

TOWN OF CLAYTON

Town Plan Commission

Meeting Minutes

7:00 P.M. – 8:12 P.M. on Wednesday, July 10th, 2013

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

I. Call to Order:

A. Notice Verification, Roll

1. Town Board Chairman Luebke 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. Plan Commission Members

Chair Knapinski	PRESENT
Commissioner Brucks	PRESENT
Commissioner Eckstein	PRESENT
Commissioner Klingenberger	PRESENT
Commissioner Linsmeier	PRESENT
Commissioner Haskell	PRESENT
Town Board Representative Schmidt	PRESENT

b. Staff

Administrator Johnston	PRESENT
Administrative Assistant Prange	PRESENT
Town Engineer – Jon Bartz	PRESENT

II. Public Hearing:

A. THE PETITIONER: Miles Dominowski and the property owners Ted and Cathy Dominowski, 2596 Oakridge Road, Neenah, WI 54956 have submitted a Conditional Use Permit Application for the purposes of conducting a Home Occupation to repair and sell limited numbers of vintage and classic motorcycles. The property address that will be subject to the Conditional Use is 2506 Oakridge Road, Neenah, WI 54956, specifically described as TAX ID# 006-0653-04, being part of the northeast ¼ of the southeast ¼, Section 25, Township 20 North, Range 16 East, Town of Clayton, County of Winnebago, State of Wisconsin.

- Ted Dominowski (property owner) advised his son applied because it isn't a business but he does generate some income. It is not meant to be a retail location, and he was just trying to do things properly and legally
- Commission Chair Knapinski questioned what method is used for selling the motorcycles and Ted advised it is all online, nothing local, not even Craigslist

III. Approval of Minutes:

A. Regular Plan Commission Meeting – June 12th, 2013.

MOTION:

Motion by: Commissioner Klingenberger

Seconded by: Commissioner Schmidt

Motion made to approve the minutes of the Plan Commission Meeting for Wednesday, June 12th, 2013.

Motion carried by unanimous voice vote.

IV. Open Forum – Non-Agendized Town-related Matters:

A. No Referrals

V. Correspondence:

A. Public Hearing Notice from the Winnebago County Zoning Department.

VI. Business:

A. Discussion/Recommendation: Plan Commission review and recommendation on a Conditional Use Application submitted by Miles Dominowski and the property owners Ted and Cathy Dominowski, 2596 Oakridge Road, Neenah, WI 54956 for the purposes of conducting a Home Occupation to repair and sell limited numbers of vintage and classic motorcycles. The property address that will be subject to the Conditional Use is 2506 Oakridge Road, Neenah, WI 54956, specifically described as TAX ID# 006-0653-04, being part of the northeast ¼ of the southeast ¼, Section 25, Township 20 North, Range 16 East, Town of Clayton, County of Winnebago, State of Wisconsin.

Property Owners: Ted and Cathy Dominowski
2596 Oakridge Road
Neenah, WI 54956

Property Information:

- 1) The surrounding properties are zoned:
 - a) North: R-2 (Suburban Residential District)
 - b) South: A-2 (General Farming District)
 - c) East: R-1 (Rural Residential District) and A-2 (General Farming District)
 - d) West: R-1 (Rural Residential District), R-2 (Suburban Residential District) and A-2 (General Farming District)

Property Information Specific to Tax ID# 006-0279-01:

1. The property is owned by Ted and Cathy Dominowski, 2596 Oakridge Road, Neenah, WI 54956.
2. The Lot is 5.260 acres in size.
3. The property is in the Neenah School District (3892).
4. The property is in the Department of Natural Resources Special Well Casing area.
5. The Lot is currently zoned A-2 (General Farming District).
6. The property is in the City of Neenah Extraterritorial Zoning District.
7. The property is out of the County's Floodplain Zoning Area.
8. The property is not in the County's Wetland Identifier.

Staff Comments:

1. Miles Dominowski (Miles), the Applicant, works on the restoration and sale of limited numbers of vintage and classic motorcycles at his parents' home. The home is located at 2596 Oakridge Road, Neenah, WI 54956.
2. The Conditional Use Application is for repair, restoration and sale of a limited number of vintage and classic motorcycles.
3. The Conditional Use Application was triggered by a State Department of Transportation (DOT) requirement that Mike have a sellers permit.
4. The DOT requires a seller's permit when an individual sells licensed and titles vehicles on more than a casual basis.
5. The Town's Zoning Code of Ordinances requires a Conditional Use Permit for a Home Occupation; at first glance this Application would appear to fit the Home Occupation criteria.
6. However, Vehicle Repair and Vehicle Sales are not allowed as Conditional Uses in the A-2 (General Farming) District; please see the attached copy of Page 8–8 of the Town's Zoning Code of Ordinances.
7. A further review of Article 3, Sections 17.19 (Home Occupation Major) and 17.20 (Home Occupation Minor) (see attached) indicates that hobbies or similar non-commercial activities are exempt from the requirement of a Conditional Use.
8. Article 3, Sections 17.24 (Kennel, hobby) and 17.25 (Kennel, Private) appear to make the distinction between a hobby and a private use based on the number of units present.
9. Additionally, the Town's Zoning Code of Ordinances does not define Hobby!
10. Based on conversations with the Applicant and its review of the Town's Zoning Code of Ordinances, staff is making the interpretation that Miles' use is a hobby and a non-commercial use and therefore exempt from the requirement of a Conditional Use Permit.
11. Additionally, staff would respectfully ask the Applicant to keep any inventory and/or parts used in his hobby activities within a structure or a fenced area so that they are out of site of the neighbors.
12. Staff would also ask that the Applicant refrain from testing restored inventory without proper silencing equipment and during the period of 9:00 P. M. and 8:00 A. M. The Commission needs to be aware that these are requests of the Applicant and that the Town has no authority under the Administration's interpretation of the Zoning Code of Ordinances to require that the Applicant comply with the request.

