

Approved  
1.15.2015

TOWN OF WINDSOR  
REGULAR BOARD MEETING

Minutes

December 18, 2014

1. Call Meeting To Order And Roll Call.

Meeting convened by Chairperson Wipperfurth at 5:00 p.m. Supervisors present: Alan Buchner, Don Madelung, Monica Smith, Bruce Stravinski, and Bob Wipperfurth. Others present: Town Finance Director Tina Butteris, Town Attorney Connie Anderson, Town Planner Jamie Rybarczyk, and Town Engineer Kevin Richardson.

2. Recitation Of The Pledge Of Allegiance.

The flag pledge was led by Supervisor Stravinski.

3. Announcements.

None.

4. Approve Minutes.

- a. November 25, 2014.
- b. December 4, 2014.

A motion was made by Supervisor Smith seconded by Supervisor Madelung, to approve the Minutes of November 25 and December 4, 2014, as presented. Motion carried with a 5-0 vote.

5. Finance.

- a. Staff Report On Finances.

Finance Director Butteris indicated that additional invoices had been provided, along with additional prepaids. In the receipt register, the biggest items include additional building permits and the third quarter franchise fee. The budget comparison should be around 91 percent with revenues being at 99 percent and expenses at 85 percent. The town is doing well. Building

permits include seven new single-family permits which makes 57 for 2014. In November of 2013, the town had 50.

Supervisor Stravinski questioned the fines received from ordinance prosecution. Does the town match the costs to prosecute; are they compared with the fine?

Finance Director Butteris responded, No, the town does not do an analysis for each of them. She indicated she could to an end-of-the year comparison on funds received and funds spent.

b. Consider Vouchers For Payment.

A motion was made by Supervisor Smith, seconded by Supervisor Buchner, to approve the vouchers as presented. Motion carried with a 5-0 vote.

c. Treasurer's Report.

A motion was made by Supervisor Smith, seconded by Supervisor Stravinski, to approve the Treasurer's Report as presented. Motion carried with a 5-0 vote.

d. Budget Report.

A motion was made by Supervisor Smith, seconded by Supervisor Madelung, to approve the Budget Report as presented. Motion carried with a 5-0 vote.

6. Appearances Before The Board.

David Beyer appeared on behalf of the Morrisonville Sanitary District. The Sanitary District has been involved in a new well project for the past two years. The Sanitary District applied for and received a grant. The well is now up and running as of December 6. There were many delays.

Tim Roehl, on behalf of the Dane County Towns Association, was present. He indicated that he, Attorney Mark Hazelbaker, and others had met several weeks ago regarding the environmental corridors. Brian Standing introduced some maps that did not reflect the vote of the committee. He did not have an exact number of parcels that would be affected in Dane County.

7. Future Governmental Structure Of Windsor.

Supervisor Buchner stated that on December 17 there was a joint meeting between the village of DeForest and Windsor Supervisors. He thanked Chairperson Wipperfurth for his leadership and Supervisor Stravinski for his comments regarding Windsor to incorporate into a village. There was a point where there was digression into a debate. Windsor chose to stay away from that. In the future, Windsor should no longer refer to the once-fractured relationship with the village of DeForest.

Chairperson Wipperfurth echoed some of Supervisor Buchner's comments. We got through the meeting in pretty good shape. Windsor handled it extremely well. This is about Windsor residents and a greater community.

Tim Roehl put on his realtor's hat. He represents the developer of Revere Trails. It took 90 meetings to get that plat approved. All along the way monkey wrenches were put in by the village of DeForest. They were sued twice by the village. Had Windsor been a village, this would have been much easier.

Putting on his town hat, Mr. Roehl indicated that there should be a final draft of the Dane County Zoning Bill on December 19. If the bill passes, towns will have the ability to opt out of Dane County zoning. Towns will all adopt the same zoning code. He felt the town of Windsor should make the village of DeForest aware that the town could opt out of county zoning.

