEED \$25,000.00. MOTION CARRIED.**

**MOTION MADE BY MR. KRANICK, SECONDED BY MS. DUCHOW TO DIRECT THE TOWN ENGINEER TO CONTACT WAUKESHA COUNTY TO REQUEST A 3<sup>RD</sup> TAX KEY FOR OLD FIRE STATION #1 PROPERTY ON MAPLE AVENUE. MOTION CARRIED.**

- B. Consideration and possible action on renovation of old town hall  
1) Highway Superintendent - report on gas and electric relocation

*Engineer Barbeau stated that he submitted an application to get the gas and electric removed from the cold storage building and also submitted to get the gas meter changed. He has not received a cost from We Energies yet. Chairman Krause requested that he try to expedite this process.*

- 2) Further discussion on asbestos abatement

*Mr. Troy stated that the cold storage building has been totally abated and is ready to be demolished with the exception of the gas and electric removed.*

*Town Hall – Mr. Troy stated that we needed to get and have received a release from the contract we signed a month ago. The new cost for abatement is \$21,800. Issues relating to floor tile, upper level construction and hazardous materials, which must be removed with special equipment, have raised the quote. Mr. Troy discussed the old and new contracts with Attorney Larson. He is of the opinion that the old contract is vague. The Town could take legal action, but it would most likely cost more to go in this direction. The new contract is still somewhat vague, and they discussed how Engineer Barbeau could clarify it with KPH.*

*Attorney Anderson directed attention to the original proposal item of “universal waste”. This is not included in the new version. Also, the language regarding “receiving a credit from the general contractor” needs to be looked into. The problem with the contract is that it is so vague according to the report. The Town is better off working with the current company. He stated that the Town should make sure that everything is abated according to the report and receive credits that are deserved.*

**MOTION MADE BY MS. DUCHOW TO ABATE THE OLD TOWN HALL BUILDING. MOTION FAILED FOR LACK OF A SECOND.**

**MOTION MADE BY MR. TROY, SECONDED BY MS. DUCHOW TO REVIEW ALL CONTRACTS, NEGOTIATE WITH KPH, GET A REDUCED PRICE CONSIDERATION FOR THIS BID AND AUTHORIZE APPROVAL UP TO \$20,000 TO ABATE THE OLD TOWN HALL. MS. DUCHOW – AYE, MR. TROY – AYE, CHAIRMAN KRAUSE – AYE, MR. KRANICK – NAY, MR. VAN HORN – ABSTAINED. MOTION PASSED 3-2.**

- C. Further discussion and possible action on new fire station/town hall  
1) Punch List Items

*Ms. Duchow summarized the “B” list. All items have been addressed with the exception of receiving a credit from Scherrer Construction re: epoxy mesh for front sidewalk and a credit for landscaping. Mr. Van Horn requested that we ask the builder to either wash the windows or provide us with \$500 to do the work.*

**MOTION MADE BY MR. TROY, SECONDED BY MS. DUCHOW TO APPROVE THE PUNCH LIST ITEMS SUBJECT TO WASHING WINDOWS, \$1000 CREDIT FOR LANDSCAPING, CREDIT FOR EPOXY MESH FOR FRONT SIDEWALK AND FINAL PAYMENT TO SCHERRER CONSTRUCTION. MS. DUCHOW – AYE, MR. TROY – AYE, CHAIRMAN KRAUSE – AYE, MR. KRANICK – NAY, MR. VAN HORN – ABSTAINED. MOTION PASSED 3-2.**

- 2) Approval of payment to Phoenix Loss Control

*Mr. Mann stated that last November a semi driver damaged a Time Warner cable while attempting to perform construction on the new Fire Station/Town Hall site. The Town received a bill for damages in the amount of \$1839.33. The consensus of the Town Board is that the driver is responsible for this bill.*

**MOTION MADE BY MR. KRANICK, SECONDED BY MR. TROY TO DENY PAYMENT.  
MOTION CARRIED.**

- 3) Approval of final payment to Fischer-Fischer-Theis, Inc.

