

**TOWN OF CEDARBURG
MEETING OF THE BOARD OF SUPERVISORS
May 3, 2017**

Present:

David Salvaggio, Chairman
Wayne Pipkorn, Supervisor, Seat 1
Gary Wickert, Supervisor, Seat 3
Thomas Esser, Supervisor, Seat 4

Tim Rhode, Administrator
Adam Monticelli, Director of Public Works
Eric Ryer, Asst. Administrator/Clerk
Charles Pretty, Treasurer
Brad Hoeft, Town Attorney

1. CALL TO ORDER/ROLL CALL/PLEDGE OF ALLEGIANCE

Chairman Salvaggio called the meeting to order at 7:00 pm. The meeting began with the pledge of allegiance.

2. ANNOUNCEMENTS:

None.

3. HEARING OF THE PEOPLE:

None.

4. COMMUNICATIONS AND REQUESTS FOR HOLDING TANK AGREEMENTS AND OPERATOR LICENSES:

a. Discussion and possible motion approving a temporary Class "B" picnic fermented malt beverage license for the Buckskin Bowmen*

Supervisor Pipkorn made a motion to approve the temporary Class "B" picnic fermented malt beverage license for the Buckskin Bowmen. Supervisor Esser seconded, and the motion passed unanimously.

5. CONSENT AGENDA: *The Consent Agenda contains routine items and will be enacted by one motion without separate discussion unless someone requests an item to be removed for separate consideration and vote.*

- a. Accepting March 29, 2017 Special Park & Recreation Committee Meeting Minutes**
- b. Accepting March 15, 2017 Plan Commission Meeting Minutes**
- c. Approving April 5, 2017 Town Board Meeting Minutes**
- d. Approving April 5, 2017 Special Town Board Meeting Minutes**
- e. Approving April 18, 2017 Special Town Board Meeting Minutes**

Supervisor Wickert made a motion to approve the consent agenda. Supervisor Pipkorn seconded, and the motion passed unanimously.

6. TREASURER'S REPORT

a. Motion Accepting the April 2017 Treasurer's Report*

Supervisor Pipkorn made a motion to accept the Treasurer's Report for April 2017. Supervisor Esser seconded, and the motion passed unanimously.

7. PRESENTATION OF BILLS/PURCHASE ORDER/PAYROLL/AWARDS

a. Presentation of Bills/Purchase Orders/Payroll/Awards for April 1, 2017 to April 28, 2017 (Check #'s 31289-31386, V1341-V1375 and manual checks as shown)*

Following brief discussion, Supervisor Wickert made a motion to accept all bills as presented for review. Supervisor Esser seconded, and the motion passed unanimously.

8. REPORTS TO BE RECEIVED/FILED (Non-action items)

a. Possible report regarding local nuisance/law enforcement issues (Constable Ryan Fitting)*

Administrator Rhode noted Constable Fitting had no report for the month.

b. Report on recreation finances (Assistant Administrator/Clerk Eric Ryer)*

Asst. Administrator/Clerk Ryer noted recreation programming remains self-supporting for the 2017, with a balance of \$37,709.

9. PUBLIC HEARINGS

a. Public hearing to take comment on Ordinance 2017-3, “An Ordinance to Amend Section 320-21. B-3 Business District in the Town of Cedarburg Zoning Code, Ozaukee County, Wisconsin”

Laura Mortag has submitted a text amendment application that would add “daycare” as a conditional use to the B-3 Business District. Currently, the only place the Town Code speaks to allowing child care is in Sec. 320-110, which allows for, “State-licensed family child care centers up to eight children” as a permitted use in all residential districts and in the E-1, A-1 and A-2 Districts through issuance of a certificate of compliance issued by the Zoning Administrator/Administrator/Assistant Administrator. Adult daycare is allowed in the same zoning districts with a conditional use permit. Laura Mortag is proposing this amendment to the Zoning Code because she would like to open a daycare for up to 45 students in the former BMO Harris Bank at the west end of the 5 Corners Lifestyle development. If the text amendment is approved, the daycare would then require a conditional use permit.