Chairperson Wipperfurth stated that Windsor will support the Dane County towns' zoning.

Chairperson Wipperfurth also advised that the town had its quarterly meeting with the village of DeForest on December 17. The big issue was the governmental structure of the town of Windsor. At the end of the discussions, Chairperson Wipperfurth believed that the town had made some headway. If Windsor can assure DeForest that the Cooperative Plan, Fire District, and Senior Center agreements would be transferred to the village of Windsor, there may be enough support in the village of DeForest for support or for DeForest to be silent.

8. Operator Licenses.

There were no applications for operator licenses.

9. Appointment Of Citizen Member To Serve On The Windsor Plan Commission.

Chairperson Wipperfurth stated that someone had expressed an interest in serving on the Plan Commission. David Gaustad submitted a letter of interest. He had also applied for the CDA position several months ago. Chairperson Wipperfurth thought Mr. Gaustad would be a good addition to the Plan Commission.

Mr. Gaustad stated he has lived in Windsor for the past 12 years. He has four children who attend the school district. He has worked for American Family for 12 years.

Chairperson Wipperfurth placed in nomination the name of David Gaustad to fill the Plan Commission vacancy. Supervisor Madelung moved to confirm the nomination, which was seconded by Supervisor Stravinski. Motion carried with a 5-0 vote.

10. Resolution 2014-69 Approving The Memo Of Understanding Regarding Use Of Windsor Sports Commons.

It was noted that Finance Director Butteris did most of the legwork to put this agreement together. The Soccer Club is fine with it as is the Lacrosse Club. Both are okay with the Memorandum of Understanding which lays out the rules and responsibilities for the town, sports clubs, and Park Commission. There was some fine tuning that was done with items broken out for soccer, lacrosse, and to be determined in the future for items that are still in the planning stages.

A motion was made by Supervisor Buchner, seconded by Supervisor Madelung, to approve Resolution 2014-69 Approving The Memorandum Of Understanding Regarding Use Of Windsor Sports Commons. Motion carried with a 5-0 vote.

11. Review Of Concept Plan For Modifications To Wolf Hollow/Prairie Creek/Pleasant Hill Estates Plats.

Town Planner Rybarczyk gave a presentation. The petitioner was before the Plan Commission on December 16 and gave a presentation. What has happened is the petitioner who is representing Wolf Hollow is getting ready to do the next phase of the development. The land sat fallow for a while. They are now moving forward. When the land sat fallow, some of the drainageways created turned into wetlands. They are now looking to do a replat of parts of Wolf Hollow, Prairie Creek, and Pleasant Hill Estates to accommodate this. Some of the green spaces that were part of the original plat will now no longer be available because they are now wetlands. They will have a new layout. Prairie Creek and Pleasant Hill in the replat are mainly going to stay the same. Wolf Hollow was impacted the most, losing 12 to 14 lots in the replat.

The Plan Commission looked at this on December 16 and for the most part they are comfortable with what they are seeing.

Town Planner Rybarczyk showed connections for storm water management. This was also shown to the Park Commission, and they were accepting of what they saw in the concept plan.

The developers will follow up with a replat. This will come before the Plan Commission in February and before the Town Board in March.

Lots 116 and 117 will now be one lot. In the original plat, they were two lots.

Town Attorney Anderson noted that the town has two existing Development Agreements with Pleasant Hill and Prairie Creek. There would be amendments for the two of those to bring them up to speed. The town would be entering another agreement with Wolf Hollow that would be tracking the same agreement and would cover the new roads. They are in a good position to move forward with the Development Agreement promptly.

Don Esposito was present representing all three developers. He briefly discussed phasing. When the road is connected to the south, it will be connected to Prairie Hill, to the commercial area and to the south.

Chairperson Wipperfurth indicated they recently had a staff meeting with all of the developers of the three plats because there are so many issues tied together between the three of them. He thought it was a very productive meeting.

Mr. Esposito added that members of the Windsor Sanitary District were also at that meeting.

