

TOWN OF CLAYTON

Town Board of Supervisors

Meeting Minutes

7:00 P.M. on Wednesday, October 7<sup>th</sup>, 2015

Town Meeting Room, 8348 County Road T, Larsen, WI 54947

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I. Call to Order:

A. Notice Verification, Roll

1. Town Board Chairman Geise called the meeting to order at 7:00 P.M.
2. Pledge of Allegiance recited.
3. Meeting properly posted at three locations in the Town.
4. Roll

a. Board of Supervisors

Chair Geise	PRESENT
Supervisor Lettau	PRESENT
Supervisor Grundman	PRESENT
Supervisor Schmidt	PRESENT
Supervisor Reif	PRESENT

b. Staff

Administrator Johnston	PRESENT
Treasurer Straw	ABSENT
Deputy Clerk Goffard	PRESENT
Town Engineer – Mary Jo Miller	PRESENT
Town Attorney – Ashley Lehocky	PRESENT

II. Public Hearing(s) and/or Public Information Meeting(s):

A. Town Board Public Hearing on a Preliminary Order pursuant to Wisconsin Statutes 60.785 (1)(b) and 60.785 (1m)(b)(2) to amend the boundaries of the Town of Clayton Sanitary District #1 by the addition and removal of certain properties in the Town of Clayton, County of Winnebago, State of Wisconsin. The amended boundaries of the Town of Clayton Sanitary District #1 are as shown on Exhibit A to include the legal description of the properties to be added to the District boundaries and the legal description of the properties to be removed from the District boundaries.

- James Turner, 9075 Clayton Avenue, Neenah, WI. Opposing the Town of Clayton getting sewer and water hooked up due to the changes he has made to make better well water than the Town of Menasha. People across the street from him have Town of Menasha water. In the future the value of his property would increase with water and sewer. Bigger businesses that could be in the Town of Clayton are requesting water and sewer being offered.

- Keith Orcutt, 8951 Clayton Avenue, Neenah, WI. Mr. Orcutt is happy with his well. Wanted an idea of what hooking up to sewer and water would cost per foot. Administrator Johnston commented that hopefully in about six months we would have an educated cost of the per foot cost. The pipes would be run in front of the property and when the system fails or property sells then the hook-up to the residence from the road would occur. The Town of Clayton is trying to make this process as cost effective as possible. The cost of pipe assessed to the property owner is based on footage. Corner lots would be assessed partly and exempt from the leftover footage. Hoping to lay the pipe in 18 to 24 months or by 2017.
- Eric Turner, 8718 State Road 76, Neenah, WI (business owner). He previously had his business (ADT) and residence in the Town of Menasha and had many issues with them. He strongly wants the Town of Clayton protected from the Town of Menasha.
- Bob Manteufel, 2915 Fairview Road, Neenah, WI. He does not see the advantage of adding his property to the Sanitary District. No intention to develop for him. His grandson will be using it for farming. Insists on removal from the Sanitary District. His property is part of the Future Land Use map.
- Paul Niemi, 8923 Clayton Avenue, Neenah, WI. He has done research in similar Towns and Villages to see what happened in those cases. Lengthy discussion on him not wanting the Sanitary District due to the cost to the property owner. Feels that he should only have to pay for the pipe hook-up from the roadway to his residence. Administrator Johnston explained that in Brown County in the southern end of DePere surrounding towns created a Joint Sanitary District. Unanimous petition for direct annexation is done by the Town of Menasha property owner.
- Rick Custer, 2645 Fairview Road, Neenah, WI. For the benefit of Town of Clayton and potential development for tax base. Distribute costs to all of Town of Clayton vs. individual residents. If the septic/well system is working hook-up not required at that time. Wanted the Town of Clayton to take into consideration that there should be exemptions for residents who own over 5 acres of land.
- Adam Boutwell, 9189 Clayton Avenue, Neenah, WI. Extensive discussion regarding his property hooking up to sewer and water. Studied some surrounding areas on what is all involved in completing this project. His neighbors across the street from him have no Town of Menasha water. Chair Geise commented that the annexation will happen. There is a referendum for Town of Menasha residents in the area near the Town of Clayton in the February 2016 election. The Town of Clayton will be behind if we wait until the next election to do anything to prevent annexation. Mr. Boutwell suggested that the Town of Clayton pay for the pipe next to the road and that the Town of Clayton residents pay to hook up from there up to their residence.
- Mark Luebke, 3929 County Road II, Larsen, WI. Suggested that the residents protect the Town of Clayton borders as soon as possible.
- Melanie Blechl, 3006 County Road II, Neenah, WI. Ms. Blechl wanted to know why some properties are being removed from the Sanitary District. In the Ridgeway area construction work in the amount of \$1.2 million dollars was done approximately 3 years ago. The Ridgeway Golf Course invested \$150,000 in their new septic system. Ms. Blechl stated that she wanted her residence lot as well as the land lot be included in the proposed Sanitary District.
- Virginia Walotka, 2722 Fairview Road, Neenah, WI 54956. Ms. Walotka wants to know how the property behind her the fees are assessed. Fees to install when the septic/well fails. There would be a delayed hook-up with the same cost now vs. five years later.

