

BELLEVILLE PLAN COMMISSION
REGULAR MEETING MINUTES

WEDNESDAY, APRIL 13, 2011

7:00 p.m

Belleville Village Hall, 24 West Main Street

Chairman Terry Kringle called the meeting to order. Members present were: Donna Moore, Lance Williston, Larry Enlow, Gary Ziegler, and Jim Schmitz. Professional staff present was Bill Preboski. Matt Dregne appeared later.

Motion by Larry Enlow, seconded by Donna Moore to approve the Public Hearing and regular Plan Commission minutes of March 9, 2011 as printed. Motion carried.

The next meeting will be May 11, 2011. There will be new appointments to the commission.

Proposal for 10-6-4 – Unincorporated Areas within Extraterritorial Plat Approval Jurisdiction.

In order for the village to enforce and have a say what might be happening in this area, we have to have something in our ordinances that pertain to it. Bill Preboski explained we do have something now. It is called the Official Map. This only shows the future streets and parks in the comprehensive plan that extends outside the village limits. Control outside the village boundaries only relates to land divisions, not the zoning or land use in the ½ mile surrounding the village limits and not the 1 1/2 miles. Previously we received courtesy plat reviews, courtesy land divisions from the county but had little to say about them. This would give us objecting authority within the ½ mile area surrounding the village in both counties. We would need to register the map of the ETJ along with the ordinance with the respective register of deeds. Any land division within the ½ mile would need public sewer. Bill set this up to match the intergovernmental agreement with Montrose. In Exeter there is a natural boundary with the marsh area to the south and also steep hills to the south west. Most of the subdivisions in Exeter occurred over more than ½ mile from the Village. Any existing land divisions within the ½ mile need to make provisions for stormwater management or environmental areas. If the land division is for a farm related purpose, they would be permitted not exceeding the ratio of one building lot for every 35 acres which allows 1-35 acre lot for farm dwelling. The only way to control development is with an agreement or with ETJ plat approval. Bill Preboski prepared a draft labeled Village of Belleville – April 2011 Draft. Bill suggested 10-6-5(a) be amended to add a certified survey map or subdivisions. This would clarify that land division could result in both certified survey maps and subdivision; otherwise the village could see a series of parcels created by CSM's turn in subdivision-sized land divisions over more than five years. 10-6-5(a) should read: Any person dividing land within the Village or within its extraterritorial plat approval jurisdiction which results in a land division, shall prepare a plat of the subdivision or a certified survey map in accordance with the requirements of this Chapter.

Proposal for 10-6-8(g) – Development of Park Areas

There is also clarification of the timing of when fees need to be paid. 10-6-7(c) should read: The sums are due in Subsection (a) shall be paid in cash at the time of the signing of the final plat by the Village. In the alternative, the subdivider may elect, by written agreement to pay the fee at the time a development agreement for each development phase is approved, and may request to pay the fee in such installments and subject to such interest on unpaid amounts and other terms and condition as the Village Board may permit. (f) deleted. Funds generated by this Section shall go into a designated park fund to be used by the Village for public park purposes. Sec. 10-6-8 (b) (g) added: 1) The park improvement fee shall be paid for each phase of the development at the date of signing of the developer's agreement

for each phase or: 2) On a lot-by-lot basis when the building permit for each lot is applied for. This option will require the recording of covenants acceptable to the Village stating that the park improvement fee for each lot will be paid at the time of application for the first building permit for such lot. It was asked in 10-6-8 (3) who is responsible to ok's this. DPW & Village Engineer was the answer. These corrections will be made and come back to the Plan Commission one more time before going to the Village Board.

Proposal for Intergovernmental Agreement between the Village of Belleville and the Town of Montrose.

Matt had made a list of his comments. A joint Public Hearing will need to be held sometime down the line with Montrose and the Belleville Village Board. As soon as this agreement with Montrose is completed, the committee will start working on an agreement with Exeter. So far this agreement has only been discussed with 3 from the Village, (Terry Kringle,(Gary Ziegler and Lance Williston) and 3 from Montrose. Neither attorneys nor any other professional people have reviewed it prior. Matt's comments were really for clarification. Matt's comments were in red and underlined. The Village Board should review this document before it is presented back to Montrose. Line 38: May 1 was discussed. The members are not considered trustees but just a residential member.