Don Hoffman, 4317 Grosbeak, had a question regarding water drainage.

Town Engineer Richardson responded and indicated it was at least 66 feet in width.

Mr. Esposito added that the road was moved further south which leaves more room for drainage.

Supervisor Stravinski commented that there are six lots in Pleasant Hill Estates that are unnumbered. One will be used as parkland. Their numbering system starts at 5. Are they gaining a lot?

Mr. Esposito responded that they actually lost a lot. They will have four lots where they used to have five.

Prairie Creek stays the same.

Supervisor Stravinski also asked if there would be a problem with Prairie Creek Road. Now it is Prairie Creek Road on both sides, but it does not connect. Would there be any problem with making a name change?

Wolf Hollow Road now connects with Vista Valley.

Mr. Esposito responded that this could be discussed in the future.

Supervisor Stravinski said he sees this as an issue.

12. Resolution 2014-75 Site Plan Review For 53 Unit Multi-Family Building On Lot 137, Holland Fields, Located At The Intersection Of Gray Road And Rembrandt Road, Town Of Windsor.

Chairperson Wipperfurth provided some history. This matter has been before the Town Board before. At last month's Plan Commission meeting, it was on the agenda for consideration. The Plan Commission could not make a recommendation. They were split three to three. What they wanted to do was to have each member add their additional comments. Some comments were germane, while others were opinions.

Town Planner Rybarczyk provided a brief overview and a staff report dated December 10. Town Planner Rybarczyk went through the series of staff reports and condensed them to where we are now. The last concept was August 29.

With regard to a review of the 1999 Agreement, the development meets the zoning density; it is an approved use; and the setback, landscape, and screening are met, as is park space. He looked at the site plan review for multi-family housing; and from his review, it matches or meets all those requirements. Where the complexity comes into play, there is the discussion as to compatibility. Where does this fit with the subdivision? Since the very first design, the town has provided comments regarding the architecture. The developer did make some modifications in the August 29 rendering. Staff still had comments regarding the fiber-cement shingles. The developer has mentioned in the meetings that that is something that he would be able to look at and add other material. They have not had an opportunity to do that. Basically what is in front of the Town Board is the Development Agreement and site plan ordinance, and Town Planner Rybarczyk feels the technical requirements have been addressed. It comes down to compatibility. This is a town policy issue.

Town Engineer Richardson indicated the town would still need approvals from Dane County Land Conservation for storm water management. It is not unusual for the developer not to finish storm water plans until he knows if he is getting approval.

Town Attorney Anderson indicated issues were discussed in closed session that may be relevant. The issues were addressed in the staff report.

Chairperson Wipperfurth asked Finance Director Butteris whether, in accordance with Paragraph A.9. of the Staff Recommendation, the petitioner is current in paying his fees and costs.

Finance Director Butteris responded that he is not current. The town does have invoices that are within the 60- to over 90-day range, totaling about \$3,500. Additional fees are due, and a new invoice will go out on December 19. The town has spent over \$5,000 on this particular matter.

John DeWitt said he was ready, willing, and able to pay the fees as soon as the Board takes action. If this gets turned down, he did not think he should be billed for this. He was ready, willing, and able to pay the fees at the meeting if he had to.

Mr. DeWitt said he was also willing to talk about an alternative façade.

Steve Keating, 6891 Rembrandt Road, stated he has owned a duplex across the street for seven years. If this goes through, this will never be the same. This is a quiet, safe place. There are kids everywhere. He did not want this big thing here. They do not deserve this here. Why couldn't we have single-family homes instead?

Chairperson Wipperfurth responded that he understands the concerns of the neighborhood. They have been expressed multiple times. This was part of the original approval of Holland Fields.

There has been a sign up that this was for sale for a number of years. There was also a deed restriction stating that this is a multi-family lot. There were opportunities for the residents to know that it could eventually be there.

Supervisor Stravinski indicated he had a list of items.

