

TOWN OF CLAYTON

Town Plan Commission

Meeting Minutes

7:02 P.M. – 8:18 P.M. on Wednesday, June 8, 2011

Town Office Meeting Room, 8358 County Road T, Larsen, WI 54947

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I. Call to Order:

A. Pledge of Allegiance, Notice Verification, Roll

1. Chairperson Knapinski called the meeting to order at 7:02 P.M.
2. Pledge of Allegiance recited.
3. Meeting properly posted.
4. Roll

a. Plan Commission Members

Chairperson Knapinski	PRESENT
Commissioner Adler	PRESENT
Commissioner Brucks	PRESENT
Commissioner Geise	PRESENT
Commissioner Hamblin	PRESENT
Commissioner Haskell	PRESENT
Commissioner VanAirsdale	PRESENT

b. Staff

Administrator Johnston	PRESENT
Treasurer Bowen	PRESENT
Town Engineer Bartz	PRESENT

II. Approval of Minutes:

A. Regular Plan Commission Meeting – May 11, 2011

**MOTION:** (Geise, VanAirsdale) Approve the Regular Plan Commission Meeting minutes of May 11, 2011, as written.

MOTION CARRIED with 5 – 1 voice vote (Commissioner Hamblin = no, and Commissioner Adler = abstained)

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

Please complete “Request to Speak at Meeting” form located on the agenda table and give to the Town Deputy Clerk or Treasurer. Non-Agendized Town-Related Matters: Pursuant to WI Statutes 19.83(2) and 19.84(2), the public may present matters; however, limited discussion may occur but no action may be taken until specific notice of the subject matter of the proposed action can be given.

A. No open forum items

IV. Correspondence:

A. Winnebago County

1. Zoning Department – June Public Hearing: No items for Town of Clayton to review

V. Business:

A. Discussion/Action: Plan Commission direction to staff relative to a request by Dennis Lehrer and Travis J. Lehrer to improve Lehrer Lane (a private road) to Town standards and then deed Lehrer Lane and the Public Improvements to the Town.

1. The Plan Commission members received a copy of a letter from and Travis J. Lehrer to improve Lehrer Lane (a private road) to Town standards and then deed Lehrer Lane and the Public Improvements to the Town.
2. The request has been forwarded to the Town’s Plan Commission for its review and recommendation to the Board.
3. The Administration has advised the Lehrer’s of the Town’s pending revision to its Minimum Road Standards and that the project would have to meet the new Town standards.
4. Based on the Town Board’s referral, the Plan Commission should request that staff enter into an engineering design and bidding agreement that would authorize the Town Engineer to design and prepare bid documents and construction estimates at the petitioner’s cost.
5. Once the design is complete and the project bid, the Plan Commission would make a recommendation to the Town Board and the Town Board will then need to award the bid and proceed with the work.

Chairperson Knapinski explained why this item was back on the agenda for this month.

The Commissioners discussed their concerns with what the initial study should and should not include.

**MOTION:** (Adler, Brucks) MOTION to authorize Municipal Staff to enter into a feasibility study of the pros and cons to the Town and the residents for converting Lehrer Road to a Town road to include, but not limited to, what the Plat looks like, easements, zoning, past processes for requests for private vs. public, costs to the residents on the road, costs to the Town, etc.

CARRIED by unanimous voice vote.

B. Discussion/Action: Plan Commission review and recommendation on a Site Plan Approval for a utility storage building at the Northeast Asphalt, Inc., site, located at 4515 County Road II, Larsen, WI 54947, Tax ID # 006-0533.

1. Applicant: Paul Budzynski, Site Manager  
Northeast Asphalt, Inc.  
W6380 Design Drive  
Greenville, WI 54942
2. Property Owner: Northeast Asphalt, Inc.  
W6380 Design Drive  
Greenville, WI 54942

3. Prepared for: Northeast Asphalt, Inc.  
W6380 Design Drive  
Greenville, WI 54942
4. Property Status:  
The statements on the status of the property are specific to the proposed project site.
  - a. The property Tax ID # is 006-0533.
  - b. The property consists of approximately 34.76 acres.
  - c. The property is in the Winneconne School District.
  - d. The property is in the Department of Natural Resources Special Well Casing Area.
  - e. The property is in the Larsen/Winchester Sanitary District.
  - f. The property is currently Zoned M-2 HEAVY INDUSTRIAL DISTRICT.
  - g. The property is out of the County's Floodplain Zoning Area.
  - h. The property is in the Larsen/Winchester Drainage District.
  - i. The property is not in the County's Wetland Identifier.
  - j. The land use is consistent with the Town's adopted Land Use Plan.
5. Application Details
  - a. The petitioner has applied for approval of a 30' x 60' utility storage building to be located at 4515 County Road II, Larsen, WI 54947, Tax ID # 006-0533.
  - b. Pursuant to the following citation from the Town's Site Plan Review Ordinance:

**2.0 – GENERAL PROVISIONS**

- (1) **Applicability of Regulations.** The regulations set forth in this ordinance shall apply to all buildings, parking, and structures or additions thereto requiring a building permit except as follows:
  - (a) One and two family dwellings and buildings and structures accessory to one and two family dwellings.
  - (b) Permitted principal or accessory buildings and structures in an A-1 Agri-Business District, A-2 General Farming District or Agricultural Development Overlay pursuant to the Winnebago Town/County Zoning Ordinance as amended.
  - (c) Principal building or structures that has been erected or constructed prior to the effective date of adoption of this ordinance are allowed to make minor improvements to these structures. These improvements must make significant efforts to conform to the site plan ordinance. Any additional square footage added to these structures must be in full compliance to the site plan ordinance. A site plan of changes must be submitted in the same process as outlined in this ordinance.
  - (d) An addition of 20 or fewer parking spaces to an existing parking lot or alteration of an existing parking lot.

- (e) Earthen berm less than three feet in height.
- (f) Aircraft hangars on an active airport as designated by the Federal Aviation Administration and Wisconsin Bureau of Aeronautics. Such structures still shall be the same appearance, shape and size of existing hangars and structures.

**(2) Site Plan Concept Approval Required.**

No building or structure or part thereof requiring a building permit and not exempt pursuant to paragraph (1) above shall hereafter be erected, constructed or reconstructed and no building permit issued unless a concept site plan has been submitted and approved according to the requirement and procedures set forth herein.

**(3) Site Plan Approval Required.**

No building or structure or part thereof requiring a building permit and not exempt pursuant to paragraph (1) above shall hereafter be erected, constructed or reconstructed and no building permit shall be issued unless a site plan has been submitted and approved according to the requirements and procedures set forth herein.

- c. The proposed utility storage building is exempt from the Town’s Site Plan Requirement because it does not require a building permit.

6. Building Details

- a. The proposed building is a temporary structure that can be moved at any time. The building consist of approximately 3’ x 3’ x 8’ cement blocks stacked to create a base for the structure and a fabric covering supported by a metal framing system.

7. Staff Comments

- a. The Site Plan Approval Application as presented is complete and accurate.
- b. Based on a review of the Town Site Plan Ordinance and a conversation with the Town’s Building Inspector, the proposed structure would not require a Building Permit. It is the Building Inspector’s opinion that the structure is temporary and can be moved at will. Based on that opinion, the Building Inspector has indicated that the proposed structure would not require a building permit. However, if the proposed structure were to be electrified, the electrification would require a building permit. The Town’s Ordinance only refers to the structure requiring a building permit.
- c. Staff has the following comments on the application as it relates to the Town’s Site Plan Ordinance:
  - i. Based on the Building Inspector’s opinion, the structure does not require a Building Permit.
  - ii. It is the Administration’s opinion that the Town’s Site Plan Ordinance exempts structures not requiring a Building Permit from the conditions required by the Town’s Site Plan Ordinance.

8. Should the Plan Commission agree with staff’s interpretation the Administration recommends the following:

- a. The Town refund the Site Plan Approval Application Fee.

- b. The project is approved by any and all units of government having jurisdiction prior to the start of construction.

Mr. Johnston discussed what process was taken to arrive at the decision of the staff report recommendations.

Mr. Budzynski explained what the building would be used for.

Commented on item: Paul Budzynski, Site Manager  
Northeast Asphalt, Inc.  
W6380 Design Drive  
Greenville, WI 54942

Mr. Budzynski explained to the Commissioners what the building would be used for and answered questions imposed by the Commissioners.

**MOTION:** (Adler, Haskell) MOTION to accept staff recommendations to refund the site approval application fee and that the project move forward with the condition that it is approved by any and all units of government having jurisdiction prior to the start of construction.

CARRIED by unanimous voice vote.

COMMENTS: Kay Lettau  
3795 County Road II  
Larsen, WI 54947

Ms. Lettau expressed her concern with the refund. Ms. Lettau asked for clarification of the amount the Town would be refunding.

Ms. Lettau also wanted to know the nature of the material being stored in the proposed structure.

Mr. Budzynski responded to the question and explained the material being stored is a crushed roofing material and how it will be used.