- Thomas Rusch, 9207 Clayton Avenue, Neenah, WI. Wanted to know the approximate cost per square foot for one section vs. corner lot square foot exemption. This project will hopefully start by 2017 on Clayton Avenue near the Town of Clayton boundaries. The fees for the piping would be assessed and deferred until the well/septic fails. At this time no curb and gutter is being planned to install. Mr. Rusch feels that homes built 200' apart should have sewer in between them.
  - Arden Schroeder, 9458 State Hwy 76, Neenah, WI. Mr. Schroeder feels that Section 1 in the Tow of Clayton should go the Airport Overlay area.
  - 8:28 p.m. the Public Hearing was closed. Brief recess taken until 8:32 p.m.
- B. Town Board Public Hearing on Preliminary Resolution # 2015-011 A Preliminary Resolution declaring the Board's intent to exercise its police powers under Section 66.0703 Wisconsin Statutes, to levy Special Assessments upon certain property owned by S&B Enterprises, LLC and R & BB Enterprises, LLC for benefits conferred upon the property by the construction of town roads, curb returns, storm water management devices, roadside ditches, and the required signage at the of intersection of STH "76" and Fox Valley Drive, and in the rights of way of Fox Valley Drive and Blacktop Way along the frontage of Outlot 1, and Lots 1, 2, and 3 of Certified Survey Map 6769 as recorded in the Winnebago County Register of Deeds Office.
- Brad Best, 7526 State Hwy 76, Neenah, WI. There has been accounting issue between S&B and R&BB Enterprises. Mr. Best stated that the amount owed will be paid by October 30, 2015 with a cashier's check. The Town of Clayton will continue with action until everything is resolved. Martenson and Eiseld did not finish the ditch at Fox Valley Asphalt located at 7526 State Hwy 76, Neenah, WI. He states that the ditch does not drain and it cannot be mowed. Richard will check with the Public Works foreman and complete this either by the end of 2015 or in the spring of 2016.

### III. Approval of Minutes:

- A. Approval of the Minutes of the Regular Town Board Meeting held at 7:00 P.M. on Wednesday, September 16<sup>th</sup>, 2015.

#### **MOTION:**

Motion made by unanimous consent to approve the Minutes of the Regular Town Board Meeting held at 7:00 P.M. on Wednesday, September 16<sup>th</sup>, 2015.

### IV. Open Forum – Town-related Matters not on the Agenda:

- Jennelle Kahler, 9619 Lind Lane, Neenah, WI. Ms. Kahler appears to discuss the traffic issues on her street, Lind Lane. Dump trucks are going by at 55 mph. There is a dip in the road which blocks view of oncoming traffic when you are trying to turn. Motorists are passing in the no passing zone. She suggested maybe have speed bumps installed. Administrator Johnston mentioned possibly having a traffic study done there. Ms. Kahler and her mother both are willing to contribute to the cost of the traffic study, etc. Both of them have called the Winnebago County Sheriff's Department and they tell them that it is a Town Board issue. This issue will be added to the agenda for the October 21<sup>st</sup>, 2015 Town Board meeting.