He discussed the site plan review under the landscaping plan. Where it talks about automobile parking screening, the plantings are maple trees and two hackberry trees. They will not obstruct anything. The duplex to the north will not be screened. To block 75 percent of the light, one way to do that would be with a berm with plantings using pine or spruce trees. This needs to be screened from adjoining lots. He felt it was important that there be some type of screening to the south. Across Gray Road and to the north there will not be adequate screening.

In the Development Agreement from 1999, on Page 6 it talks about Lot 137 having a maximum number of units for that site. On Pages 9 through 11, it talks about the R-4 District. In that discussion it talks about the power of approval, which he read: “The power of approval shall pertain to issues of compatibility of uses with any adjoining lot or use, aesthetic quality of building and landscaping design, and impact of the proposed R-4 development on the surrounding neighborhood, which is defined for purposes of this agreement to include any parcel within 200 feet of the subject R-4 lot unless excluded by the Town at its sole discretion. This authority shall encompass the site plan, landscaping plan, management of storm water drainage, lighting, signage, building materials and exterior elevations, which together shall make up the Development Plan for the lot.” There is some discussion that the applicant has the right to 53 units. The Town Board has the power of approval in the Development Agreement. There is power to the town to approve the development plan and if the town says the development plan is not compatible or has a negative impact, it has the right to do so. Compatibility is to be decided by the Town Board. He does not feel it is compatible with the adjoining uses because of the size of the structure, which is three stories and is massive; the style of the structure and color of the structure; the type of materials, especially the shake siding that is not compatible at all. There would be an impact of the proposed R-4 development on the surrounding neighborhood. He thought it will have a huge impact on the amount of traffic that will be created and a negative impact from the traffic.

There was a declaration of covenants that was assigned to Greater Neighborhoods, LLC, which is now Veridian, recorded in the Dane County Register of Deeds on May 31, 2002. One of the items in that is that it states that all multi-family lots are subject to all of the conditions in this declaration. On Page 10, it references an Architectural Control Committee. Supervisor Stravinski would like to have Veridian Homes look at this first. The town should have some information from the Architectural Control Committee as to whether or not they would approve this apartment building.

Mr. DeWitt responded that he has sent the plans on to Veridian.

Veridian has the right to comment and make recommendations on building materials.

Supervisor Madelung stated this has caused a lot of heartburn. He was the Plan Commission Chairman for a number of years. He has seen some good developments come into the town. One thing that always guides him is compatibility. It is critical. He did not want to approve this. He knew the developer had a legal right.

Supervisor Smith stated she would let Supervisor Buchner voice his comments first.

Supervisor Buchner stated he heard very clearly where this neighborhood is at now. The developer has a legal right in this that could be argued by a business litigator who could show that the township is wrong. Compatibility is subjective and ambiguous. There are developments in the area that are three stories. There are rental properties adjacent and across. He will support the developer.

Supervisor Smith felt this could be modified. The developer could make something a little more compatible with the neighborhood. While indicating this is subjective, she thought compatibility could be worked on.

Chairperson Wipperfurth stated this is a tough issue. He did believe that the developer has a certain amount of rights in this process. The town of Windsor entered into that contract in good faith. Is there room for interpretation? Absolutely. Are we going to learn from this situation? Absolutely. Compatibility can be subjective in nature. The problem is that the developer is coming in at the end of the completion of the development. If this was built first, this problem would never have developed. The town cannot keep spending legal dollars.

Mr. DeWitt addressed one issue. The township is misinterpreting the term compatibility in the Development Agreement. The Development Agreement specifically says apartments and specifically says 53.

There was a discussion of compatibility. This should be to objective standards. He did not think it was fair to make an interpretation of one word. The words should be given an ordinary meaning. There is nothing ambiguous about 53 units and apartment.

Chairperson Wipperfurth added that Mr. DeWitt is still willing to work on the color of the siding and screening.

Supervisor Stravinski stated if the Board wishes to go ahead with this project, one of the conditions should be the okay of the Architectural Control Committee before a building permit would be issued with further review of the landscaping plan. While 53 units is definitely stated, it is also stated that the power of approval of the development plan pertains to certain issues and building materials and external elevation.