C. Discussion/Action: Plan Commission review of proposed changes to the Town’s Access Ordinance.

1. The Plan Commission members received a copy of the Town’s Access Control Ordinance and a map of the Town identifying the exempt road (highlighted in yellow).
2. The Access Ordinance is divided into 19 sections. The comments following each section represent the Administration’s understanding of (and problems with) the Ordinance as drafted.
  - a. Access Ordinance
    - 1) Authority:
      - a) The Town is well within its authority to control access points to public roads within its jurisdiction. The attached documentation provides the Statutory Authority used by the Board.
    - 2) Purpose and Intent:

- a) certain town roads:
    - i. “Certain Town Roads” implies that the Town has categorized its road network into a system of arterial, collector, and local roads.
    - ii. To the best of my knowledge the Town has not categorized its road network.
  - b) functional obsolescence:
    - i. How does allowing access to Town Roads create functional obsolescence?
    - ii. The only way the Administration can explain functional obsolescence is with a road classification system. Increased traffic could cause the classification of a road to change; thus making it functionally obsolete.
  - c) points of access:
    - i. How can points of access be poorly designed if the design is controlled by the Town?
- 3) Jurisdiction:
- a) The Ordinance applies to all Town Roads except all roads in subdivisions, Umland Road, Green Meadow Road, and Hillcrest Road.
    - i. Subdivision roads have a 25 MPH speed limit and serve to access housing units.
    - ii. With the exception that two of the following roads are dead end roads, Umland Road, Green Meadow Road, and Hillcrest Road are no different from any other Town Road. Why are they exempt?
- 4) Compliance with Ordinances, Regulations, and Plan:
- a. Listed Town roads:
    - i. This section requires compliance with all other Town Ordinances; the only issue is that, other than the enumerated exceptions, all Town Roads are listed.
- 5) Right of Access:
- a. The first element of this section deals with lots existing prior to the enactment of the Ordinance
    - i. Lots existing when the Ordinance was enacted are entitled to access provided they meet the conditions of the Ordinance. The Administration believes that the intent of this element was to create lots of record that would be entitled to access even if they did not meet the conditions of the new Ordinance.
  - b. Lots created after the enactment of the Ordinance do not have the right of access by easement.
    - i. This element does several things; it says that lots created after the enactment of the Ordinance must comply with the provisions of the Ordinance. This is a common and customary application of a new Ordinance.

- ii. The other function of this element is the restriction on access by easement. This would effectively eliminate the ability of a property owner to gain access to a lot by means of an easement. The only way to access multiple lots with a single driveway would be to place the driveway on a common property line. Additionally, the language used would make the use of a private road impossible.
- 6) Approval Necessary for Obtaining Access:
- a. This section is fairly straight forward as far as the approval process is concerned, however, the Administration has the following concerns:
    - i. The approval process should be consistent. The Plan Commission should recommend and the Town Board should approve.
    - ii. Given the requirements of the approval process, the standard for revocation should be far more specific. Specificity of standards and findings of fact would make a legal challenge to an access permit revocation for more difficult.
- 7) Vacation of Access Control:
- a. This section allows, and specifies how, the Town Board can revoke access control on a Town Road.
    - i. The implication is that Town Roads are categorized, they are not. Removing the access control from a Town Road would require an amendment to the Ordinance.
- 8) Addition of Access Control:
- a. This section specifies the statutory authority that allows the Town Board to invoke access control on additional roads in the Town.
    - i. Without a categorized road system, all new town roads will fall into one of the two categories where subdivision roads will not have access control and town roads will have access control; the only way to change the access control process would be to amend the existing Ordinance.
- 9) Existing Points of Access:
- a. This is a sunset clause for existing access points with specifications on how to vacate an existing access point that has not been used for a year.
    - i. Without specificity on what constitutes abandonment of an access point, there is no clearly defensible way to require that an access point be discontinued.
- 10) Change of Use:
- a. This section allows the Board to review a permitted access point and require improvements to the access point based on

changes in traffic counts and types of vehicles using the access point.

- i. The issue is a lack of specificity on what constitutes a change in use, an increase in traffic counts and changes in the types of vehicles using the access point.

11) Spacing and Frequency:

a. This section defines the separation between access points on access controlled roads.

- i. The section is problematic because it refers to minor roads; this is a road classification that does not exist.
- ii. The other problem is the use of “no other way to provide access to an existing parcel”. What constitutes “no other way”?

12) Design:

a. This section has the appropriate standards and a set of references defining the standards that create a quantifiable unit of measure for the design and approval of an access point.

13) Permits:

a. This section lays out the standards for the application for an access permit, the inspection process for constructing an access point on a town road, and the construction term of the approved access permit.

- i. The only real problem with the section is the requirement that a violation of the conditions results in a revocation of the permit. There is no remedy short of the revocation of a permit.