6 **Officers:** There shall be a chairperson and vice chairperson of the JPC. The chairperson for the JPC shall alternate from the Town to the Village on an annual basis at-large. In the first year the chairperson shall be elected from the Village of Belleville representatives. The vice chairperson shall be from the community that is not serving as the chairperson. The chairperson and vice chairperson shall be elected by the JPC annually on the third Tuesday of June. A secretary shall be appointed by the JPC with the per diem split paid equally by the Village and the Town. ①

1. **Section 2.6.** Can the secretary be a member of non-member? How will the secretary's per diem be set? If the secretary is a member, will he/she receive one per diem as secretary and another as member?

7 **Meetings:** Meetings shall be conducted by the chairperson. In the chairperson's absence, meetings shall be conducted by the vice chairperson. Meetings of the JPC may be called by the chairperson of the JPC, the Town Chairperson, or the Village President and shall be on the third Tuesday of the month. The JPC shall meet at least annually. The meeting location shall be the chair's municipal building. Members shall receive per diems as determined by the community that the member represents. The JPC's recommendations shall be made as determined by simple majority. If there is no majority on a particular issue, the report back to the Town and Village Boards shall state that the JPC is divided and unable to make a recommendation. The notices and conduct of the meetings shall be noticed and conducted in accordance with the Wisconsin Statutes governing open meetings and open records. Open Meeting Law. ②

Section 2.7. Why say that meetings "shall be" on the third Tuesday of the month? They are only required to meet once a year or when called. Do you want to say that the Town Chair and Village President can "call" a meeting? Or should they simply be allowed to request that a meeting be called? *As is states, they can only meet the third Tues. of the month.*

2.8 **Cost Sharing:** Any outside consultant costs or fees (including but not limited to joint engineering, planning or legal) to be incurred by the JPC must be pre-approved by the Town Board and Village Board. Such pre-approved costs will be shared proportionally based on the equalized value of the Town and Village. With the exception of such pre-approved costs, all costs shall be borne by the Town and Village as incurred by the Town and Village. ③

Section 2.8. What does the last sentence mean? Shouldn't this say that the JPC shall not incur any costs that have not been pre-approved, and that neither the Village nor the Town shall be responsible to pay any such costs? *This is what the town wants.*

2.9.1 **Review Land Use Decisions in the Joint Planning Area Only:** In order to further a cooperative approach and promote the planning goals of each community, the JPC shall serve as the advisory body to the Town Board and Village Board with respect to development and planned growth in the Joint Planning Area. To that end, the following issues shall be referred to the JPC for its review and recommendation prior to final action by either the Town Board or Village Board; *provide, however, if the JPC does not meet within forty-five (45) days of referral, or make a recommendation within _____ days of referral, the Town and Village may proceed without a recommendation from the JPC. A referral shall be deemed made upon delivery to the chairperson and vice chairperson. Delivery may be made in person, by U.S. Mail, or by electronic mail.*

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2.9.1.1 Changes affecting roads and highways, traffic conditions, and road development and classification in the Joint Planning Area.

2.9.1.2 Changes affecting utilities and community facilities in the Joint Planning Area (stormwater management, recreation facilities, emergency services, cell towers, telecommunications facilities and fiber optics, and schools); and,

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2.9.1.3 Consider need for joint municipal services. Both the Town and the Village are committed to providing necessary municipal services efficiently and effectively, and wish to explore whether jointly providing services will be more beneficial than providing the same services separately. The JPC shall review the current services provided by the Village, the Town and/ or joint service providers in which the Town and/or Village participate and shall consider whether any services overlap, and recommend whether services could be more effectively or more efficiently be provided jointly. Reports and recommendations from the JPC on joint municipal services shall be made to the Town Board and Village Board *on an as needed basis or as directed requested by the Town Board and/or Village Board.*

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Section 2.9.1.

1. The first sentence says that the JPC shall serve as “*the* advisory body to the Town Board and Village Board with respect to development and planned growth in the Joint Planning Area.” Does that mean the JPC will serve *in place of* the Village Plan Commission and Town Land Use Committee? If so, there could be legal issues. If not, the language should be changed to say that the JPC shall serve as “*an* advisory body.”
2. It appears that an issue could be held up at the JPC for an indefinite period of time. This could be avoided by limiting the JPC’s time to make a recommendation, as I have shown.
3. The use of the words “changes affecting” creates significant uncertainty about what actions must first be referred to the JPC. For example, would a zoning change allowing the construction a new commercial establishment located outside or inside the JPC need prior review by the JPC, if the rezoning could lead to increased traffic within the JPA? This ambiguity could be avoided by specifying those governmental decisions or actions that would need prior JPC review, such as:
 4. The division of land within the JPA;
 5. The rezoning of land within the JPA.
 6. The annexation of territory within the JPA.
 7. The construction of a new road or alteration of an existing road within the JPA.
8. Subsections 2.9.1.3, 2.9.1.4 and 2.9.1.5 are all located under the list of “issues that shall be referred to the JPC” before final action by the Town or Village. However, the issues addressed in those sections seem to be of a different type. For example, section 2.9.1.3 seems to direct the JPC to review and make recommendations regarding the delivery of services. I would separate these issues from the other issues under section 2.9.1.