Mr. DeWitt stated that it costs \$10,000 a unit more to build a two-story building instead of a three-story building. This building could have been four stories.

Supervisor Madelung stated he was very empathetic with the people of Holland Fields. He has a strong sense of what is legal. Is what Supervisor Stravinski has stated defensible? Supervisor Madelung did not want to get into a legal battle.

Chairperson Wipperfurth indicated that the town's attorney has advised the town of its position.

Town Attorney Anderson added that it was not appropriate to repeat what was discussed in closed session.

Chairperson Wipperfurth stated that Mr. DeWitt is willing to change the color and look at the landscape plan. Can the Resolution be modified? It is in the agreement that those items should be addressed. It is in our technical comments in the staff report. Chairperson Wipperfurth asked if Mr. DeWitt would be willing to add that a professional management company would be operating the complex.

Town Attorney Anderson responded that this is useful but not meaningful. It would have to run with the land, not the owner.

Mr. DeWitt agreed with that.

Supervisor Smith said she was thinking about the neighborhood. Is there any way to put fencing up to block it and make it more aesthetically pleasing?

Mr. DeWitt responded that he would prefer not to put up a fence.

Town Engineer Richardson added that there are supposed to be terrace trees every 50 feet. He will also have trees on his property. Once you put in terrace trees, that will help in a few years. Also, fences are not normally allowed in front yards.

Supervisor Buchner stated that, as a small business owner, he is frustrated to think you have a deal and wake up 15 years later to find it is now incompatible through no fault of yours. All property owners had deed notification. This is a contractual debate.

A motion was made by Supervisor Buchner, seconded by Chairperson Wipperfurth, to approve Resolution 2014-75 Recommending Approval Of The Site Plan For Lot 137 Of The Plat Of Holland Fields In The Town Of Windsor, Dane County, Wisconsin. A friendly amendment was added regarding having a professional management company operate the complex. The motion maker agreed.

Supervisor Madelung added that he did not like it, but he knows the legal consequences.

Roll call vote:

Supervisor Stravinski -- No

Supervisor Buchner -- Yes

Supervisor Smith -- No  
Supervisor Madelung -- Yes  
Chairperson Wipperfurth -- Yes

Motion carried with a 3-2 vote.

13. Resolution 2014-76 Reduction In Letter Of Credit For Windsor Corners.

Town Engineer Richardson stated he had provided a memorandum. All of the infrastructure is in. They are in the guarantee period. The town will hold 15 percent of the project. He is asking that the letter of credit be reduced to \$28,160.

A motion was made by Supervisor Smith, seconded by Supervisor Madelung, to approve Resolution 2014-76 Approving Reduction In Letter Of Credit For Windsor Corners. Motion carried with a 5-0 vote.

14. Resolution 2014-77 Reduction In Letter Of Credit For Wolf Hollow.

Town Engineer Richardson advised that this is Phase 3 of the Wolf Hollow infrastructure. This is a different format for the letter of credit because of the change in the letter of credit laws. Following the new standard, he is asking for a reduction to \$53,000 which represents the amount of work that has to be done plus a percentage of the work that has been done. Substantial completion is now statutory and not in the town's discretion.

A motion was made by Supervisor Smith, seconded by Supervisor Stravinski, to approve Resolution 2014-77 Approving Reduction In Letter Of Credit For Wolf Hollow Windsor – Phase 3. Motion carried with a 5-0 vote.

15. Ordinance 2014-10 Establishing A Permit Requirement For Agricultural Commercial Vehicles And Implements Of Husbandry.

Chairperson Wipperfurth stated that the Town Board has an ordinance in front of it. If the town is going to do anything, it has to be done by January 20, 2015. The Town Board could either take action at its meeting or schedule a special meeting in early January.