Staff Recommendations:

Staff is recommending that the Administration sign the DOT document indicating that the proposed use and activity are allowable in the A-2 (General Farming District) under the Town's Zoning Code of Ordinances.

Additionally, the Administration would strongly recommend that the Plan Commission ask the Board for direction relative to correcting this issue, specifically, the Plan Commission should generate a definition for Hobby that clearly defines the parameters of the exempt activity and that definition should be included in the Town's Zoning Code of Ordinances.

- Commissioner Brucks questioned who regulates the amount of motorcycles sold and voiced his concerns with other residents coming to the Board with "hobbies" and having it get out of hand

- Administrator Johnston advised the DOT regulates the sales and the Zoning Code of Ordinances can be amended to include certain regulations. He explained multiple examples and suggested to define a hobby as a “non-principle source of income”
- Commissioner Klingenberger voiced his concerns with defying the State’s definition of a business and not wanting to take short cuts in order to avoid issues down the road.
- When questioned if he pays sales tax, Miles Dominowski (Applicant) advised that the purchaser pays the sales tax during title registration
- Tom Dominowski (Property Owner) advised that many people hold licenses and don’t necessarily use them to operate a business
- Commissioner Haskell advised the commission to focus on defining “hobby” because many people make different things and sell them, but she thought the concern was coming from it being vehicle repair
- Town Planner Bartz mentioned that in his experience, a hobby was usually defined as a non-commercial activity, but that the definition of non-commercial would also be controversial. He suggested trying to define a “home occupation” instead of a hobby
- Commissioner Linsmeier suggested limiting quantities in order to avoid things getting out of hand

MOTION:

Motion by: Commissioner Klingenberger

Seconded by: Commissioner Schmidt

Motion to recommend to the Board that the Administration sign the DOT document and also recommend that the Board advise the Plan Commission to review prohibited uses for a conditional use permit.

Motion carried by unanimous voice vote.

B. Discussion/Recommendation: Plan Commission review and recommendation on a Certified Survey Map (CSM) submitted by the Petitioner: Brad Best, President of Fox Valley Asphalt & Maintenance, LLC, 7526 STH “76”, Neenah, WI 54956 for property owned by S & B Enterprises, LLC and R & BB Enterprises, LLC, located at 7526 STH “76”, Neenah, WI 54956; specifically described as Tax ID# 006-0897-05 and Tax ID# 006-0897, being all of Lot, 2 of Certified Survey Map No.3370, part of Lot 3 of Certified Survey Map No.5026, all located in the southwest ¼ of the northwest ¼ of Section36, Township 20 North, Range 16 East, Town of Clayton, County of Winnebago, State of Wisconsin.

Property Owners: S & B Enterprises, LLC, Tax ID# 006-0897-05
R & BB Enterprises, LLC, Tax ID# 006-0897

Consultant: Gary A. Zahringer, S-2098
Martenson & Eisele, Inc.
1377 Midway Road
Menasha, WI 54952

Prepared for: Brad A. Best, President
Fox Valley Asphalt & Maintenance, LLC

7526 STH “76”
Neenah, WI 54956

Property Information:

- 1) The surrounding properties are zoned:
 - a) North: A-2 (General Farming District) and R-1 (Rural Residential District)
 - b) South: A-2 (General Farming District)
 - c) East: A-2 (General Farming District)
 - d) West: R-1 (Rural Residential District), A-2 (General Farming District) and A-1 (Agribusiness District)

Property Information Specific to Tax ID# 006-0897:

1. The property is owned by R & BB Enterprises, LLC and located at 7526 STH “76” Neenah, WI 54956.
2. The Lot is 12.689 acres in size.
3. The property is in the Neenah School District (3892).
4. The property is in the Department of Natural Resources Special Well Casing area.
5. The Lot is currently zoned B-2 (Community Business District).
6. The property has a 50-foot setback from the STH “76” right-of-way.
7. STH 76” has an officially mapped 100-foot right-of-way on the property frontage.
8. The property is in the City of Neenah, Extra Territorial Zoning District.
9. The property is out of the County’s Floodplain Zoning Area.
10. The property is not in the County’s Wetland Identifier.
11. The property is currently being farmed.