*Mr. Mann stated that Mr. Fischer has agreed to sign off on the stormwater management issue.*

**MOTION MADE BY MR. VAN HORN, SECONDED BY MS. DUCHOW TO APPROVE THE  
FINAL PAYMENT OF \$3,312.00 TO FISCHER-FISCHER-THEIS, INC. MS. DUCHOW – AYE,  
MR. TROY – AYE, MR. KRANICK – NAY, MR. VAN HORN – AYE, CHAIRMAN KRAUSE –  
AYE. MOTION PASSED 4-1.**

- 4) Approval of proposal from Landmark Engineering Services to conduct as-built survey

*Mr. Mann stated that part of Waukesha County's requirement to get stormwater approval is to conduct an as-built survey. The Town received a proposal from LandMark Engineering Services, Inc. in the amount of \$1350.00.*

*Mr. Kranick directed attention to condition 5.1 in the proposed agreement. Mr. Troy also expressed concerns with 16.1.*

**MOTION MADE BY MR. TROY, SECONDED BY MS. DUCHOW TO AUTHORIZE THE  
EXPENDITURE NOT TO EXCEED \$1350.00 WITH LANDMARK ENGINEERING SERVICES, INC.  
TO PROVIDE AS-BUILT PLANS FOR THE STORMWATER BASIN AFTER APPROVAL OF THE  
CONTRACT BY THE TOWN ATTORNEY WITH SPECIFIC INSTRUCTION TO REVIEW ARTICLES  
5, 16 AND 18. MS. DUCHOW – AYE, MR. TROY – AYE, MR. KRANICK – NAY, MR. VAN HORN –  
AYE, CHAIRMAN KRAUSE – AYE. MOTION PASSED 4-1.**

**Eighth order of business:** New Business

- C. Consideration and possible action on Plan Commission's recommendation to approve a Certified Survey Map to reconfiguration 4 parcels of land located at N34 W28341, N34 W28439 and N34 W28453 Taylors Woods Road into 3 parcels of land

*Engineer Barbeau stated that this piece of land has 4 parcels on it, including one vacant parcel. Each new parcel meets the minimum area of 3 acres and all setback and offsets. A portion of Lots 1 and 2, and all of Lot 3 is in the Waukesha County Shoreland and Floodland Protection Ordinance jurisdiction. With the exception of a small portion of Lot 1, the balance of the land is in the Primary Environmental Corridor. All comments by myself and the Plan Commission have been addressed and are incorporated into the Certified Survey Map.*

**MOTION MADE BY MR. KRANICK, SECONDED BY MR. VAN HORN TO ACCEPT THE PLAN  
COMMISSION'S RECOMMENDATION TO APPROVE. MOTION CARRIED.**

- D. Supervisor Kranick – Park and Recreation Commission Update

*Mr. Kranick stated that he wanted to provide a report to the Town Board and note some of the accomplishments of the Park and Recreation Commission. The Easter Egg hunt was successful, and the Commission is looking to continue this event in 2016. The baseball program was a success, with teams coming in 1<sup>st</sup> and 2<sup>nd</sup> place. Paving of the path at Elmhurst Park was completed in July.*

*The concept plan for KE Park has been approved and it will be named North Shore Park.*

*The Commission suggested the potential of holding movie nights in the Sports Commons and/or Del Hart Park, as these areas provide best parking options. There has been discussion on bringing back the Log Cabin Run and adding a Farmer's Market. The Commission is always looking for other ideas and suggestions from the Board and citizens.*

*The park on KE will be developed in three phases: 1. Grading and Site Prep; 2. Nature based play, 1/3 of trees; 3. Install sport court type facility and plant 1/3 of trees. The Commission will come before the Board next month to ask permission to retain RA Smith to work on design documents for the park. They will also be asking for monies in the budget process to start work in spring of 2016. The SW corner of the skateboard park will be closed next month for repairs. The dates of Fright Hike are October 23 & 24.*

E. Set 2016 Budget workshop dates

*The Budget workshop dates are set for September 14 and September 21 @ 6:00 p.m.*

**Ninth Order of business:** Announcements and Planning Items

- A. Next Town Board Meeting – August 25
- B. Special Primary Election – Assembly District 99 – September 1
- C. Next Plan Commission Meeting – September 15

**Tenth order of business:** Adjournment

**MOTION MADE BY MR. KRANICK, SECONDED BY MR. VAN HORN, TO ADJOURN AT 9:45 P.M. MOTION CARRIED.**

Respectfully submitted,

Mary Elsner  
Town Clerk/Treasurer

Minutes approved on: August 25, 2015