With no comment from the public, Supervisor Pipkorn moved to close the public hearing. Supervisor Wickert seconded, and the motion passed unanimously.

10. OLD BUSINESS

a. Discussion and possible motion on appointments to Town Committees, Commissions and Boards*

Chairman Salvaggio made the following nominations:

- (1) Landmarks Commission (3 yr term) – F. Eric Utz
- (2) Weed Commissioner (1 yr term) – DPW Director (Monticelli) & Foreman (Jeff Boerner)
- (3) Emergency Government Director (1 yr term) – DPW Director Adam Monticelli
- (4) Personnel Committee (1 yr term) – 5 Town Board Members
- (5) Board of Review (1 yr term) – 5 Town Board Members & Sandra Ingram
- (6) Finance Committee (1 yr term) – Wayne Pipkorn, Thomas Esser and unnamed additional
- (7) Park & Recreation Committee (3 yr term) – Tom Esser (chair), Keith Martin, John Bishop

Following brief discussion, Supervisor Wickert made a motion to approve the appointments as noted above. Supervisor Pipkorn seconded, and the motion passed unanimously.

Also at this time Chairman Salvaggio nominated William Wattson to fill the vacant Town Supervisor Seat #2. Supervisor Esser moved to approve Bill Wattson to fill the vacant Town Supervisor Seat #2. Supervisor Wickert seconded, and the motion passed unanimously.

11. NEW BUSINESS

- a. **Discussion and possible motion on a conditional use permit application by Eco-Site, Inc. (Agent Joe Coyle of Pyramid Network Services, LLC) to construct a 120 foot tall telecommunications monopole located at 4628 Cedar Creek Road [Owner: Scott & Patricia Akerlund, zoned A-1 Agricultural, 19.11 acres, SE ¼ Section 11]***

Chairman Salvaggio clarified that the motion made at the 2017 Annual Town meeting to disallow the approval of this cell tower is outside the purview of the Annual meeting and has no authority. Chairman Salvaggio then asked Clerk Ryer to review the items the Board must consider for this conditional use. Chairman Salvaggio also noted there is no public hearing associated with this item tonight as the public hearing was held at the March 15th Plan Commission meeting. Lastly, he confirmed that each Board member has reviewed the packet materials and listened to the recording of the March 15th Plan Commission public hearing. The Board members confirmed this.

Clerk Ryer then explained that this item was to be considered at the October 19th, 2016, Plan Commission meeting. However, the applicant requested additional time to search for alternate locations. The applicant and Town agreed to two extensions on the 90-day review period, with the second extension expiring on May 3, 2017. On February 22nd, 2017, Joe Coyle of Pyramid Network Services, LLC (Agent for Eco-Site, Inc.) notified staff that despite efforts to consider other sites, they need to keep the process moving forward with the Town application and requested the Town place the item on the March Plan Commission agenda, with no changes to the application materials. The Plan Commission then held the public hearing at their meeting on March 15th.

Mike Long of Husch-Blackwell, representing Eco-Site, then spoke. He noted he was there to answer any questions the Board may have. He explained that he submitted a survey to the Town showing the Akerlund property has adequate frontage showing 300' feet of frontage. He also submitted a supplemental affidavit that further describes points made in the original affidavit submitted several months ago. This additional affidavit describes financial differences between being collocated on the Grafton water tower versus being located on the Akerlund property. It also describes operational and functional differences between the two locations. Mr. Long asked if the Board had any questions for him. The Board did not have any questions for Mr. Long. Mr. Long also noted the Akerlund property was chosen for its close proximity to the Grafton Water tower and fit within their network, being about 1,300 feet north of the water tower. He said the parcel is large at over 19 acres, there is screening on the east side, the site is zoned at A-1, with towers being allowed in the A-1 district, the Town setbacks are met, and standards are met as set forth within the Town's ordinance. He felt the site would have minimal disruption to traffic, the site is served adequately by utilities, the tower won't create a nuisance, it won't create a drainage issue, and the standards are met for a conditional use permit.

