

**TOWN OF DELAFIELD
PLAN COMMISSION MEETING
Tuesday, February 5, 2013**

Members present: T. Oberhaus, P. Kanter, C. Dundon, M. Tagtow, L. Cunningham, B. Cooley, G. Reich
Also present: T. Barbeau, *Town Engineer*, E. Larson, *Town Attorney*, 3 citizens

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

Second order of business: Approval of the minutes of January 15, 2013
MOTION MADE BY MR. TAGTOW, SECONDED BY MR. REICH TO APPROVE THE MINUTES OF JANUARY 15, 2013, AS PRESENTED. MOTION CARRIED.

Third order of business: Communications (for discussion and possible action)
A. Jason Fruth, Waukesha County Planning and Zoning Manager (1/15/13) Final Draft of Map Modernization Project.

Engineer Barbeau displayed the modernized and updated shoreland and floodland protection ordinance zoning district map. He stated that it shows what areas of the town are in the shoreland zone. This map will be very useful when working with the building inspector to determine whether or not a County permit is required. The applicant must first obtain county permits when needed. The County has jurisdiction of a property that is 1000' ft. from a navigable lake and 300' from a navigable stream.

B. Tim Barbeau, Town Engineer/Zoning Administrator, (1/29/13) Direction from Town Board regarding regulation and preservation of environmental corridors in the Town discussed that the 1/15/13 Plan Commission meeting.

Engineer Barbeau contacted SEWRPC to request that they attend an informational meeting to inform the Plan Commission how they determined the designated environmental corridor areas, and they have not responded.

Fourth order of business: Unfinished Business
A. None

Fifth order of business: New Business
A. Lisa Anne Witthun, d/b/a/ Pathways of Light N47 W28270 Lynndale Road, Re: Consideration and possible action on a request to approve a plan of operation for a personal consulting business located in the offices of the Center for Well-Being located at N47 W28270 Lynndale Road.

Ms. Witthun stated that Pathways of Light is a small personal consulting business that creates horoscopes using astrology, as well as classes and individual sessions centered on spiritual well-being. Her class size consists of 5 people and all visits are scheduled by appointment only. She leases one office and utilizes the general area for classes.

MOTION MADE BY MS. DUNDON, SECONDED BY MR. TAGTOW TO APPROVE THE PLAN OF OPERATION FOR A PERSONAL CONSULTING BUSINESS LOCATED IN THE OFFICES OF THE CENTER FOR WELL-BEING LOCATED AT N47 W28270 LYNNDALE ROAD CONSISTENT WITH THE FOLLOWING STAFF RECOMMENDATION: THE APPLICANT REIMBURSE THE TOWN OF DELAFIELD FOR ALL COSTS AND EXPENSES OF ANY TYPE THAT THE TOWN INCURS IN CONNECTION WITH THIS DOCUMENT, INCLUDING THE COST OF PROFESSIONAL SERVICES INCURRED BY THE TOWN (LEGAL, ENGINEERING, PLANNING, CONSULTING) FOR THE REVIEW AND PREPARATION OF THE REQUIRED DOCUMENTS OR ATTENDANCE AT MEETINGS OR OTHER RELATED SERVICES FOR THIS APPLICATION, AS WELL AS ENFORCEMENT OF CONDITIONS ASSOCIATED WITH ANY CONDITIONAL APPROVAL IN THE EVENT OF A VIOLATION OF THE CONDITONS. MOTION CARRIED.

B. Bill Meyers, Meyers Electric S13 W33752 Summit Avenue, Re: Consideration and possible action on an update to the plan of operation of Meyers Electric to allow the retail sale of wood burning stoves and possible wood pellets at their facility located at S13 W33752 Summit Avenue.

Engineer Barbeau stated that the Town Fire Chief performed an inspection of the subject property and noticed there were a large number of pellets on pallets stored at the site. Engineer Barbeau visited the site, determined that Mr. Meyers sells wood stoves (there were three in the showroom) and is an authorized dealer for Harman wood stoves. The plan of operation was not approved to include the retail sale of wood burning stoves.

Ms. Meyers stated that when completing the application, she did not indicate there would be retail sales as customers do not come into the office to purchase the stoves. Pellets are sold to employees and/or friends only; therefore, were not considered to be retail sales.

MOTION MADE BY MR. REICH, SECONDED BY MS. DUNDON TO ALLOW AN AMENDMENT TO THE PLAN OF OPERATION FOR MEYERS ELECTRIC, S13 W33752 SUMMIT AVENUE, TO INCLUDE MINOR RETAIL SALES OF WOOD BURNING STOVES. MOTION CARRIED.