Town Engineer Richardson explained what this means to the agricultural community. He has attended meetings with the Dane County Towns Association. Dane County Towns Association believes Windsor should have a similar ordinance with the surrounding towns. If Windsor passes the ordinance, it can collect fees and stop equipment when there is frost. The town will also have to give permits for the equipment on the roads. The town would at least know the weights of the equipment.

Town Attorney Anderson added that this is not limiting enforcement to the Dane County Sheriff. It could be enforced by the State Patrol.

Chairperson Wipperfurth stated this has evolved from a series of negotiations from the state of Wisconsin. It is a hotly contested issue. The town does not want to impede agriculture, but the town is responsible for the town roads. There has to be a way to help educate farmers that they have to be responsible for the roads and help recapture if there is significant damage to the town roads. Farming has changed. Equipment is huge. Farms are small factories. This tool can be used as a dialog with farmers.

Supervisor Buchner asked if this only applied to animal husbandry or also cultivation equipment.

The response was both. It is not so much that the equipment is overweight, but over-width.

Supervisor Smith stated that implement companies should understand that they are ruining the roads. They should make lighter and narrower equipment.

Supervisor Buchner responded that if they make a bigger piece of equipment he will buy it. It is more efficient.

Chairperson Wipperfurth added that grain heads are 30- to 40-feet wide and must be transported on a trailer. A combine takes up the whole road.

A motion was made by Supervisor Buchner, seconded by Supervisor Smith, to approve Ordinance 2014-10 To Establish A Permit Requirement For Agricultural Commercial Vehicles And Implements Of Husbandry, In The Town Of Windsor, Dane County, Wisconsin. Motion carried with a 5-0 vote.

David Beyer, a former employee of the Lodi Canning Company, asked whether this would be an annual permit or a use-per-day permit.

Town Engineer Richardson responded it would be an annual permit.

16. Recycling Center Use Permits, Facility Usage, Improvements And Land Needs.

Chairperson Wipperfurth noted that this has been discussed a number of times. The town is struggling on what to do. Money has been put in the budget to add staff. There has been money set aside to purchase more land. The village of DeForest is interested in doing something jointly.

Town Engineer Richardson did research as to how access is controlled. One of the issues is they believe a lot of the traffic is unauthorized from the village of DeForest and surrounding communities. Eliminating unauthorized traffic would leave room for the town of Windsor. This would be an administrative issue for the town of Windsor. The town could use a placard or token or sticker on the vehicle. A driver's license of a Windsor resident could say DeForest,

Sun Prairie, or Windsor. The sofa, bed, and mattress dumpster is well used and probably by people not in the town of Windsor. The attendant thought Windsor would have enough room if it was limited to the town of Windsor.

David Beyer stated he has property in the town of West Point and gets a card with his tax bill that shows hours.

Greg Hull, 7647 Moe Road, thought a sticker would be the way to go.

JoAnn Thorsen, 3931 Partridge, suggested a sticker with a photo ID – the card with an address and driver's license to match.

Chairperson Wipperfurth stated the town would need two attendants to monitor what people are putting in the piles.

Supervisor Smith thought because the county site closed that is why Windsor has a lot of vehicles.

Finance Director Butteris responded that the town had a lot of vehicles when the Dane County site was open.

Supervisor Smith felt the town needed to educate people as to what they can bring to the site.

Supervisor Buchner suggested a rear-view mirror sticker that is renewed annually.

17. Resolution 2014-78 Commending The DeForest Area Public Library On Their 50 Years Of Library Services To The Area.

A motion was made by Supervisor Stravinski, seconded by Supervisor Madelung, approving Resolution 2014-78 Congratulating The DeForest Area Public Library On Their 50 Years Of Library Services To The Area. Motion carried with a 5-0 vote.

18. Adjournment.

At 7:15 p.m. a motion was made by Supervisor Buchner, seconded by Supervisor Smith, to adjourn the meeting. Motion carried with a 5-0 vote.

Respectfully submitted,



Ellen G. Teed  
Recording Secretary