

# TOWN OF CLAYTON

## Town Plan Commission Regular Meeting Meeting Minutes

April 13, 2011  
7:00 p.m. – 8:01 p.m.

8358 County Road T Larsen, WI 54947

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### I. Call to Order

Called to order at 7:01 p.m. by Chairperson Knapinski

Roll:	<u>Plan Commission</u>	
	Chairperson Knapinski	PRESENT
	Commissioner Adler	ABSENT (excused)
	Commissioner Brucks	PRESENT
	Commissioner Geise	PRESENT
	Commissioner Hamblin	PRESENT
	Commissioner Haskell	PRESENT
	Commissioner Van Airsdale	PRESENT
Roll:	<u>Staff</u>	
	Administrator Johnston	PRESENT
	Treasurer Bowen	PRESENT
	Town Engineer Bartz	PRESENT

Pledge of Allegiance recited.  
Meeting properly posted; three locations in the Town.

### II. Approval of Minutes

- Regular Plan Commission – March 9, 2011
  - Changes to Minutes: On the bottom of page two second line of answer there is an extra “t” in the sentence. On the top of page 3 “2010” there is a hyphen in it. Replace “grandfather” with “grandfathered” on page 3, misspelled “super cede” on page 3, and on the bottom of page 3 replace “avigation” with “aviation”. Ms. Lettau also corrected the first name of Ms. Sabee on number 11 – change “Mary Ann” to “Marion”.
- MOTION:** (Hamblin, Haskell) Approve Regular Plan Commission meeting minutes of March 9, 2011, as written with corrections above  
CARRIED by unanimous voice vote.

### III. Open Forum – Non-Agendized Town-related Matters

- NONE

### IV. Correspondence

- Outagamie County / Airport Overlay Ordinance ADHOC Committee Meeting – Wednesday, April 13, 2011, 9:00 a.m.
- Winnebago County / UW-Extension / Plan Commissioner Network Meeting – Wednesday, April 27, 2011, 6:30 p.m. – 8:30 p.m.

### V. Business Items

- A. **Discussion / Recommendation:** – Plan Commission review and recommendation on a Conditional Use Application for Beaming, Inc., 1190 Symphony Boulevard, Neenah, WI 54956, and Mary Alice Eisch, 5345 Ann Street, Larsen, WI 54947, for property located at 3346 Oakridge Road in the Town of Clayton (Tax ID#006-0696-03, a portion of #006-0695, and a portion of #006-0696).

Site Location: The property is known as Tax ID #006-0696-03, Part of the South ½ of the Southeast ¼ Described as Lot 1 of CSM-6405, Section 27, Town 20 North,

Range 16 East, Town of Clayton, County of Winnebago, Wisconsin, a portion of Tax ID #006-0695 and a portion of Tax ID #006-0696.

Applicant: Sandra Sandee for Beaming, Inc.

Property Owner: Mary Alice Eisch  
5345 Ann Street  
Larsen, WI 54947

Prepared for: Sandra Sandee, Agent  
Beaming, Inc.  
1190 Symphony Boulevard  
Neenah, WI 54956

**Property Status:**

1. The surrounding properties are zoned:
  - a. North: A-1 Agri-Business District and A-2, General Farming District
  - b. South: A-1 Agri-Business District
  - c. East: A-2 General Farming District and R-1 Rural Residential
  - d. West: A-1 Agri Business District and A-2 General Farming District
2. The lots are in the Department of Natural Resources Special Well Casing area.
3. A navigable stream is intermittently identified on the property.
4. The property is currently zoned A-2 General Farming District.
5. The property is in the City of Neenah Extra Territorial Zoning District.
6. The property is not in the County’s Floodplain Zoning Area.
7. A portion of the properties are in the County’s Shoreland Jurisdiction Zoning.
  - a. Tax ID #006-0696-03 is in the 300-foot buffer of the County’s Shoreland Jurisdiction Zoning.
  - b. Tax ID #006-0695 is in the 1,000-foot buffer of the County’s Shoreland Jurisdiction Zoning
  - c. Tax ID #006-0696 is in both the 300-foot and the 1,000-foot buffer of the County’s Shoreland Jurisdiction Zoning.
8. The property is not in the County’s Wetland Identifier.
9. The proposed Conditional Use Application is consistent with the Town’s approved Land Use Plan.