Matt would change this to 2.9. 2 Make recommendation on terms; 2.9.3: changes to the agreement; 2.9.4: other services as requested which are all under the duties of the JPC.

- 2.9.1.4 Periodic review of agreement and joint planning areas. ~~The Agreement, the designation of the Joint Planning Area and the designation of the Town Development Area shall be reviewed by the JPC on no less than an annual basis, and summary recommendations shall be provided to the Town Board and Village Board within sixty (60) days thereafter. The JPC shall also conduct such a review within sixty (60) days of a request from either the Town Board or Village Board.~~ (5)
- 2.9.1.5 Other duties as assigned. In addition to the duties described above, the JPC shall also perform such duties as may be assigned to it from time to time jointly by both the governing boards of the Town and the Village.

Section 2.9.1.4. This is the only reference I see to the Town Development Area. What is it? Need to reword the second sentence: *The Agreement and the designation of the Joint Planning Area shall be reviewed by the JPC on no less than an annual basis, and summary recommendations shall be provided to the Town Board and Village Board*

- 3.1 ~~Annexation requests in joint planning area:~~ The Village shall not initiate annexation requests in the Joint Planning Area, but rather shall continue to consider all such annexation requests presented to the Village on a case by case basis. The Village may unilaterally deny all annexation requests. However, prior to consideration of an annexation request, there shall be a review of the annexation by the JPC. (6)
- 3.2 ~~Urban services~~ Services provided by each community: Except as otherwise agreed or required by law, the Town and Village acknowledge and agree that each community will continue to be responsible for negotiating and providing urban services to the residents of its community.

SECTION 4 - GENERAL PROVISIONS

Section 3.1. This section says that the Village shall not “initiate annexation requests” in the JPA. Why not? The agreement anticipates that development in the JPA should be in the Village. I don’t like the word “initiate.” Too many things might be called “initiate.” Why not just say that the Village will not annex territory in the JPA without the owner’s consent? Make it clear there is no prohibition on annexing in the JPA. *After discussion, delete 3.1.*

- 4.3 **Enforcement:** This Agreement is intended to provide each party with the right and standing to challenge by court action (including action by *certiorari* or otherwise to declare a governmental act invalid) any act of the other party that violates this Agreement. This Agreement is intended to provide each party with the right and standing to seek any available legal or equitable remedy to enforce or seek damages for the breach of this Agreement. In any action concerning an alleged violation of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable costs and expenses of litigation, including reasonable attorneys’ fees. (7)

Section 4.3. Given that the JPC’s authority is only advisory, I suggest modifying the agreement to saying that failure by either party to obtain a recommendation before taking one of the actions in section 2.9.1. would not be grounds for invalidating the action taken, and would not be grounds for damages. *This really only benefits the town unless we can get something in the agreement that benefits the village such as an area established on what the town can do. Think about this and we will come back to this.*

- 4.4 **Duration of agreement; term:** Unless otherwise mutually agreed in writing by the Town and Village, this Agreement shall remain in effect for an initial ten (10) year period. The Agreement shall be automatically extended for an additional ten (10) year period unless terminated as proved herein. Either the Town Board or the Village Board may terminate the Agreement if either ADOPTS A RESOLUTION TERMINATING THE Agreement no less than ninety (90) days prior to the end of the initial period. No breach or violation of any of the terms of this Agreement by either party shall operate to void or terminate or provide grounds for termination of this Agreement, it being the intent of the parties that any such breach or violation shall only be redressed, enjoined or otherwise remedied by the exercise of any lawful contractual enforcement remedies then available to be used by the aggrieved party to enforce the terms of this Agreement. (8)

Section 4.4. I recommend against automatic extension. It is too easy for the Village to lose track of the deadline for extension and have the agreement automatically extended without due consideration. I

would change it to say that the agreement will terminate after 10 years unless the parties agree to extend for another 10 years. *Matt will rewrite it so it will terminate after 10 yrs unless they sign another agreement.*

4.7 **Enforceability.** The parties have entered into this Agreement under the authority granted by sections 66.0301 and 62.23(7a) of the Wisconsin Statutes. Its enforceability will not be affected by changes in the forms of Town or Village government, or changes in elected officials. The parties agree that this Agreement shall be construed so as to be binding on their respective successors, agents and employees.

