

**TOWN OF LODI  
PLAN COMMISSION MEETING MINUTES  
WEDNESDAY, AUGUST 17, 2016**

1. **Call to order and roll call:** all present except Terry. Also present: Town Engineer John Lichtenheld, Surveyor Greg Knuteson (Jennings, Zeman), Richard & Constance Ness, Craig Ness, Atty. Doug Kammer (Ness), MSA Engineer Chuck Bongard (Ness), Roberta Arnold.

2. **Certified Survey Map: combining Parcels 11022-61 and 11022-62 plus previously vacated public right-of-way located on N. Lake Point Dr. in Section 4, owned by James Jennings:** Knuteson – this is a CSM to combine to lots and a vacated public right-of-way into one parcel. Krause – the vacated public right-of-way was vacated back in the 1990’s as part of the original Trevor Ridge development. What are Jennings’s future plans? Knuteson – I believe just to sell this as one parcel. Bechen – what is it zoned? Krause – single family residential. Bechen - are these vacant lots? Knuteson – yes.

*Pfister/Robbins motion to approve CSM as presented. MC 6-0.*

3. **Certified Survey Map: to create an 11.03-acre parcel and an 11.09-acre parcel from current 22.41-acre Parcel 11022-517.01 located on CTH J in Section 22, owned by Donald Anderson & Beth Kalscheur-Anderson:** Krause – due to changing of this meeting date Surveyor Jim Grothman is not able to be present tonight; and nothing has been received since the last meeting.

*Marx/Pfister motion to table this for future meeting; MC 6-0.*

4. **Certified Survey Map: creating 3 lots (2.0 acres each) on a portion of 28.54-acre Parcel 11022-418.01 located on CTH V in Section 16, owned by Tony Zeman:** Krause – there are 3 things that have to happen with this property: 1. Need the CSM approved; 2. Rezone the property, which is currently zoned Ag, to Rural Residential with an Ag overlay district; 3. Approve a waiver of access. Knuteson – I’ve had discussion with Zeman as to whether the access should be an easement or joint ownership. Krause – Mark Zeman chose this portion of the 130+ acres he owns for homes because it is the poorest quality farm land; in dry years it pretty much burns up. What I’d like to do tonight, as Atty. Bechler has schooled us, is not take action on the CSM alone tonight so that Zeman can come back with the complete application for CSM (which has been submitted) plus the required rezone and waiver of access easement. Pfister – is there any concern about the CTH V access? Krause – there is good line of sight there, but I don’t know if Zeman has talked to or applied for the access with Col Co Hwy. Smith – does the town care about the physical easement document; or is it just shown on the CSM? Krause – we typically require it and it is reviewed/approved by our Town Engineer and Attorney. Knuteson – the CSM will have a note on it that the driveway easement is per a separate document/agreement. Bechen – as far as the driveway back to the 3<sup>rd</sup> lot – is what shown the driveway? Knuteson – what is shown is the current Ag/field access, not the actual driveway for the future.

*Bechen/Robbins motion to table for future meeting; MC 6-0.*

4. **Rezone: from A-1 Agriculture to RR-1 Rural Residence a 4.0+/- acre section of 35.16-acre parcel 11022-43.01 (the remaining 31-acres to be restricted by an A-4 Agriculture Overlay) located off of Michael/Wildenberg Drives in Section 3, owned by Thomas Sokol (Jay Boyd – Agent):** Krause – what we have here is a request to rezone approx. 4 acres to rural residential with an ag overlay for the remainder of the property. Smith – why is this being done? To create 1 buildable parcel and keep the rest Ag? Krause – yes, the rest of the land is pretty much unbuildable swampy land. There are 3 things that need to be submitted: 1. Rezone application; 2.

