

VILLAGE OF WINDSOR

JOINT VILLAGE BOARD AND PLAN COMMISSION MEETING

Minutes

November 1, 2016

1. CALL MEETING TO ORDER AND ROLL CALL.

1.a. Windsor Village Board. Meeting convened by President Wipperfurth at 5:00 p.m. Trustees present: Alan Buchner, Don Madelung, Monica Smith, Bruce Stravinski, and Bob Wipperfurth. Others present: Village Director of Finance/Deputy Clerk Tina Butteris, Director of Planning and Development Anderson Schweppe, Village Attorney Connie Anderson, Village Planner Rybarczyk, and Village Engineer Richardson.

1.b. Windsor Plan Commission. Meeting convened by Chairperson Wipperfurth at 5:00 p.m. Commissioners present: Dave Gaustad, Kay Hoffman, Bill LeGore, Bruce Stravinski, and Robert Wipperfurth. Al Davis has an excused absence. Chairperson Wipperfurth advised that Barry Eichinger resigned from the Windsor Plan Commission and CDA due to family issues. Chairperson Wipperfurth expressed the village's appreciation for his many years of service.

2. RECITATION OF THE PLEDGE OF ALLEGIANCE.

The flag pledge was led by Commissioner LeGore.

3. ANNOUNCEMENTS.

3.a. Public Hearing On the Amendment Of Chapter 52 Of The Windsor Code Of Ordinances For Non-Metallic Mining Uses.

President Wipperfurth read the above announcement.

4. OLD BUSINESS.

4.a. Joint Minutes – October 18, 2016.

A motion was made by Trustee Madelung, seconded by Trustee Buchner, to approve the Minutes of the October 18, 2016, meeting as presented. Motion approved by all members of the Plan Commission and Village Board.

5. APPEARANCES BEFORE THE BOARD.

None.

6. CREATION OF CHAPTER 55 OF THE WINDSOR CODE OF ORDINANCES FOR NON-METALLIC MINING OPERATORS LICENSING.

President Wipperfurth indicated staff would provide a presentation. Communications have been received from Rod and Luana Schneider and Alan Harvey.

Village Attorney Anderson indicated she would go through the changes made based on Windsor's last meeting. While some requests for additional changes have been received since that meeting, it was noted that several of these changes were already in the updated draft.

A change was made so that the applications for Section 55 (Licenses) and Section 52 (Zoning) should be submitted simultaneously.

At the last meeting, it was talked about having the fee schedule and escrow included in the ordinance. Those changes were made as well. There is an application fee of \$250 for processing facilities and a \$5,000 escrow deposit. Mining registration licenses would require a \$250 license application fee and a \$500 escrow deposit. Mining operator's licenses for new facilities would require a \$250 application fee, and the escrow would be either \$5,000 or \$10,000 depending on the size of the operation.

A question has arisen regarding transfer of licenses. A license transfer would be prohibited without village approval. The license is held by the operator.

Section 55.04 lists the requirements. Both zoning and a license are required. The minimum standards of operation in Section 55.07 are required. A berm is to have no less than a 4:1 slope. The operator will mow and maintain the berm. Hours of operation were returned to those hours that were in Windsor's previous policy.

The ordinance would be effective when passed and published. Current operating sites would have 45 days to submit their application and obtain a license.

Regarding the comments received from the Schneiders and Alan Harvey, the Village President, Village Attorney and Director of Planning and Development Anderson Schweppe met and went through those concerns. Alan Harvey was not looking at the complete updated document. There were some really good points that came up to improve the ordinance. Some were addressed. With some, Windsor did not take the same view.

The first issue comes up in Definitions on page 4. The definition for industrial sand was put back in.

Village Planner Rybarczyk addressed how the distance from the operation site and the boundary line of the property line is measured. The use of the mining operation will have an internal boundary, which is called the operation area. All of the operations of the mining site take place in the operation area. The only exceptions would be the access road leading to the operation, the operator's office, and scale which would be outside of the operation area. Buffers would be 300 feet and 500 feet. Three hundred feet is the distance from the operation area to the property line that the mine sits on. Five hundred feet is the buffer from any building that houses people or animals. It is measured from the operation area to the structure itself. The buffer for schools and medical facilities is one-half mile. A diagram will be included to explain the setbacks.

Village Attorney Anderson recommended modifications to the definition of mining site to include the operations area. A definition for sand and gravel mines was added.

Section 55.04 described the three different types of licenses. There is no section for planned mining operations anymore. There are only three types of licenses: processing facility, registration license, and mine operator's license.

Fee amounts have been added.

Section 55.04 is as was discussed at the last meeting. The flow chart was changed to pull out planned mining operations. The last sentence under Preliminary Cost Reimbursement Agreement was deleted.

A sentence was added under Section 55.05(5) that the Village Board reserves its right to impose additional requirements due to unique requirements of the facility.

Under Section 55.06 regarding the License Application, it was added that the owner shall submit "such other information as is deemed necessary by the Village." Windsor does not want proprietary information. It just wants to know the owner, the operator and the lease between them.