**Staff Comments:**

The property consists of a well-maintained farm house and outbuildings that have been used to house horses, cows, and farming equipment in the past. The property is no longer farmed by the property owner; however, the site continues to be farmed under contract.

The County is requiring the applicant to obtain a Conditional Use Permit to run a horse boarding facility with riding and training programs for people with disabilities (see information in commission packets or visit BEAMING, INC. website on the internet). The proposed use is compatible with the Town’s Future Land Use map as an agricultural function. The specifics of the program are:

1. The program is expected to have 6 to 8 employees.
  - a. Staffing will include 2 to 3 full-time employees
  - b. Staffing will include 4 to 5 part-time employees
  - c. Staff will include a caregiver living on site
2. The program will have a minimum of 7 and a maximum of 15 horses on site at any given time.
3. The hours of operation are to be 8:00 A.M. to 8:00 P.M. and the occasional weekend.
4. The organization plans to complete site improvements to the property including the following:
  - a. Fencing
  - b. Building restorations and/or minor improvements
  - c. Cosmetic landscaping of the property
  - d. Office space in one of the existing outbuildings
5. The organization and its program will be required to comply with all State and County Livestock Waste Management permitting as enforced by the County’s Land and Water Conservation Department.

- 6. The organization expects to complete the purchase of the property in April of CY 2011 with work to continue on the property for the balance of CY 2011.
- 7. The organization may hold occasional small fundraising events at the site.

In order to complete the property purchase, as shown in the application site plan, Beaming, Inc., will need to have an approved Certified Survey Map (CSM) that creates a single property out of portions of the following properties Tax ID #006-00696-03, Tax ID #060-0695, and Tax ID # 006-0696. Any approval of the proposed Conditional Use Application should be conditioned on submission and approval of the required CSM.

With the proposed new use of the property it would appear that the two old farm access points would become not only unnecessary but quite possibly a potential traffic hazard under certain circumstances. Specifically, If Beaming, Inc. were to hold a fundraising or training event at the site, the multiple access points in close proximity would create a potential traffic hazard. Like any municipal park, the site should have a single access point with an internal traffic circulation pattern. For these reasons, staff would like to require that the access to the site be limited to the paved driveway and that the old farm access points be removed at the Town’s expense. Town staff would remove, dispose of the culverts, and restore the ditch in order to control the cost of the project.

Beaming, Inc. is a 501-C3, tax exempt, organization and as such, any property they own will be removed from the Town’s tax rolls. The Conditional Use Application indicates that a caretaker will be living in the house located on the site. Should the house be lived in, Beaming, Inc. will be required to pay a Special Assessment Fee for Municipal Solid Waste and Recycling Services. The specific dollar value of the fee varies from year to year based upon the Town’s municipal solid waste activities and the Town’s solid waste and recycling contract.

**Staff Recommendation:**

Staff recommends approval of the proposed Conditional Use Application subject to the following conditions:

- 1. The removal, using force account labor, of the two old farm access culverts subject to prior notice to the property owners. The culverts are located approximately 100 feet on either side of the paved farmhouse access driveway.
- 2. Limiting staffing to a total of 10 Full-Time Equivalent Employees (FTE).
- 3. Limiting the total number of horses on site at any given time to 15.
- 4. Limiting the hours of operation from 8:00 A.M. to 8:00 P.M. with the occasional weekend.
  - a. Weekday hours of operation shall be limited from 8:00 A.M. to 8:00 P.M.
  - b. Saturday hours of operation shall be limited from 10:00 A.M. to 8:00 P.M.
  - c. Sunday hours of operation shall be limited from 10:00 A.M. to 6:00 P.M.
- 5. Compliance with any and all animal waste regulations promulgated by the State, the County, and/or the Town.
- 6. Limiting any fundraising events to the approved hours of operation.
- 7. The imposition of a Municipal Solid Waste and Recycling Special Assessment Fee on the property. As an alternative Beaming, inc., can provide the Town with evidence of a private solid waste and recycling contract for the property.
- 8. Approval of the required Certified Survey Map by all units of government having jurisdiction.
- 9. Documentation of the approval of the proposed Conditional Use Permit by any overlying unit of government with jurisdiction.

Hamblin recused himself from the Commission for this item of business due to conflicting interest.

**Commenting on item:** Cindy Miller, Executive Director, Sandy Sandee, Clinical Director

Ms. Miller would like the Commission to reconsider the limitation of hours. Ms. Miller stated that the hours of operation listed would hinder the clean-up and chores that need to be completed after clients went home. Ms. Miller asked that the “hours of operation” be changed to “hours of service”. Commissioner Haskell would like definition of hours of operation to include service hours only. The

Commission agreed to extend the operating hours to 9:00 pm and defined the “hours of operation” as the hours dedicated to providing services (i.e. riding lessons and other therapeutic activities) and not to include any clean-up, chores or other activities that are required as part of the daily routine of the business.

Ms. Sandee asked the Commission to define fundraising event and if a donor was included in that definition. Johnston explains his definition of “fundraising” and stated that a donor was not included in that definition. Beaming, Inc. could have “donors” without it being considered a fundraising event. Mr. Johnston went on to explain that this action was necessary to limit traffic, lights, tents, parking etc.

Ms. Sandee asked if an Annual event would be acceptable and if a permit would be required. Mr. Johnston stated no permit would be required unless Beaming, Inc. intended to sell of alcohol.

Commissioner Knapinski expressed his concern with the location of a set of bleachers and the proximity to the road.

The discussion continued and covered proper rest room facilities, disposal of animal waste, sanitary capabilities for the house, and the other buildings on the property complying with commercial standards.

Commissioner Geise asked how many people per day could be expected. Ms. Sandee and Ms. Miller gave estimates of approximately 20 - 50 per day with 50 being on the high end. They explained that they schedule groups of 4 kids/families at a time.

The special assessment for garbage/recycling was a concern with Mr. Johnston stating that because of the tax-exempt status, there would only be fees for these services.

Commissioner Haskell expressed a concern for the limit of 15 horses. Commissioner Haskell went on to discuss the county zoning ordinance in reference to the acreage of the property and that there are no limitations on livestock for the amount of acreage involved. Commissioner Haskell also expressed concern for the culverts and the asphalt driveway. The Commission agreed to change the limit for the total number of horses on site to 25. The Commission also agreed to the removal of one of the access culverts and leaving one culvert in place.

Commissioner Brucks asked if the facility would be open to public without disabilities and what the age limit was. Ms. Miller and Ms. Sandee stated that the facility accommodated anyone from age 4 thru adult. Their mission statement reflected services for individuals and families with special needs.

Commissioner Haskell expressed a concern that the limitation of full time staff may hinder growth of business. Chairperson Knapinski stated a conditional use can be brought back anytime in the event of a need for an increase in staffing.

**MOTION:** (Geise, Brucks) Motion to approve the recommendation of a Conditional Use Application for Beaming, Inc., 1190 Symphony Boulevard, Neenah, WI 54956, and Mary Alice Eisch, 5345 Ann Street, Larsen, WI 54947, for property located at 3346 Oakridge Road in the Town of Clayton (Tax ID#006-069603, a portion of #006-0695, and a portion of #006-0696) with all staff recommendations and conditions, to include extending the hours of operation to a 9:00 pm close, a maximum of 25 horses be kept, and to remove one culvert and maintain the other culvert as a farm entrance with a gated access.