CSM review; 3. Access

*Pfister/Marx motion to approve rezone as requested; (no vote taken)*

*Pfister/Marx withdraw their motion, this needs further information as it's been disclosed (by Goeske) that the access off of Michael is not owned by Sokol, it's owned by Wenger who would legally have to grant an easement via that access. There is another possible access to this property off of CTH V, but it doesn't go all the way to the acreage being rezoned residential, and a driveway from CTH V to the rezoned area would exceed the length allowed for a driveway.*

*Robbins/Pfister motion to table until future meeting; MC 6-0.*

**5. Final Plat (Pleasant Valley): creating 10 residential lots on 15.69-acre Parcel 11022-487.02 located @ W10518 County Highway J in Section 22, owned by Richard & Constance Ness:** Kammer – Declaration of Covenants, which have been approved by Atty. Bechler. Re: Stormwater Management Agreement, the one I'm presenting to you tonight was prepared by Atty. Bechler after he reviewed the one I prepared. Krause – at last month's meeting there was confusion between the Ness team and the Town's team, information wasn't flowing between the 2 parties. One of the subjects was the Stormwater Management Maintenance Plan, there hadn't been resolution of of several issues. Lichtenheld – I put together some comments on the Plan, Atty. Bechler added comments, and Plan Commission comments all relating to Stormwater Management. At this point I believe MSA Chuck Bongard (Ness' engineer) and I are in agreement now. Krause – that set in place the need for legal documents, prepared by the Ness team (Kammer).

Note of clarification: 3 documents presented at tonight's meeting, which no one on the Commission has seen prior to tonight's meeting because they've been a work-in-progress through today: (1) "Storm Water Management Maintenance Agreement"; (2) "Declaration of Covenants, Restrictions & Conditions"; and (3) Developer's "Agreement for Land Division Improvements".

Declaration of Covenants.....: Krause – what happens if something happens to the Ness' (Richard & Constance) before they've sold all the lots. Kammer – it would be the responsibility of the Ness estate. Krause – 3<sup>rd</sup> line on page 3 "...the lot owner shall demonstrate to the Developer that owner has adequate liability insurance....", what is "adequate"? Krause – "Any dog that barks.....". So if it barks other hours it's not a nuisance?! Kammer – the By-Laws for the homeowners association still have to be prepared. Krause – Atty. Bechler has stated the town doesn't need to get too involved in any homeowners association. Craig Ness – the homeowner's association won't do the maintenance of the stormwater items, the town will have that done and then bill the homeowners, can be added to their tax bill as a special assessment.

Both parties have to sign the Developer's Agreement upon approval by the Town.

Storm Water Management Maintenance Agreement: Lichtenheld – the way this is written the homeowners association DOES get the maintenance done, and the town only steps in and gets it done if they don't. Kammer – Atty. Bechler wrote this version. Lichtenheld – exactly what "maintenance" is needs to be defined more clearly. The Storm Water Management basically is in the back yard of 4 of the 10 parcels. We don't want people putting things in the actual basin, but also those 4 lot owners not putting anything in the runoff areas in their back yards. Robbins – are there any restrictions on those 4 parcel owners on what they can or can not plant or build in those portions of their parcel? Bechen – it is addressed in the agreement. Bongard – I would suggest that the approval be conditioned that the Stormwater Maintenance agreement be approved by the Town Engineer. Krause – what you

(Bongard) say makes sense. But you've put in an application to the DNR that doesn't agree with the Storm Water Management Maintenance Agreement stating that it's the homeowners association doing the maintaining. Bongard – when we applied it was still an open issue, and I was told by the DNR just to submit the final agreement so they have it on file. Craig Ness – my understanding was that the town was going to do the maintenance and bill it to the homeowners association. Now you're stating the homeowners association is going to do it, and only if they don't will the town come in and do the work. Krause – I thought, in one of the discussions we had, the conclusion was that the town was going to do the maintenance. But tonight's agreement, drafted by Atty. Bechler, states otherwise.

Note: Atty. Bechler arrived at 6:40 PM.