(9)

Section 4.7. This section says the agreement is entered under 62.23(7a). That statute provides a way for Village's to exercise extraterritorial zoning authority, cooperatively with a neighboring township. This agreement does not include such zoning activity, so the statute should not be cited. Need to come back to this to say something for the Village's benefit.

5.2 If any lands outside the Joint Planning Area are annexed to the Village the Village agrees in accordance with the provisions of Wis. Stats. Sec. 65.028 to reimburse the Town as liquidated damages and not as a penalty an amount equivalent to the tax revenue lost to the Town as a result of such annexation each year for a period of twenty (20) years from the date the annexation ordinance is effective.

(10)

5.2.1 Such reimbursement shall be calculated based on the assessed value of all land and improvements in the annexed territory as of January 1st of each year after the annexation took place.

(11) + (12)

Section 5.2.

9. The Village should be very confident that it can live with the establishment of this area where the Village is prohibited from annexation.

10. This penalty is severe. The agreement is only a 10 year agreement – why pay a 20 year penalty? Why not limit the penalty to the statutory tax reimbursement period (5 years), plus the number of years before the agreement would expire? *Need to come back to this issue of time and length of penalty.*

Section 5.2.1. This calculation would give the Town the tax revenue from not only the tax base it had before annexation, but also new development that occurs post-annexation. The statutory amount the Village is required to pay is “the amount of property taxes the town levied on the annexed territory, as shown by the tax roll under s. 70.65, in the year in which the annexation is final.” I would not pay more than that.

Section 5.2.1. This would require payment before the Village would receive full tax payments.

6.1 **Assure Orderly and Economic Development of Town and Village within the Planning Area:** The Town does not believe it is economical for the Town to attempt to provide a full range of urban services to high-density urban development. The Town and Village agree that the predominant share of population growth in this part of Dane County can best be accommodated in higher density residential subdivisions served by urban services such as sewer and water. Therefore, the Town and Village agree that all defined development within the lands known as the Joint Planning Area described in Appendix A shall occur within the Village, in compliance with applicable Village development standards and requirements, and served by a full range of municipal services provided by the Village.

6.1.1 “Develop” or “development”, refers to division of land, or construction of more than one principal structure on a parcel of land, or rezoning a parcel from a residential or agricultural classification to a more intense residential classification or a non-residential classification. Use or division of land by the Town or Village for governmental purposes does not constitute development.

(13)

Section 6.1. This section appears intended to mean that, in order for things defined as “development” to occur, the property must first be annexed to the Village. If that is the intent, then the agreement should expressly say that. The agreement may need to be revised so that it refers not to “defined development,”

but rather to specific governmental approvals or actions that the is either prohibited from taking or required to take in the JPA. For example, the agreement could prohibit land divisions and certain types of rezoning activities within any part of the JPA that is in the Town, and require the Town to use its authority to affirmatively prevent prohibited rezoning or conditional use permits. It may not be possible to prevent the issuance of building permits on existing lots with proper zoning. The reference to “more intense residential classification” is unclear. Be more specific. Change “governmental purpose” to “governmental use.”

Wouldn't it make sense to include this section in Section 3 of the Agreement?

11. What remedy does the Village have if the Town breaches this section of the agreement? Could we build an automatic boundary change into the agreement? May be legally difficult under the statute. What about establishing an ETJ joint zoning area, so that the parties jointly control the zoning, and undesirable things can't happen without Village approval? This is the one part of the agreement that might offer solid benefit to the Village. It needs teeth. *Remove the words higher density. The whole paragraph needs to be redone. Move this section to 2.9 somewhere.*

12.

6.3 The Town and the Village agree that the farmland located in the Town is an irreplaceable resource which provides food and fiber for basic maintenance of the economy. Market forces, unguided by land use planning, may impinge on the viability of farming by introducing incompatible residential and commercial uses in the vicinity of farm operations. Further, inappropriate residential growth may cause the value of farmland to increase to the point where farmers make an economic decision to abandon farming, which causes the withdrawal of valuable land from production. The Town and the Village

(14)

expressly intend to use this Agreement to prevent annexation and development pressure from leading to excessive and unnecessary conversion of farmland to other uses.