Commissioner Haskell asked to amend the motion to include a limit of 12 full time staff members. Commissioner Geise declined the amendment.

CARRIED by unanimous voice vote.

- B. **Discussion / Recommendation:** – Plan Commission review and recommendation on a request by the Town Administrator for an agreement to make a Payment In Lieu of Taxes (PILOT) from Beaming, Inc., a 501-C3 tax exempt entity proposing to purchased property located at 3346 Oakridge Road in the Town of Clayton (Tax ID#006-0696-03, a portion of #006-0695, and a portion of #006-0696).

Beaming, Inc., is tax exempt 501-C3 corporation. As such, any real and personal property they own will be tax exempt. The Administration has asked representatives of the organization if they would be

willing to make a PILOT equivalent to the Town's tax rate on the assessed value of the property as of January 1<sup>st</sup>, 2011.

The rationale for the request is the use of the municipal services provided by the Town and used by the organization during its routine activities. The cost of providing the services will not be reduced because of the tax exempt status; therefore, those costs will be spread over the other properties in the Town. The assessed value of the property is approximately \$250,000 and the CY 2010 Municipal Tax Rate is approximately \$2.50 per thousand dollars of assessed value; thus the PILOT would be approximately \$625.00. Should Beaming, Inc., agree, the Plan Commission recommend, and the Town Board approve, staff would draft a PILOT subject to Legal Counsel Review, with a five-year term. A PILOT would have a payment schedule similar to a tax payment and would be payable to the Town Treasurer.

The Administration would respectfully remind the Commission that this agenda item must not be discussed as part of the organization's Conditional Use Application. Any discussion that appears to connect the two issues could be grounds for a legal challenge if the Conditional Use Application is denied.

**Commenting on item:** Sandy Sandee, Clinical Director

Mr. Johnston discussed the services we provide and the reasons for requesting that a PILOT be paid by the organization.

Ms. Sandee explained that Beaming, Inc. is a small non-profit organization that is struggling. Ms. Sandee stated that she hopes that the Town could agree on some type of a limited dollar amount the organization could live with due to their budget constraints. Ms. Sandee went on to include that Beaming, Inc. has an operating budget of approximately \$135,000 annually.

Mr. Johnston explains the Town's position and agrees to draft PILOT and get a fixed rate for an agreed upon reasonable period between the Town and Beaming, Inc.

Mr. Ben Hamblin, 2986 W Shady Lane, Neenah, WI 54956

Is the PILOT based on the Town's portion of the tax rate the property would receive and could we expect this from a county or state level as well? Mr. Johnston discussed the requirements and explained that the Town was not being unreasonable by requesting that a PILOT be made.

Commissioner Van Airsdale asked if this is a new approach and if we had any existing agreements with other non-profits. Mr. Johnston discussed how the Town appropriates money and the need for a policy in the future for this type of payment for a non-profit organization that may come to exist in the Town.

Ms. Sandee has checked with other small profits who do not have to pay and stressed the need for a very reasonable agreement.

Commissioner Haskell expressed concerns with the PILOT being based on the assessed value of the property right now. When improvements are made, the taxes would go up based on the new assessments, and will the PILOT be renegotiated to reflect those changes? What is the PILOT going to be based on?

Mr. Johnston and Commissioner Haskell discuss the assessing process and taxes on property.

Commissioner Brucks expressed his concerns with not requiring a non-profit organization to pay a PILOT.

Ms. Sandee asked about donor improvements to buildings and the effect the improvements would have on the assessment. Mr. Johnston stated that in this particular case – no. If the Town and Beaming, Inc. enters into an agreement, the valuation will remain fixed for the length of the agreement.

Commissioner Geise agrees with the PILOT.

**MOTION:** (Geise, Brucks) Motion to have the Town Administrator draft a Payment in Lieu of taxes (PILOT) between the Town of Clayton and Beaming Inc., a 501C3 tax exempt entity.