Krause (to Bechler) – we are having discussion as to whom exactly maintains the stormwater facilities. Your document presented tonight states it's the homeowners association responsibility Bongard's application to the DNR states that the town would be doing it. Atty. Kammer strongly suggests it be the homeowners association's responsibility. But you have stated that homeowner's associations aren't the most reliable. Bechler – they're often not organized. Bechler – it is universal by communities south of here having the homeowner's associations be the first party responsible. The document I prepared for tonight doesn't detail exactly what maintenance be done, as I didn't have that information. Robbins – in all fairness to the homeowners what maintenance they are to do and what they can and cannot do should be outlined in detail. Bechler – I agree, if I had that information it would have been included in this Storm Water Management Maintenance Agreement. Bongard – I can give you the maintenance details to be added into the agreement, for the town engineer to approve. Smith – is there a chance that we could move this along to the town board, recognizing that these issues have not been resolved to-date. Does the Plan Commission have to have everything and be in total agreement and make a final recommendation before it goes to the board? Krause – I see 3 items that remain outstanding, that are all well on their way to being completed: **(1) Developer's Agreement...**, **(2) Covenants...**, **(3) Stormwater Management Maintenance Agreement;** **(4) Homeowners Association Agreement.** Marx – from a Town Board point it seems fine to move it on to the Town Board. Bechler – our pattern for many subdivisions over the year is that the developer's attorney will do everything they can to make sure the homeowners association IS actually functioning. Marx – what about the offsite property owners affected by the Stormwater from this development. Krause – there has been discussion as to whether there should be agreement or at least notice to downstream owners that they will be receiving stormwater from this development. But in discussions with Town Engineer Lichtenheld there will actually be less water going downstream after development than there is now. Lichtenheld – that is true. Atty. Bechler – since the stormwater from this development will go into its retention basin, but where does it go from there? Is there a chance it drains from the retention basin and creates erosion? Lichtenheld – there's already a ravine there. If we get a huge rain that blows out the retention pond, is the town liable because it approved this development? Atty. Bechler – yes, there can be liability to the town, but it's based on several mitigating factors. But it's not likely. But again, this would be the time to get an easement before anything happens. Atty. Kammer – if you were the property owners downstream would you sign an easement? Bongard – right now there's already 26 acres already running stormwater down through the property adjacent to this development. This development will create very minute amount of increase to that flow. Lichtenheld – Notification of the downstream property owners I can understand, but trying to get an agreement I've never heard of. Bechen – should some wording be put in the Maintenance Agreement keeping the town from being liable. Atty. Bechler – that can be done. Atty. Kammer – I have misgivings about doing that, but I have no problem with indemnification clause being put in the agreement. Arnold – I would hate to put homeowners in position to be liable if the downstream property owner would decide to sue if there was water runoff damage. Kammer – the law protects them. Smith – is that a detention or retention pond? Lichtenheld – it's a dry pond that only has water in it when it rains and then releases it slowly. Smith: (1) a consequence of this will be reduction in water running onto adjacent property; (2) there's already a ravine; (3) it's an engineered

structure; (4) we are requiring it to be maintained – so it seems we’re doing as much as we can do. So I’m comfortable with the elimination of the risk or liability to the town. Marx – I agree, we can always plan ahead for something that happens possibly once every 100 years, and government has a habit of trying to detail everything.

Marx - before we make a motion, who is going to let the board know that the 4 documents are ready to be approved?

Bechler – I and Lichtenheld would give our approval first before they’d go to the board.

Bechler – regarding a Surety, this is the first development in the town since that law changed. The law now states it’s the Developer’s choice how to post the surety, and this developer has chosen to do that via cash (to be put in an escrow account). And there are no reductions to it until there are lien waivers from the contractors. My gut is saying “gee I don’t like this, but it’s allowed”. The purpose of the surety is to have a fund to pay contractors that don’t get paid and to pay for repairs that need to be done during the warranty period. Marx – are you saying that the surety would be paid to the town and the town would pay the bills. So does the town get compensation for the time it takes to handle this? Bechler – I would suggest hiring someone to do this who has the experience in it (Escrow Agent), and the agent gets paid through that fund also. Atty. Kammer – that’s done all the time. Lichtenheld – if you look at public contracts you often pay the contractor, withholding 5-10% until the work is done and approved. Krause – so they’re recommending 125% cash. Bechler – that’s correct. Krause – so that seems to be okay as long as the town does not have to administer that fund. Craig Ness – how long are the excess funds held? Atty. Bechler – until the end of the warranty period. Craig Ness – something like 14 months. Goeske – when does the town have to accept the new town board being created by this development? Bechler – we could state that the road be finalized when say 75-80% of the lots are sold (? developed). Kammer – do we do, as the agreement states, in the Fall of 2017, or when 75-80% of the lots are done? Marx – wasn’t there something that stated it became a town road after 4 lots have been sold? Krause – one of the early on discussions was the 4 lots and it becomes a town road, or now it’s for the Ness’ to pay ahead and the town do the final roadwork. We want to protect the town’s interests, we want a good road when we accept it. Atty. Bechler – this is an unusual subdivision because we’re taking a current private driveway and turning it in to a town road. Lichtenheld – I’d suggest you make a stipulation that the final road be developed by the end of 2018 or when 4 lots are developed (not just sold), whichever comes first. Smith – would the final determination as to when a home is done be the issuance of a Certificate of Occupancy (Goeske – which are issued by the Town’s Building Inspector)? Atty. Bechler – yes. Also, with the Surety (Escrow) Fund if the amount got down to 20% or less then the developer would have to replenish the fund.