14) Variances:

a. The appeal process for a permit that is denied under this Ordinance requires that a petitioner appeal the decision of the Town Board to the Town’s Plan Commission.

- i. This places the responsibility for a decision on an appeal ~~to~~ with a body that has already rendered its opinion on the application.
- ii. Additionally, it places the responsibility for acting on an appeal on a subordinate unit of the Town government that is appointed by the Board.
- iii. An appeal is a judicial process that should be judged by an impartial body not subject to the possibility of political pressure. An example of this is a Board of Adjustments where the appeal is to Circuit Court.

15) Fees:

a. The fees are subject to periodic revision by the Board.

- i. The Ordinance should indicate the Board’s authority to adjust the fees.

16) Access Control Maps:

- a. This section requires that the Town keep access maps for all controlled access roads designated by the Town Board.
        - i. The Town has no such maps.
  - 17) Violations and Penalties:
    - a. This section refers to the statutory reference for violations of the Ordinance (see Wisconsin Statutes 61.34).
  - 18) Definitions:
    - a. This section defines the specific language of the Ordinance.
      - i. The definitions are reasonable and relate to the common use of the word. The only definitions that are missing relate to the classification system for town roads, i.e. arterial, collector and neighborhood roads.
3. Staff apologizes for the detailed dissection of the Ordinance; however, it takes a detailed review to find the inconsistencies in the Ordinance as drafted. Correcting the internal inconsistencies in the document should be relatively easy; however, a significant amount of work will be needed to generate the documentation needed to implement the ordinance. The Commission will need rationalize the inconsistencies between the Town’s Access Ordinance and the County’s Zoning Code of Ordinances, Minimum Lot Size and make a recommendation to the Board on a revised Ordinance.

Chairperson Knapinski asked how this Ordinance version differs from the earlier Access Ordinance.

Mr. Johnston explained that this Ordinance is not different and would like direction from the Commission on how to proceed.

The Commissioners discussed the changes that should be included in the Access Ordinance update.

**MOTION:** (Hamblin, Brucks) MOTION to table the possible changes to the Town’s Access Ordinance and recommend to the Town Board that it be included in the 2012 budget process.  
CARRIED by unanimous voice vote.

- D. Discussion/Action: Plan Commission review of proposed changes to the Town’s Sub-division Ordinances and Policies.
- 1. The Plan Commission members received a copy of the Town’s current Sub-Division Ordinance. The document was drafted by the Town’s Attorney.
  - 2. The Town Board and Plan Commission have directed staff to recommend updates and revisions to the Town’s development-related Ordinances and Policies.
  - 3. Staff has reviewed the Town’s Ordinance and recommends that the document be brought into compliance with the recent changes to the related State Statues.
  - 4. Additionally, staff would like to ask the Plan Commission to review the document so any questions and/or inconsistencies can be clarified.

5. The Administration has asked Jon Bartz, Planner at M & E, to attend the Plan Commission's meeting to provide advice to the Plan Commission and staff relative to any proposed changes to the document.

Mr. Johnston explained to the Commission that there have been a number of changes to the State Statutes relative to Subdivisions in Towns and recommends that the Town's Ordinance be updated to adopt the State Statutes by reference.

Mr. Bartz is in concurrence with Johnston's recommendations

Mr. Johnston and the Commission discussed the inconsistencies of the Town's document and the Counties document in regards to the language that is currently being used.

The Commission also discussed the incorporation of a storm water management system.

The discussion continued in regards to when and how to proceed with changing the Ordinance and what should or should not be included.

Chairperson Knapinski would like to see the Staff start working on the "technical" side of the Ordinance and then also bring forward some of the "philosophical" side with examples, etc.

No motion on this item.

COMMENTS: Mark Luebke  
3905 County Road II #21  
Larsen, WI 54947

Mr. Luebke reminded on record that we, as public servants, represent everyone in the Town of Clayton which includes the residence of the subdivisions.

- VI. Upcoming Meeting Attendance
  - A. Thursday, June 9, 2011 (8:00 A.M.) – Local Comprehensive Planning and Ordinance development Seminar (The Marq, 3177 French Rd., DePere, WI 54155)
  - B. Clayton Fest – Saturday, June 11, 2011
  - C. Wisconsin Town's Association meeting on Plan Commission

- VII. Adjournment – 8:18P.M.  
**MOTION:** (Brucks, VanAirsdale) MOTION to Adjourn.

CARRIED by unanimous voice vote.

Respectfully submitted,  
Tori Bowen, Town Treasurer

Note to Plan Commission – the Attendance sheet for this meeting has been misplaced and not available.