- V. Correspondence:
- A. A copy of a memorandum from the State Department of Natural Resources on the proposed scoring and funding of the Urban Nonpoint Source & Storm Water Management Applications for CY 2016.
  - B. Winnebago County Solid Waste Management Board 2015 Monthly Recycling Tonnage Report.
  - C. Building Inspection Monthly Revenue Report.
  - D. Notice of the 68<sup>th</sup> Annual Wisconsin Towns Association Convention.
  - E. Copy of correspondence from the State Department of Natural Resources to Mark Caswell, 3380 CTR “II”, Neenah, WI 54956.
    - Burt Drews, 3113 County Rd II, Neenah, WI. Mr. Drews commented that this issue with the DNR has been ongoing with the wetlands and the work should stop.
- VI. Discussion Items (No action will be taken):
- A. County Supervisor Report
  - B. Winnebago County Sheriff’s Department – Public Concerns and Issues
    - Deputy Johnson appeared from 7:15 to 7:45 p.m. Deputy Clerk Goffard informed him the open forum meeting could be awhile and he left to go back on patrol. Deputy Johnson had nothing to report.
  - C. Clayton-Winchester Fire Department
  - D. Larsen-Winchester Sanitary District
    - Mike Pfankuch reported that the spring drain was done. The pond report was not good. Treeo’s cut 22 trees down. At this time they are waiting for the contractor for ditching on Grandview. The budget levy may stay the same. The rip-wrapping project is complete and they continue to have wipes coming into the pond area.
  - E. Administration Comments
    - Engineer Miller stated that the 2015 Road Improvement Project is complete. MCC is done along with the grass seeding. She requested that the Town check into a ditch complete at 2547 Oakcrest, Neenah, WI.
- VII. Operator Licenses Issued by the Town Clerk:
- A. New:
    - i. No New Licenses Issued
  - B. Renewal:
    - i. No Renewal Licenses Issued
- VIII. Business referred by the Plan Commission:  
Town Board receipt, review, and consideration of Plan Commission Referrals (second Town Board meeting of the month):
- Nothing to report.
- IX. Business referred by the Green Space Committee:  
Town Board receipt, review, and consideration of Green Space Committee Referrals (first Town Board meeting of the month):
- Nothing to report.

## X. Business:

- A. Discussion/Action: Town Board Public Hearing on a Preliminary Order pursuant to Wisconsin Statutes 60.785 (1)(b) and 60.785 (1m)(b)(2) to amend the boundaries of the Town of Clayton Sanitary District #1 by the addition and removal of certain properties in the Town of Clayton, County of Winnebago, State of Wisconsin. The amended boundaries of the Town of Clayton Sanitary District #1 are as shown on Exhibit A to include the legal description of the properties to be added to the District boundaries and the legal description of the properties to be removed from the District boundaries.

Attached please find a copy of the Town Board Order amending the boundaries of the Town of Clayton Sanitary District No. 1. Please be advised that the Town Board, acting in its role as the Sanitary District Commission, has referred this action to the Town Board for consideration and action. The Town's Attorney, Ashley C. Lehocky (Ashley), is recommending that when the Board refers to the document it should use the specific language of "Proposed Order". Following the Public Hearing the Board will consider approving the Proposed Order, at that point the Chair should read items 1 through 6 of the Proposed Order into the record and call for a roll call vote on the issue.

Staff has published the Class 2 Notice of the Public Hearing in the Appleton Post Crescent, provided the State Department of Natural Resources and the State Department of Safety and Professional Services with the required notices, and sent letters to the owners of the properties being added to the District and the owners of properties being removed from the District. Please be advised that the Notices to the property owners generated a significant number of calls and visits to the Town Offices. The calls and visits were relatively evenly distributed between those for and against the Proposed Order. The Administration will read comments from the mail to the Town Offices into the record of the Board's Public Hearing.

The Administration would like to reaffirm that the proposed revision to the boundaries of the Town of Clayton Sanitary District No. 1 are based (with some exceptions required by the County) on the first service area in the Municipal Sanitary Sewer and Municipal Water Utility Study completed, at the Board's direction, by Cedar Corporation. Additionally, the Administration would like to advise the Board that the Town of Clayton, Sanitary District No. 1 is likely to grow over time to match the entire service area proposed in the Cedar Corporation Study and beyond.

**MOTION:**

Motion by: Chair Geise

Seconded by: Supervisor Reif

Motion: To approve the amendment of the Town of Clayton boundaries to include three additional properties. Two parcels owned by Alan and Melanie Blechl, 3006 County Road II, Neenah, WI (Parcels 006-0391 land only and 006-039104 residence) and one property owned by Thomas Rusch, land on State Road 76 (Parcel 006-0323) and land on Fairview Road (Parcel 006-032302).

Vote: **Chair requested roll call vote:**

Chair Geise: Aye

Supervisor Reif: Aye

Supervisor Lettau: Aye

Supervisor Grundman: Aye

Supervisor Schmidt: Aye

Motion carried unanimously.

- B. Discussion/Action: Town Board review and consideration of Preliminary Resolution #2015-011 A Preliminary Resolution declaring the Board's intent to exercise its police powers under Section 66.0703 Wisconsin Statutes, to levy Special Assessments upon certain property owned by S&B Enterprises, LLC and R & BB Enterprises, LLC for benefits conferred upon the property by the construction of town roads, curb returns, storm water management devices, roadside ditches, and the required signage at the of intersection of STH "76" and Fox Valley Drive, and in the rights of way of Fox Valley Drive, and Blacktop Way along the frontage of Outlot 1, and Lots 1, 2, and 3 of Certified Survey Map 6769 as recorded in the Winnebago County Register of Deeds Office.