*Pfister/Bechen motion to recommend approval on the Pleasant Valley Final Plat conditioned upon (1) Developer’s agreement; (2) Covenants document be prepared approvable by the town; (3) Stormwater Management and Maintenance to include a detailed Stormwater Maintenance Plan; (4) Homeowner’s Association documents approved by the town attorney; (5)submittal to the, town of a surety document of 120% (Kammer – this is incorporated in the Developer’s Agreement; Bechler – will include an escrow agreement); MC 6-0.*

**7. Amendments to Comprehensive Plan:** Krause – over the last 5+ years there’s been an accumulating list of items that we need to amend the Comprehensive Plan. Now seems like an appropriate time to do this, and there’s a process to doing this, which we will need the assistance of Atty. Bechler and Engineer John Lichtenheld.

Krause – what we did last time is held a Public Information meeting to inform the public about what the town was doing and why. Bechler – the statutes say that the Town Board decides whether to have an additional Public Hearing. Krause – we’ve done the Public Hearing joint with the Plan Commission and Town Board present. Bechler – this requires a Resolution approval by the Plan Commission and then an Ordinance approval by the Town Board. County Boards like to still approve those changes also, but there’s nothing in statutes that requires that now. Pfister

– what’s the time frame for getting this done? Krause – I think it’ll take at least 3 Plan Commission meetings to start with. Lichtenheld and I need to create and agree on the list, and those need to get redlined in the Comprehensive Plan. Lichtenheld – we have several rezones that the town has approved that are not what is shown in the current Comprehensive Plan, so the zoning map in the Comprehensive Plan needs to be updated. There is also some major updates needed for the Okee area in the Comprehensive Plan. Our list consists mostly of mapping changes.

Lichtenheld – one of the first things we need to do is adopt a Public Participation Plan. Atty. Bechler – when the Town adopted the Comprehensive Plan in 2010 it adopted a Public Participation Plan, so no need to do it again unless there are changes needed to it. We also have to notify adjacent municipalities. Krause – Goeske needs to look up what rezones have been approved since the Comp Plan was adopted in 2010. Lichtenheld – CCP&Z John Bluemke states the county have those electronically – pretty much. Krause – so we need to cross-check that. Marx – can, we add the map that I’m working on with the speed limits, town-owned drainage structures, etc... to the Comprehensive Plan? Lichtenheld – part of the Comprehensive Plan is coordinating all town maps.

Krause – so how long does this take? First there is a redlined document that comes to the Plan Commission, the Plan Commission approves a Resolution. We schedule a Public Information meeting and then a Public Hearing.

Marx – one thing I’ve become aware of is that between the City of Lodi and the Town of Lodi we don’t have any areas designated for future business development. Pfister – we have discussed that in the past. Krause – that’s not a Comp Plan amendment unless we decide to designate areas for such. But it is a good item for discussion. When we were creating the Comp Plan we discussed for a long time if there should be a business park in the town and where. We couldn’t come up with anything we agreed on, so the subject was dropped. The feeling at the time was that people didn’t want industry in the town, that’s what the City was for.

Krause – Lichtenheld has the first action items, which he’s already done a list of items for amending the Comp Plan. I am reviewing.

Krause (to Atty. Bechler) – if the Comp Plan isn’t amended, does that hold up the Pleasant Valley (Ness) Plat? Atty. Bechler – generally the Comp Plan is supposed to be amended first before development starts, but that’s not how it’s usually been happening. The Pleasant Valley (Ness) Plat property is one of the old R-1 Residential zoned properties. Smith – I seem to remember a letter from the County regarding the Ness development stating that the development complies with the town’s Comprehensive Plan.