The Minimum Standards are the guts of the document. Reference to a pre-blasting survey or inspection was added.

These are one-year licenses. There is a fee and escrow amount, if appropriate. Holding a license under this chapter is not a guarantee of renewal. This will be looked at every year based on the performance of the operator.

Trustee Madelung questioned the definition of "Village." Did it mean staff or the Village Board?

President Wipperfurth responded that the word "village" was chosen on purpose. This means the village and/or village staff or the Director of Planning and Development. He indicated he was fine if the wish was to have Village Board and village staff.

Village Attorney Anderson said she would scan the document regarding the definition of village. She, Village Planner Rybarczyk, and Director of Planning and Development Anderson Schwappe will go through this.

Trustee Stravinski noted that in the ordinance there are license fee and escrow amounts. All of Windsor's other fees have been pulled out of the ordinances and put in a fee or deposit schedule. Shouldn't we do the same here?

Village Attorney Anderson responded that this document was drafted so as to allow future changes to the fee or deposit schedule to be made by resolution, rather than an ordinance amendment.

Trustee Stravinski thought that staff did an excellent job in putting this together.

Trustee Buchner had a question regarding the 300-foot buffer and the 500-foot buffer.

Village Planner Rybarczyk responded that these are two separate provisions.

Trustee Smith asked how the amount of the escrow funds was determined.

Director of Planning and Development Anderson Schwappe responded that this was her recommendation based on what she sees monthly. Windsor wanted to keep it fair for a small operation. The escrow is replenishable.

Village Attorney Anderson referred to the five-feet from groundwater requirement. The engineer would be comfortable with ten feet from groundwater.

Mike Bakken is the operator of the Mile Quarry. His first concern was with the hours of operation. What he presently has is more than referenced in the ordinance. They are allowed to work on Saturdays from 7:00 a.m. to 3:00 p.m. and from 6:30 a.m. to 7:00 p.m. Monday through Friday. Weather is the factor that causes working Saturdays in order to get projects done. They have to work Saturdays to make up for bad weather. He referenced allowing operators to ask for 15 to 20 days for a special exemption.

President Wipperfurth responded, indicating that whatever Mr. Bakken was granted for the Mile Quarry would be grandfathered in.

Mr. Bakken added that we are nine inches above our average rainfall. He would like the village to have the latitude to grant longer hours.

President Wipperfurth stated that there could be special exceptions in response to an emergency.

Village Attorney Anderson added that the Mile Quarry application is unique and that those issues should be considered when their application is reviewed.

Rod Schneider asked whether it would be detrimental to add “minimum” of 300 feet and “minimum” of 500 feet.

Village Planner Rybarczyk responded. In other communities, the buffers are much less. There is a 100-foot buffer and a 150-foot buffer from structures that house animals or homes. Windsor stayed with its original policy. It was Village Planner Rybarczyk’s proposal to make them less. Distances from schools are an industry standard.

Alan Harvey thanked everyone for including some of his comments. It is very important to make sure that the village has as many tools as possible for problems that may come up.

He was pleased to see the escrow amount.

He suggested one additional minor change that was in the materials he provided to the village. What types of things can you draw against the escrow amount? The village may want to consider adding it can also draw on such money if there is an ongoing inspection. Mr. Harvey wanted to make sure that Windsor was considering some of these things that did not make it into the document.

He wanted to make sure that the Board had thought about the property value guarantee provision. He is increasingly seeing that around the state.

Mr. Harvey said he did not see anything about insurance indemnification. There could be problems with subcontractors and truckers that the operators have brought in. He provided language that covers that type of contingency.

Mr. Harvey suggested language on citizens’ complaints and how they are handled. What triggers village action?

President Wipperfurth responded that this was discussed at length earlier in the day, and it was decided not to put that language in. Windsor has a history of being responsive to complaints. How do you define a complaint? Does it have merit? Procedures would be overkill right now. Language was suggested making sure once an operator is issued a permit if there are some regulatory actions by other bodies that Windsor receives a copy from the operator of those enforcement actions.

Village Attorney Anderson added that Windsor requires that it be provided within 15 days of receipt. That would also be part of Windsor’s request on a renewal application.

President Wipperfurth discussed notifying the city of Sun Prairie and surrounding neighbors. The city of Sun Prairie asked for this during Windsor’s incorporation process. Because they are asking, Windsor will give them an opportunity to review and comment. Any neighboring community can have the ability to comment if they choose.

Joe Dagget said he had no issues and was not complaining. He is a neighbor to Mile Road. He had questions about what requirements would apply.

Windsor is going further than in the conditional use document. The existing documents for Mile Road are all available.

Commissioner LeGore asked whether there was a staff comment on the suggestion for insurance and indemnification as part of the licensing process.

Village Attorney Anderson responded there is nothing, but there can be an amendment.

Commissioner LeGore discussed proof of insurance, limits of insurance, and indemnification for the village.

Trustee Stravinski agreed.

President Wipperfurth felt it had some merit.