Attached please find the documentation relative to this issue. The Owners of Fox Valley Asphalt and the adjoining properties to include S&B Enterprises, LLC and R & BB Enterprises, LLC entered into a Developers Agreement (see attached) with the Town to engineer and construct the specified Public Infrastructure. The Developers Agreement called for the provision of Irrevocable Letters of Credit to cover the Town's costs related to the project. The first Irrevocable Letter of Credit was provided to the Town, the second required Irrevocable Letter of Credit was not provided in the manner required by the Town. At that point the Administration elected to complete the project as required and to exercise its option under the Developers Agreement to Special Assess, to the benefitted properties, the remaining costs of the project. The attached Preliminary Resolution is the first step in that process. Should the Board approve the Preliminary Resolution, a final Resolution will be scheduled for the Board's Wednesday, October 21<sup>st</sup>, 2015 meeting. The final Resolution will set the required payment, direct staff to place the payment on the taxes of the specified properties, and approve the payment schedule. Should the Board agree with the Preliminary Resolution, a motion would be in order to approve the Preliminary Resolution by roll call vote and to direct staff to prepare the Final Resolution levying the Special Assessments on the benefitted properties.

**MOTION:**

Motion by: Supervisor Reif

Seconded by: Supervisor Schmidt

Motion: To approve Preliminary Resolution #2015-011 to levy Special Assessments upon certain property owned by S&B Enterprises, LLC and R & BB Enterprises, LLC for benefits conferred upon the property by the construction of town roads, curb returns, storm water management devices, roadside ditches, and the required signage at the of intersection of STH "76" and Fox Valley Drive, and in the rights of way of Fox Valley Drive, and Blacktop Way along the frontage of Outlot 1, and Lots 1, 2, and 3 of Certified Survey Map 6769 as recorded in the Winnebago County Register of Deeds Office to be paid by Cashier's check no later than October 30, 2015.

Vote: **Chair requested roll call vote:**

Chair Geise: Aye

Supervisor Reif: Aye

Supervisor Lettau: Aye

Supervisor Grundman: Aye

Supervisor Schmidt: Aye

Motion carried unanimously.

- C. Discussion/Action: Town Board review and consideration of Resolution 2015-012 a Joint Powers Agreement pursuant to Wisconsin Statutes 256.35(9) submitted by the Winnebago County Sheriff.

Attached please find a copy of correspondence from Winnebago County Sheriff, John F. Matz. Also attached is a copy of Resolution 2015-012 authorizing the renewal of the Town's participation in the Winnebago County 911 Emergency System. The Joint Powers Agreement, required under Wisconsin Statutes, essentially sets system protocols and requires that an emergency vehicle dispatched by the County 911 System render service even if it is outside the department's jurisdiction. A motion to authorize the Town Chair and the Town Clerk to sign the Winnebago County, 911 Emergency System, Joint Powers Agreement would be in order.

Vote: Motion made by unanimous consent to approve Resolution 2015-012.

- D. Discussion/Action: Town Board review and consideration of Pay Request #3 and Change Order #3 submitted by MCC, Inc., 2600 Roemer Road, Appleton, WI 54912 for the Town's CY 2015 Roadway Capital Improvements Projects.

Attached, please find a copy of Pay Request #3 and Change Order #3, submitted by MCC, Inc., 2600 North Roemer Road, Appleton, WI 54912-1137. Change Order # 3 is in the amount of \$6,775.00 and was required to correct a minor storm water drainage issue and driveway culvert aprons in the project area. Pay Request # 3 is in the amount of \$440,228.90. The Town Board will need to approve the Change Order even though the work has been completed. The Administration authorized the Change Order work so that the project could be completed in a timely manner. Both the Town Engineer and the Town Administrator have reviewed the pay request and agree that it is correct and should be paid. If the Board is comfortable with staff's recommendation, two motions would be in order: the first would be to approve Change Order #3 to the Town's CY 2015 Capital Construction Projects in the amount of \$6,775.00, the second to approve pay request #3 in the amount of \$440,228.90 and to direct the Treasurer to make the payment to MCC, Inc., 2600 North Roemer Road, Appleton, WI 54912-1137.

**MOTION:**

Motion by: Supervisor Schmidt

Seconded by: Supervisor Grundman

Motion: To approve Change Order #3 in the amount of \$6,775.00 submitted by MCC, Inc.