Supervisor Wickert asked staff if the additional affidavit could be considered. Attorney Hoeft noted the original application was deemed complete within 10 days of being received, and that supplemental information should not be considered in a way that would change information submitted with the original application, but could be used as supplemental information only.

At this time Chairman Salvaggio and Attorney Hoeft asked Clerk Ryer to read the standards that must be considered by the Board for this conditional use permit application to make sure that the application meets Town Building Code and the Zoning Ordinance. Attorney Hoeft also noted that a decision to approve or disapprove must be made tonight per the extension

agreement, and must be supported by substantial evidence. Clerk Ryer then explained the six standards that must be considered are:

- (1) Welfare. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
- (2) Compatible with adjacent land. The uses, values and enjoyment of other Town property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
- (3) Not impede surrounding property development and improvement. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding Town property for uses permitted in the district.
- (4) Adequate infrastructure. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
- (5) Ingress and egress. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- (6) Conform to zoning district regulations. The conditional use application shall conform to all applicable regulations of the district in which it is located.

Attorney Hoeft pointed out those standards must be considered by the Town Board any time a conditional use permit application is considered. Supervisor Wickert then explained that state law changed back in 2013 as a non-fiscal policy was slipped into the 2013 budget that ties the hands of the Board in many but not all ways, as the Board must consider Town requirements and conditions that must be met before the Board can approve a cell tower. The Town is bound by statute and ordinance. Supervisor Wickert asked if the application had been denied four times previously. Attorney Hoeft clarified that Supervisor Wickert is likely referring to the application being incomplete several times, and noted applicants are allowed to resubmit the application as many times as they like until the application is complete. Supervisor Wickert noted there is legislation pending at the state that will give municipalities more discretion, but that municipalities currently do have some discretion in that Town Ordinance read by Clerk Ryer requires six standards be met in order for the Board to approve the application. Supervisor Wickert finds three things lacking. Attorney Hoeft then interjected that while Town ordinance applies, the Town cannot apply anything that is inconsistent with State Statute 66.0404. Supervisor Wickert continued that there would be foreseeable property value loss to residents in the vicinity of the tower site, particularly because of the rural and rustic nature of the property. When looking at the Town's Ordinance, constructing a large metal monopole with an unsightly metal platform comprised of lots of exposed metal in the middle of utopia will have a great impact on property values, thus not meeting Town standards. It has come to the Board's attention that there has already been some loss of sales in this area as a result of the prospect of the tower. Secondly, he also does not think the tower is compatible with the surrounding area, another standard that must be considered under Town ordinance, and is just about as incompatible as he could imagine. The Board has an obligation to deny the application for this reason alone, but is not the only reason. Supervisor Wickert noted his comments are not based on aesthetics, which is not a factor the Board will consider, but will be focused on the incompatibility of the tower in an area they are struggling to keep rural and rustic, and preserve it as such. Thirdly, the granting of the permit would be

detrimental to the public health, safety, morals, comfort or general welfare. Taking a beautiful and scenic area and dropping a metal tower in the middle of it is detrimental to the general welfare of the public. The proposal barely complies with Town setbacks, which exacerbates the negative aspects and effect on the general welfare. The above three criticisms are predominant in Supervisor Wickert's mind. He noted he listened to the audio of the March 15th Plan Commission meeting, and it seems that the search ring used by eco-Site is unnecessarily small. He felt the applicant did not do a good job explaining how they came up with the search ring, and the application and evidence is silent on this issue. The application contains some generic conclusory observations, but the Town Ordinance is clear. Many people in the audience have their own reason for not wanting tower, many of which cannot be considered by the Board, but Town Ordinance is clear and the aforementioned reasons can be considered. Supervisor Wickert then made a motion to deny the conditional use permit by Eco-Site, Inc. (Agent Joe Coyle of Pyramid Network Services, LLC) to construct a 120 foot tall telecommunications monopole located at 4628 Cedar Creek Road, because of the reasons mentioned. Supervisor Pipkorn seconded, and the motion passed unanimously.