Arnold – does the Ness property need to be rezoned from the old R-1 residential to the new RR-1 Rural Residential? Atty. Bechler – I seem to remember the Ness’ previous attorney stating to me that there was a rezoning before the County, but I’m not positive.

Arnold – are there changes for Okee that need to be amended in the Comp Plan. Lichtenheld – the one hold up was the disagreement in terms of PUD zoning.

**8. Updating & Amendments to Ordinances (check title):** Our town ordinances were adopted in the early 1990’s. Since then there’s things we’ve adopted that have not been incorporated into our ordinances to keep them updated. In addition some of our ordinances are in conflict with county ordinances. Our ordinances can be stricter than the related county ordinances, but cannot be less strict than the related county ordinances. In addition, the fees we charge for CSM’s, rezones, variances, etc... are very outdated and do not cover costs, so the Clerk has to rebill the applicant for those additional fees. Atty. Bechler – the ordinances were just recently codified. Another issue we

need to look at the fees is escrows. Currently we only require an escrow for land divisions. But we can require escrows for CSM's, etc... also. Marx – are there sections of the subdivision ordinances that need to be updated. Lichtenheld – Section 5 regarding roads needs to be looked at. We also have 1990 erosion control ordinances, which were good then but extremely outdated now.

Smith – (1) Section 10.06(L) refers to requiring covenants in final plats for fences; (2) Section 10 states the maximum length of cul-de-sacs; (3) Section 10.07(c)(1) maximum length of a block as 1,200 feet. These are

outdated. In our subdivision ordinance we have a minimum lot size of 1.5 acres. Bechler – that's only for rural lots. The issue of lot size relating to zoning vs subdivision is dealt with in the Town of Sun Prairie vs. Stones, which stated that lot size can be done under zoning or under subdivision ordinance. I would not suggest what some communities do which is create a form-based code that is difficult to understand and even more difficult to enforce. Smith – I've read through the town's subdivision ordinance twice and I've found it to be a workable document. Just needs to be updated. Atty. Bechler – our initial subdivision ordinance was vetted over 6-8 months and shouldn't be too hard to update, and I like focusing on specific issues that are noted.

Arnold – what about deadlines for action being taken on things like CSM's, etc... Atty. Bechler – many of them are set by state statute. But there are some set within our ordinances, but many have to be set within the limitations of related statutes.

Krause – another thing we need to look at his deadlines for reviews, actions, etc... Atty. Bechler – Goeske could create an electronic document to record when a document comes in and comes up with the deadlines for it so that the town doesn't end up in a position of not taking action within the time limit.

Goeske – another thing we need to look into is submission deadlines for rezones, CSM's, etc... Too many are submitting applications, some complete, but more often incomplete, and then think they should be an agenda the next week, etc...

Krause – have you created anything for another municipalities within timelines, deadlines, etc. Atty. Bechler – yes. Smith – Arnold is exactly right, if a property owner or their agent is not present at a meeting then the Plan Commission has to consider whether it should take any action until the owner/agent can be present.

Bechen – what if the Pleasant Valley Plat expects to come before the Town Board on August 31<sup>st</sup> but don't have the 5 items and approved by that date? Atty. Bechler – you let them know that if they don't have those documents and they haven't been approved by myself and Lichtenheld, then the board may deny your Final Plat on the 31<sup>st</sup>.

**9. Minutes of July 21, 2016 meeting:** tabled until next meeting, copies not distributed to Plan Commission members.

**10. Next meeting date:** Krause – continuation of Anderson, Jennings and Sokol. Also coming up is a rezoning by Mike Ryan. I'd like the Plan Commission to consider whether we'd like to take on a Neighborhood Plan for CTH V in this section between Ryan and CTH J/Richards. Arnold – you may want to think of a moratorium to give you time to create a Neighborhood Plan.

Next meeting date, Thursday, September 15<sup>th</sup>.

**11. Adjourn:** *Robbins/Marx motion to adjourn at 9:30 p.m.*

*April D. Goeske*  
Clerk-Treasurer