Vote: Carried by unanimous consent.

**MOTION:**

Motion by: Supervisor Schmidt

Seconded by: Supervisor Grundman

Motion: To approve Pay Request #3 in the amount of \$440,228.90 submitted by MCC, Inc.

Vote: Carried by unanimous consent.

- E. Discussion/Action: Town Board review and consideration of authorizing staff to proceed with the engineering redesign and repairs to the failing outfall area of the eastern pond in the Plat of Strawberry Fields (Cavendish Road).

Attached please find several photographs of the referenced storm water management pond. If one looks carefully at the outfall of the pond it is evident that the pipe has lifted causing water to be trapped in the pond. Also visible in the photographs is the manifold device the County required the Town to install. The Administration is concerned about the integrity of the retention pond

berm in the area of the outfall pipe. Specifically, if the berm were to fail the water released from the pond would run into a drainage easement between two relatively expensive homes to the south and, depending on the volume of water released, would likely damage both homes and the roadway before it finds its way into the Strawberry Estates storm water management pond. In order to avoid the potential problem staff has been pumping down the level of the water in the retention pond. Additionally, staff has cut the outfall pipe in order to allow the water to be released from the pond at its original level.

At the Board's September 16<sup>th</sup>, 2015 meeting staff was directed to solicit engineering proposals, however, there was no consensus or direction from the Board to proceed with the engineering or repairs. The process stopped with the discussion of a pond on private property and whether the Town should get involved in repairing a storm water management pond on private property. The Administration understands the question but not the position. The storm water management pond is on private property because the Town required it to be on private property despite the fact that the storm water management pond serves a Public Good. The Town assigned the maintenance responsibilities for the storm water management pond to the Owner's Association despite the fact that the Town has no ability to enforce that maintenance requirement. The Town can make the repairs and then Special Assess the costs to the benefited property owners; however, this option is limited to the property owners whose storm water runs to that specific storm water management pond. If the Board takes this path it is likely to be challenged in court by one of the owners based on the Town's creation of a Storm Water Management Utility that charges all residents a fee for maintenance of all of the storm water management ditches and devices (ponds) that serve the Town.

The Administration is concerned with making the repairs in a timely manner. The Administration also has an idea of how to fix the issue and the requested engineering work should provide the Town with some security and guarantee that the solution will work. The Administration is respectfully requesting that the Board make a motion that will allow the Town Chair to approve the engineering and direct staff to proceed with the project in a timely manner.

- Administrator Johnston showed Chair Geise the area and to discuss future issues on private property which serves a public purpose. Chair Geise was wondering if these issues could have been prevented. Administrator Johnston was not working here when this area was developed. The area should have been constructed with a manhole cover and a spillway. The pond level is too high.

**MOTION:**

Motion by: Supervisor Schmidt

Seconded by: Supervisor Reif

Motion: To direct staff to visit the area with Chair Geise to approve future engineering work to be done to resolve these water issues.

Vote: Carried by unanimous consent.

- F. Discussion/Action: Town Board review and consideration of an appointment to the Town of Clayton Plan Commission to serve the balance of the 3-year term of Commissioner John Jesse with a term starting with the Wednesday, October, 14<sup>th</sup>, 2015 Plan Commission Meeting.
- i. Name to be presented by the Town Chair

It is the Administration's understanding that Mr. Jesse is not able to complete his appointed term to the Town's Plan Commission. The Town Chair has indicated that he will be putting forward the name of an individual to complete Mr. Jesse's term at the Board's Wednesday, October 7<sup>th</sup>, 2015 meeting. That term will start with the Wednesday, October, 14<sup>th</sup>, 2015 Plan Commission Meeting.

Motion: To approve Kelly Wisnefske to complete the term of John Jesse commencing at the October 14<sup>th</sup>, 2015 Plan Commission Meeting.

Vote: Approved by unanimous consent.

- XI. Upcoming Meeting Attendance:  
Special Town Board meeting scheduled for Friday, October 9<sup>th</sup>, 2015 at 5:30 p.m. before the next Joint Fire Board meeting which is scheduled for Monday, October 12<sup>th</sup>, 2015.
- XII. Board Member Requests for Future Agenda Items:
- Traffic issues on Lind Lane.
  - Policies and procedures for Special Assessments.
- XIII. Review of Disbursements:
- XIV. Adjournment:  
**MOTION:** To Adjourn approved by unanimous consent at 9:23 p.m.

Respectfully submitted,  
Laurie Goffard, Deputy Clerk