Trustee Buchner had a question to Mr. Bakken regarding how he handles independent haulers who haul aggregate.

Mr. Bakken responded.

President Wipperfurth thanked everyone for their time and attention and ability to provide comments.

He would like to take action; however, given the insurance question, he will amend the agenda for the November 3 meeting to address that item and have a clean copy of the ordinance.

Commissioner Hoffman asked for clarification on hours of operation and was told they would be in the special exemptions portion.

Commissioner Gaustad indicated there needed to be insurance indemnification verbiage with staff doing the final edits. "Village" needed to be defined.

These will be amended – insurance indemnification; definition of village, Village Board, and village staff, and a buffer diagram.

President Wipperfurth indicated the Village Board could take action and amend those items on November 3.

Trustee Stravinski indicated it could be adopted as presented, asking that Village Attorney Anderson address the recommendations of the Plan Commission on November 3 and bringing back those revisions.

6.a. Action Item / Plan Commission Resolution 2016-34.

A motion was made by Commissioner Gaustad, seconded by Commissioner LeGore, recommending approval of Resolution 2016-34, Recommending Adoption Of Chapter 55: Nonmetallic Mine Operator's Licenses, provided that three items were addressed: an insurance indemnification provision; clarifying the definition for village, Village Board, and village staff; and clarifying the definition of operations area as it applies to the buffer. All were in favor, with Commissioner Hoffman abstaining.

6.b. Action Item – Village Board Ordinance 2016-26.

A motion was made by Trustee Smith, seconded by Trustee Madelung, to approve Ordinance 2016-26, Adoption Of Chapter 55: Nonmetallic Mine Operator's Licenses.

Trustee Stravinski did not think the Village Board was doing it right.

The Village Board can adopt the ordinance and then adopt a motion immediately thereafter that Village Attorney Anderson bring an amendment back to the Village Board on November 3 that would address the issues raised by the Village Board.

Trustee Stravinski asked whether Windsor would then have two ordinances. It did not seem logical.

President Wipperfurth added that there is merit in approving what the Village Board has already agreed to. On November 3, it would be amended.

Three items need to be addressed: an insurance indemnification provision; clarifying the definition for village, Village Board, and village staff; and clarifying the definition of operations area as it applies to the buffer.

Motion carried with a 5-0 vote.

A second motion was made by Trustee Smith, seconded by Trustee Madelung, directing the Village Attorney to consult with staff to prepare these amendments for consideration on November 3: insurance indemnification provision; definition of village, Village Board, and village staff; and an operations diagram. Motion carried with a 5-0 vote.

7. AMENDMENT OF CHAPTER 52 OF THE WINDSOR CODE OF ORDINANCES FOR NON-METALLIC MINING USES.

7.a. Public Hearing.

President Wipperfurth opened the public hearing at 6:24 p.m.

Village Planner Rybarczyk provided an update. Changes have been made to reflect the Ordinance. References to planned mining operations were removed. There was a section that talks about the review process requirements, and adding after “federal, state, and county” the word “local.” With regard to the rezone application, Windsor is asking that it be submitted concurrently with the operator’s license application. Staff looked at the timing of the rezones. Originally, there was a 60-day review period within which the Plan Commission had to act. That has now been increased to 90 days within which to act.

With regard to the CUP and the processing facility site, that it not be applicable in the C-1 District, Village Planning and Development Coordinator Schweppe and Village Planner Rybarczyk looked at both C-1 and C-2. The difference is in the size of the buildings that can be constructed. They felt that potential conditional use in both C-1 and C-2 was appropriate.

President Wipperfurth closed the public hearing at 6:28 p.m.

7.b. Action Item / Plan Commission Resolution 2016-35.

A motion was made by Commissioner LeGore, seconded by Commissioner Gaustad, to approve Resolution 2016-35 Recommending Adoption Of Amendments To The Windsor Code Of Ordinances For Chapter 52 – Zoning Districts – To Create Districts For NMO Metallic Mining Operations And Conditional Use Permits For Processing Facilities; Amend Certain General Provisions. All were in favor with Commissioner Hoffman abstaining.

7.c. Action Item / Village Board Ordinance 2016-27.

A motion was made by Trustee Stravinski, seconded by Trustee Buchner, to approve Ordinance 2016-27, Adoption Of Amendments To The Windsor Code Of Ordinances For Chapter 52 – Zoning Districts – To Create Districts For NMO Nonmetallic Mining Operations And Conditional Use Permits For Processing Facilities; Amend Certain General Provisions. Motion carried with a 5-0 vote.

8. ADJOURNMENT

At 6:30 p.m. a motion was made by Commissioner Gaustad, seconded by Commissioner Hoffman, to adjourn the Plan Commission meeting. All were in favor.

At 6:30 p.m. a motion was made by Trustee Buchner, seconded by Trustee Madelung, to adjourn the Village Board meeting. Motion carried with a 5-0 vote.

Respectfully submitted,

Ellen G. Teed

Ellen G. Teed, Recording Secretary