Section 6.3. It is not at all clear what this section means, so it should either be removed, or clarified. Consider adding recitals to the beginning of the agreement where this kind of statement of intent could be added without risk of unintended, substantive application. *Create a recital area for the fluffy stuff like this. This should not be in the agreement.*

6.4 **Current Land Use Plans:** Certain of the lands included in the Joint Planning Area are included in adopted Village neighborhood development plans. These neighborhood development plans include a description of existing conditions within each of these planned neighborhoods at the time the neighborhood development plans were prepared. The existing conditions section of these plans provides a narrative summary of existing land uses, zoning, topography and natural features, stormwater drainage, and site analyses. Each of the neighborhood development plans include a series of maps summarizing existing conditions and growth and development problems and opportunities.

(15)

Section 6.4. What is the purpose of this section? It simply states certain facts. *Delete this section.*

7.1 Through section 823.08 of the Wisconsin Statutes, the Wisconsin Legislature has adopted a right to farm law. This statute limits the remedies of line established residential property to seek changes to pre-existing agricultural practices in the vicinity of residential property. Active agricultural operations may produce noise, odors, dust, machinery traffic, or other conditions during daytime and evening hours. All annexations after 2010 shall have as part of their annexations agreement a deed restriction that requires each property sold have an attachment to their deed that holds the Village and/or the Town of Montrose harmless to conditions caused by active agricultural operations that produce noise, odors, dust, machinery traffic, or other conditions that are the result of agricultural operations at any time of the day.

(16)

Section 7.1. Need to discuss the purpose of this language, and whether it is workable. What does it mean to hold the communities harmless? *Delete this section, it does not belong in the agreement.*

8.1 Extraterritorial Jurisdiction: The Extraterritorial Jurisdiction shall be an area of joint concern. In the Extraterritorial Jurisdiction area, the following restrictions and limitations shall apply:

8

8.1.1 The Village will only exercise its Extra Territorial Jurisdiction authority within the first one-half (1/2) mile.

Section 8. Is this intended to apply to ETJ plat approval, zoning approval or both? *This might include both zoning and plat approval. Need to look at.*

9.1 If the Village annexes land which includes road right-of-way, but the area annexed is only part of the road, the Village shall negotiate, prepare and execute an Agreement specifying the responsibilities for maintenance of the roads in a fashion which minimizes the inefficiency which otherwise might result from split responsibility for a length of roadway.

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Section 9. Does this mean annexing only part of the road width, road length, or both? *It should be width of road.*

10.2 The Village has been granted certain authority to adopt zoning ordinances applying lands within one and one-half (1.5) miles outside of its corporate limits by sec. 62.23(7a), Wis. Stats. The Village may engage in comprehensive planning, official mapping or other land use planning within that area. Further, the Village has the power to review proposed land divisions within that one and one-half (1.5) mile area by sec. 236.02(5) and 236.10(1)(b), Wis. Stats. In order to further the cooperative purposes of this Agreement and provide for orderly and efficient development of land, the Village agrees as follows:

19

Section 10.2. Why add this here? The agreement does not give the Village ETJ zoning, and does not establish an ETJ zoning area. *Hold off on this.*

11.1 Town and Village agree to amend their respective Comprehensive Plans to be consistent with the terms of this Agreement. The formulation and preparation of such amended Comprehensive Plans shall be pursuant to the procedures herein.

20

Section 11. What does it mean to say that the Comp Plans will be amended "pursuant to the procedures herein?" *Remove the second sentence.*

12.1 The term of this Agreement shall commence upon the date of its approval by the parties and shall terminate at 11:59 p.m. on the tenth (10th) anniversary of said approval.

21

12.2 The Town and the Village agree that they shall, not less than five (5) years prior to the expiration of this Agreement, commence discussions for a successor Boundary Agreement and Agreement which shall address land uses and other issues of joint concern under the circumstances then existing between the communities.

Section 12. I recommend against binding the Village to commence discussions for a successor agreement. *Delete 12.2.*

Summary of "hard" benefits of agreement to Village and Town.

- 13. Hard Town benefits.
- 14. No annexation outside JPA w/o large penalty.
- 15. JPC review required for actions in the JPA
- 16. Limitations on annexation in JPA
- 17. Hard Village benefits

18. Prohibition on land divisions and certain rezoning in JPA in Town, but needs teeth to be enforceable. Use ETJ zoning?

A revised map needs to be completed for the Joint Planning Area Description.

Terry would like Matt to have a revised version by May 2, 2011.

Bill Preboski handed out what was available from the Census on population and housing. Belleville has 1,848 in Dane Co and 537 in Green Co for a total of 2,385.

Motion by Donna Moore, seconded by Larry Enlow to adjourn. Motion carried. Meeting adjourned at 10:10.

Submitted, Mary Austin