Property Information Specific to Tax ID # 006-0897-05:

1. The property is owned by S & B Enterprises, LLC and located at 7526 STH “76” Neenah, WI 54956
2. The Lot is 10.00 acres in size.
3. The property is in the Neenah School District (3892).
4. The property is in the Department of Natural Resources Special Well Casing area.
5. The Lot is currently zoned B-3 (General Business District).
6. The property is in the City of Neenah, Extra Territorial Zoning District.
7. The property is out of the County’s Floodplain Zoning Area.
8. The property is not in the County’s Wetland Identifier.
9. The western side of the property is the current location of Fox Valley Asphalt & Maintenance, LLC and the eastern side of the property currently being farmed.

Staff Comments:

1. The proposed CSM re-configures two existing properties into a remnant parent parcel, three new Lots and an Outlot.
2. The proposed CSM is consistent with the Town’s approved Land Use Plan.
3. The existing use and proposed use of the Lots created by the proposed CSM is consistent with the existing Zoning on the property.
4. The proposed Lots comply with the area, and the frontage requirements of the Town’s Zoning Code of Ordinances and Access Ordinance.

5. Lot 2 of the proposed CSM could be divided into 2-Lots and still comply with the Town’s Zoning Code of Ordinances.
6. Outlot 1 of the proposed CSM is to be dedicated as the site of the stormwater management facilities for the development of the property.
7. The location and the design of the ingress and egress from STH “76” on to Fox Valley Drive has been approved by the State Department of Transportation.
8. Both the northern and southern extensions of Black Top Way have been designed with temporary cul-de-sacs to facilitate access and turning maneuvers on the road.
9. The southern boundary of the property has an officially mapped right-of-way for a future east/west road.
10. Lots 1 and 3 have a 25-foot drainage easement on the outside perimeter of the properties that will drain storm water to the storm water management facilities proposed for Outlot 1.
11. The CSM, as proposed, dedicates approximately 132, 351 square feet of property to the Town for the rights-of way of Fox Valley Drive and Black Top Way.
12. The existing ingress and egress easement on the parent parcel will be released as soon as the proposed roads are developed and accepted by the Town.
13. All of the internal intersections will have 30-foot drainage easements and vision triangles.
14. Staff is currently in the process of formulating a Public Improvement Agreement for the property; the Board will review and approve the document prior to the award of a bid for the construction of any public improvements.
15. The proposed CSM is being reviewed by the City of Neenah based on their Extra Territorial Zoning Jurisdiction. Staff will review their comments as soon as they are available.

Staff Recommendations:

Staff recommends approval of the proposed CSM subject to the following condition:

1. Documentation of the approval of the proposed CSM by any overlying unit of government having jurisdiction.

MOTION:

Motion by: Commissioner Haskell

Seconded by: Commissioner Klingenberger

Motion to recommend approval of the proposed CSM with staff recommendations

Motion carried by unanimous voice vote

- C. Discussion/Recommendation: Plan Commission review and recommended direction to staff relative to the Town enforcement of pre-existing Zoning Code violations transferred to the Town by the County’s Zoning Code Enforcement Officer.

Attached please find copies of the two Zoning Code violations forwarded to the Town by the County’s Zoning Office. Because the Town now does its own zoning, Town staff is responsible for Zoning Code Enforcement. Staff has reviewed the attached violations and is recommending that the Town proceed with enforcement actions where they are warranted. Specifically, staff is recommending the following:

1. Based on a preliminary site visit, staff believes that in the case of Michael Schroeder, 2648 Fairview, there will be no violation based on the Town’s Zoning Code of Ordinances. The County’s violation consists of not removing a detached storage building when a new attached garage structure was added to the existing home. The Town’s Zoning Code allows detached storage buildings as long as they do not exceed a

specific limit. Staff believes the Plan Commission should recommend that the Board direct staff to confirm the Zoning Code violation and if a violation exists, enforcement action should be taken.

2. In the case of Jason Ehrmentraut, the Zoning Code violation is the same under both the County's Zoning Code and the Town's Zoning Code. Specifically, Mr. Ehrmentraut's landscaping business is a Conditional Use in the A-2 (General Agriculture) District. Mr. Ehrmentraut is aware of the Zoning Code violation and has contacted staff relative to correcting the condition as soon as the Town's Zoning Code is in place. At this time, staff believes that the Zoning Code is functional and Mr. Ehrmentraut should submit a Conditional Use Application for the site. Staff believes that the Plan Commission should recommend that the Board direct staff to confirm the Zoning Code violation and if a violation exists, enforcement action should be taken.

MOTION

Motion by: Commissioner Klingenberger

Seconded by: Commissioner Haskell

Motion to recommend that the Board direct staff to confirm the Zoning Code violations and if violations exist, to take enforcement action.

Motion carried by unanimous voice vote.

- VII. Upcoming Meeting Attendance
 - a. No Referrals

- VIII. Adjournment – 8:12 P.M.

MOTION:

Motion by: Commissioner Schmidt

Seconded by: Commissioner Brucks

Motion to Adjourn

Respectfully submitted,
Jenna Prange, Administrative Assistant