C. Town of Delafield Plan Commission, Re: Consideration and possible action on zoning code amendments to address legal non-conforming structures, uses and lots to meet Wisconsin State Statute requirements.

Attorney Larson stated the importance of the distinction between legal nonconforming and illegal non-conforming. When we talk about legal non-conforming, there are three different kinds of issues: uses, structures and lots. An example of a legal non-conforming use is a business in a residential district, a legal-nonconforming structure is a building that doesn't comply with the current Code, but complied when it was built and a legal non-conforming lot is a lot that was created that complied when it was created and does not comply now. The State has been changing the rules and has been dictating what the rules will be for non-conforming structures and lots, most recently by 2011 Wisconsin Act 170. He directed attention to the draft ordinance referencing repair, maintenance, renovation, remodeling and restoration. He stated that when the State laws apply, we are not going to enforce our current legal non-conforming regulations, but rather follow the State Statutes. He didn't want to try to re-write the whole Code, but just reference the State Statutes that apply to these rules (as they could change). Also, the new rules state that in the shoreland areas a municipality cannot regulate legal nonconforming lots more restrictively than the State DNR shoreland zoning standards.

Mr. Reich stated his request to include a statement saying that the Town Board reserves the right to appeal whatever decision is being made by the State agency. Attorney Larson stated that he will research this request and other areas of the code to include a reference of this type and include determinations of any regulatory body, i.e., Army Corps of Engineers, etc.

Discussion followed on clarifying the wording in 17.07 (4) to include a disclaimer at the beginning that reads: "Despite the provisions of subsections (1), (2), (3) above, (4) shall apply to non-conforming structures and lots".

MOTION MADE BY MS. DUNDON, SECONDED BY MR. COOLEY TO TABLE TO ALLOW ATTORNEY LARSON TO PREPARE A DRAFT WITH THE SUGGESTED AMENDMENTS TO THE ORDINANCE. MOTION CARRIED.

D. Town of Delafield Plan Commission, Re: Consideration and possible action regarding options to address illegal, nonconforming uses and structures in the Town.

Attorney Larson provided a summary stating that after the adoption of the current open space requirements in 1998, several property owners were issued a permit, but they do not conform to the Town Code. He presented four options: 1. Use enforcement, 2. Try to pinpoint what the situations are

and craft some ordinance language to legalize them, 3. Establish a procedure that would allow for a case-by-case review of these situations; 4. Allow these cases to come before the Zoning Board of Appeals. Attorney Larson stated that he recommends using option #3. He prepared an ordinance that accomplishes this purpose, by special exception. This would create a clear record of the properties that are affected, the percentages of open space that apply to those properties, and define for the property owners and the Town what can and cannot be done in terms of further development and changes on these lots. It is legalization of the current activities, but it is legalization in a way that creates a clear record and does not create a loophole for open space enforcement on other parcels throughout the Town. Special exception is like a conditional use and would be handled similar to a court proceeding. The special exception document would be recorded. Discussion followed on the final decision being made by elected officials. The same procedure would be followed that the Town uses for revocation of a conditional use. The Plan Commission will act as a fact finder, collate their determination, make a recommendation and pass the matter on to the Town Board for consideration. Attorney Larson will provide wording in the next draft that allows for the distinction between the role of the Plan Commission and Town Board. The Plan Commission is of the opinion that if a special exception is granted for open space less than what is required, the property owner cannot increase or exchange hard surfaces to meet the open space approved through the special exception process. That is, the property owner must move toward more conformity with the Code.

MOTION MADE BY MR. REICH, SECONDED BY MR. TAGTOW TO TABLE TO ALLOW ATTORNEY LARSON TO RE-DRAFT AN ORDINANCE TO CREATE SECTION 7.08 OF THE TOWN OF DELAFIELD ZONING ORDINANCE REGARDING MODIFICATIONS BY SPECIAL EXCEPTION. MOTION CARRIED.

Sixth order of business: Discussion

A. None

Seventh order of business: Announcements and Planning Items

Next meeting – Tuesday, March 5, 2013

Eighth order of business: Adjournment

MOTION MADE BY MR. TAGTOW, SECONDED BY MR. COOLEY TO ADJOURN AT 9:12 P.M. MOTION CARRIED.

Respectfully submitted,

Mary T. Elsner, CMC, WCMC
Town Clerk/Treasurer

Minutes approved on March 5, 2013