CARRIED by 4-1. (Haskell –NO)  
**Hamblin rejoins the Commission**

- C. **Discussion / Recommendation:** – Plan Commission review and recommendation on an amendment to the Town’s Comprehensive Plan, adopted on December 16, 2009, for the Center for Avian Rehabilitation & Education, 3053 Beechwood Ind. Ct., Suite 1, Hubertus, WI 53033, and Bret and Virginia Luzenski, 2722 West Fairview Road, Neenah, WI 54956, for property located at 2722 West Fairview Road, in the Town of Clayton (Tax ID #006-0339-02-01)

Site Location: The property is known as Tax ID# 006-03390-02-01, Part of the southeast ¼ of the southwest ¼ and part of the southwest ¼ of the southeast ¼, Section 12, Town 20 North, Range 16 East, Town of Clayton, County of Winnebago, Wisconsin described as Lot 2 of CSM 4460.

Applicant: Bret and Virginia Luzenski and the Center for Avian Rehabilitation & Education.

Property Owner: Bret and Virginia Luzenski  
2722 West Fairview Road  
Neenah, WI 54956

Prepared for: Bret and Virginia Luzenski

**Property Information:**

1. The property is in the Department of Natural Resources Special Well Casing area.
2. The area has officially mapped roads.
3. The property is in the Outagamie County Airport Overlay Zoning District with Height Restrictions (neither the Town nor Outagamie County currently enforce the Airport Overlay Zoning District in the Town of Clayton).
4. The property is currently Zoned R-1 Rural Residential (non-subdivided).
5. The surrounding properties are zoned:
  - a. North: M-1 Light Industrial and Office District.
  - b. South: A-2 General Farming District.
  - c. East and West: R-1 Rural Residential (non-subdivided).
6. The property is in the City of Neenah Extra Territorial Zoning Area.
7. The property is not in the County’s Wetland Identifier.
8. The property is shown on the Town’s Future Land Use Map as reserved for Commercial Development.

**Staff Comments:**

The subject property (site) consists of a residential structure on approximately 5 acres of land. Property to the north of the site is owned by a development firm and on the market as commercial/industrial property with frontage on STH “10”. A future access point to the proposed commercial development (future road) is located immediately to the west of the site. The applicants are seeking permission to build an avian rescue facility on the site. Because the Town operates under County Zoning, the County is requiring the applicants to successfully amend the Town’s Comprehensive Land Use Plan and the County’s Comprehensive Land Use Plan. Additionally, the applicants will need to successfully rezone the site and obtain a Conditional Use Permit. It is the Administration’s understanding that the need for the County’s Conditional Use Permit is related to the housing element of the proposed project. At the Administration’s recommendation, the applicants are starting the process by asking the Town to approve an amendment to its Comprehensive Plan, Future Land Use Map). Should the Town not approve the proposed Future Land Use Map amendment the applicants will not make any of the other land use permit applications. The proposed amendment would change the Future Land Use Map designation for the site from Commercial to Agricultural. This change is required to satisfy the County’s Zoning Code requirement that the intended use be limited to land zoned for agricultural use with a Conditional Use Permit. The applicants are proposing to build a 60-foot by 80-foot free standing structure at the northern end of the site. The structure will

be used to house a small apartment, a retail area, a shop area, a medical facility and the rescue facility (please visit the organizations website at WWW.CENTERFORAVIANREHAB.ORG)

The Administration believes that in many municipal zoning codes, such as the one in the City of Neenah, (see attached Code section copy) the proposed operation is consistent with the Town’s existing Future Land Use designation of “Commercial”. In many zoning codes the proposed use would be considered in the same realm as a veterinary clinic or dog care center and thus an allowable use in commercial districts. The Commission will need to make a recommendation to the Town Board on an amendment that will change the Town’s Future Land Use Map to allow for an activity that is consistent with the existing Future Land Use Map and is compatible with the Town’s. County Planning and Zoning staff has indicated that it will honor the Town’s position on the issue. The issue the Commission needs to resolve is the compatibility between what is being proposed and what the Town’s long term vision is for the area and the site. If the Commission believes that the project is a step toward the long term vision it should approve the proposed Amendment; if it is not, the Amendment should be denied.