Chairman Salvaggio then called a recess.

b. Discussion and possible motion on Ordinance 2017-3, "An Ordinance to Amend Section 320-21. B-3 Business District in the Town of Cedarburg Zoning Code, Ozaukee County, Wisconsin"

The Board returned from recess. This item continues from item #9a. Following discussion, Supervisor Pipkorn moved the Board approve Ordinance 2017-3, "An Ordinance to Amend Section 320-21. B-3 Business District in the Town of Cedarburg Zoning Code, Ozaukee County, Wisconsin." Supervisor Esser seconded, and the motion passed unanimously.

c. Discussion and possible motion on a conditional use permit application by Laura Mortag to operate a daycare center for a maximum of 45 children for the property located at 7955 STH 60 [Owner: 5 Corners Development LLC, zoned B-3 Business, 2.54 acres, NE ¼ Section 21]*

This item continues from items #9a and #11b. Following discussion, Supervisor Esser moved the Board approve the conditional use permit application by Laura Mortag to operate a daycare center for a maximum of 45 children for the property located at 7955 STH 60. Supervisor Pipkorn seconded, and the motion passed unanimously.

d. Discussion and possible motion on a conditional use permit application by Matt Burrow (Catalyst Construction) to construct self-storage units on lot #2 of the Certified Survey Map approved by the Town Board on March 1, 2017 for the property located at 8611 STH 60 [Owner: Lynnwood Properties, LLC, NW ¼ Sec. 21, 10.941 acres, zoned M-2 Planned Industrial and Mixed Use District]*

Chairman Salvaggio noted this item will not be addressed tonight at the request of the applicant.

e. Discussion and possible motion on Resolution 2017-8, "In Recognition of National Public Works Week and the Town of Cedarburg Public Works Crew"*

Following discussion, Supervisor Pipkorn moved the Board approve Resolution 2017-8, "In Recognition of National Public Works Week and the Town of Cedarburg Public Works Crew." Supervisor Esser seconded, and the motion passed unanimously.

f. Discussion and possible motion on Resolution 2017-9, “Recognizing Municipal Clerks Week and the Town Clerk Office Staff”*

Following discussion, Supervisor Esser moved the Board approve Resolution 2017-9, “Recognizing Municipal Clerks Week and the Town Clerk Office Staff.” Supervisor Pipkorn seconded, and the motion passed unanimously.

g. Discussion and possible motion on Resolution 2017-10, “Resolution authorizing the redemption of general obligation promissory notes, Series 2009A, dated April 15, 2009, and taxable general obligation promissory notes, Series 2009B, dated April 15, 2009”

Following discussion, Supervisor Pipkorn moved the Board approve Resolution 2017-10, “Resolution authorizing the redemption of general obligation promissory notes, Series 2009A, dated April 15, 2009, and taxable general obligation promissory notes, Series 2009B, dated April 15, 2009.” Supervisor Wickert seconded, and the motion passed unanimously.

h. Discussion and possible motion to fill a vacancy on the Town Board*

This item was addressed along with item #10a.

12. CLOSED SESSION

a. The Town Board may go to closed session pursuant to:

- i. Wisconsin Statutes Sec. 19.85(1)(e) to “Deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session,” including but not limited to the former Prochnow landfill property.

Supervisor Wickert moved to go into closed session. Supervisor Esser seconded, and was unanimously approved by a roll call vote.

b. Reconvene to open session and the regular order of business

13. Discussion and possible motion related to closed session business*

None.

14. CLOSED SESSION

a. The Town Board may go to closed session pursuant to:

- ii. Wisconsin Statutes Sec. 19.85(1)(e) to “Deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session,” including but not limited to the property located at 8611 STH 60 and the proposed Town Sports Complex.

b. Reconvene to open session and the regular order of business

Supervisor Esser moved to go into open session. Supervisor Wickert seconded, and was unanimously approved by a roll call vote.

15. Discussion and possible motion related to closed session business*

None.

16. ADJOURNMENT

At 9:35 pm, Supervisor Wickert made a motion to adjourn that was seconded by Supervisor Pipkorn. The motion was unanimously approved.

Respectfully Submitted,
Eric Ryer
Assistant Administrator/Clerk