On a related issue, if the Town opts out of County Zoning this type of consistency problem will be temporary; if the Town does not opt out of County Zoning, this type of consistency problem will continue to present itself.

Because the environment in which the Comprehensive Plan is implemented is dynamic, it is expected that amendments to the Comprehensive Plan will need to be addressed to allow for changing conditions and attitudes. The process of amending the Comprehensive Plan is the same as that originally used for the adoption of the Comprehensive Plan. The Plan Commission will make a recommendation to the Town Board on the amendment. The Town Board will hold a public hearing on the recommended amendment and then adopt the amendment by ordinance (see attached).

**Staff Recommendations:**

Staff recommends approval of the proposed Future Land Use Map amendment subject to the following conditions:

1. Approval of the required Town and County Rezoning needed to allow the project to be completed.
2. Approval of the Town and County Conditional Use Application needed to allow the project to be completed.
3. Approval of the required Future Land Use Map Amendment by all units of government having jurisdiction.
4. Payment of the Town’s \$240 Comprehensive Plan Amendment Fee.

Commenting on item: Virginia and Bret Luzenski/ Laurie Drew, founder

Mr. Johnston commented that the owner’s property is not tax exempt as was the previous case discussed.

Ms. Luzenski wanted to make the Commission and the audience aware that this facility is for pet birds and not wild life. Ms. Luzenski explained the facility similar to a dog and cat shelter. Adoptable birds are rehabilitated and they try to find permanent homes for the birds. The facility would be both a long term and short term facility for birds. There is always the possibility that a bird will come in and not be a candidate for adoption. There would be no imported birds because importing birds is illegal. The birds that come through the facility will all have blood work done to prevent the spread of diseases.

Commissioner Geise asked how many birds can be handled by the facility at one time. Ms. Drew indicated that keeping in mind that a flight cage can hold up to 50 birds at a time there may be as many as 100 birds at the facility at one time, but mostly small birds. A Veterinarian Technician is on staff, but no Veterinarian.

Chairperson Knapinski asked if the facility and the care of the birds is quiet. Ms. Drew stated that in the morning and at night there is about 20 minutes of noise. There will be no outdoor flights and the building will be sound proof.

Mr. Johnston, as a point of reference to the Commission, explained that this would be an amendment to the Town’s Comprehensive plan which would affect the future use of the Luzenski’s property.

**MOTION:** (Hamblin, VanAirdale) Motion to approve the amendment to the Town's Comprehensive Plan, adopted on December 16, 2009, for the Center for Avian Rehabilitation & Education, 3053 Beechwood Ind. Ct., Suite 1, Hubertus, WI 53033, and Bret and Virginia Luzenski, 2722 West Fairview Road, Neenah, WI 54956, for property located at 2722 West Fairview Road, in the Town of Clayton (Tax ID #006-0339-02-01) with staff recommendations to change the Town's Future Land Use Map for this property from Commercial to Agricultural.

Mr. Luzenski asked about the use of the land that is located behind his home. Chairperson Knapinski explained to Mr. Luzenski that there have been no plans brought forward for that property and how it is zoned.

Commissioner Geise asked if the Mr. & Mrs. Luzenski fail to make it through the hoops will it go back to the original zoning. Mr. Johnston explained the procedure that must be followed and if at any point this procedure fails, this transaction does not occur.

CARRIED by unanimous voice vote.

This will go before the Board next Wednesday (April 20, 2011).

## **VII. Adjournment – 8:01p.m.**

**MOTION:** (VanAirdale, Hamblin) Motion to Adjourn.

CARRIED by unanimous voice vote.

Respectfully Submitted, Tori Bowen, *Treasurer*