

# PLANNING, RESOURCES AND DEVELOPMENT COMMITTEE PUBLIC HEARING

February 27, 2012  
County Board Room – Administrative Center  
6:00 p.m – 7:50 p.m

**MEMBERS PRESENT:** Donald Meyer, Marilyn Pedretti, Tina Wehrs, Don Bina, Bev Mach  
**MEMBERS EXCUSED:** Bob Keil, Dennis Manthei  
**MEMBERS ABSENT:** None  
**OTHERS PRESENT:** Nathan Sampson, Jonathan Kaatz, Michael Harding, Charlie Handy, Annette Kirchhoff (Recorder)

## CALL TO ORDER

The Recessed Meeting and Public Hearing of the Planning, Resources and Development Committee was called to order by Donald Meyer, Chair, at 6:00 p.m. Let the record show that this meeting is called in full compliance with the requirements of the Wisconsin Open Meetings Law.

The procedures for tonight's meeting were explained to those gathered. This meeting is being recorded.

**ZONING PETITION NO. 1884** Robert E & Debra A Allen, W3676 Fennigkoh Road, West Salem, WI 54669. Petitions to rezone from the Transitional Agriculture District to the Agriculture District "A" 19.63 acres described as the SW of the SW of Section 3, T16N, R6W, EXCEPT Lot 1 of Certified Survey Map Volume 2, page 186 and EXCEPT the East 548.50 feet, for one continued and one future residential use lot. Tax parcel 7-55-2 and part of tax parcel 7-55-0. Town of Hamilton.

**Appearing in favor:** Robert Allen, W3676 Fennigkoh Rd, West Salem, WI 54669. Just sold part of our farm and need to rezone because we don't have enough acreage to stay in that zoning classification.

**Pedretti:** Can you explain what part you sold and what part you are on?

**Allen:** We sold the forty there (refers to map) and then that next parcel there, that one right there.

**Pedretti:** So the two parcels that say Allen on them? Those are the ones you sold?

**Allen:** Yep.

**Pedretti:** And they're staying as is? And you want to rezone, I'm just getting this into the record so it's officially in the record.

**Allen:** The next one over then, the piece that one right there (refers to map) all except that one that says Sweet on it there. There's a piece that's about three (3) point some acres that's cut out of there.

**Pedretti:** So, you're living in the house that's W3676, correct?

**Allen:** Yes.

**Pedretti:** That is your house?

**Allen:** Yes.

**Pedretti:** So, you're staying on and you just want to rezone in order to be able to continue and not be a non-conforming.

**Allen:** Sure.

**Pedretti:** And, that lot number two (2) is a possibility in the future of selling?

**Allen:** Yes.

**Pedretti:** That's what you're looking at?

**Allen:** Well, sell or build, I don't know what the situation. Depends on how good we are on our (inaudible). Get something on one level possibly. We'll see what happens in the future.

**Pedretti:** Ok.

**Sampson:** I just wondered Mr. Allen, the easement; there was some question about the 66-ft wide easement up to that lot two (2). We couldn't find in the CSM description that there was, that was an exclusive easement....

**Allen:** I'm going to get that changed on the deed. I couldn't find it on my deed either so I called Claire up there to see if he could find it. Well, he couldn't find it either, so we got to digging around. Well, I found it on the original Land Contract I had. It's noted in the Land Contract that it is an exclusive ag easement

coming up there is what I have. So I'm going to get that transferred onto my deed. So that'll be on there and I assume Claire will do the same thing then too.

**Sampson:** Thank you.

**Bina:** Evidently this lot number two (2) that you have must have been rezoned for a house way back when sometime. Are you going to keep that as the same size lot then? If you own this whole parcel yet?

**Allen:** Yep.

**Bina:** If you build a house up there you may want to change the size of that lot depending on if you want to sell the other part where you live now. So, I guess that is in the future but..

**Allen:** Yeah, I guess I hadn't given that too much thought. I'm just taking one step at a time.

**Bina:** But, it is a separate lot from your parcel now that we're going to take action on tonight?

**Allen:** Yeah. When we originally bought the place from Irvin Labus we bought the property from them and he had this, he lived in, he built the house and lived in the upper one where Sweet's is and he had that lot plotted out. He had two (2) lots plotted out at the time and it's always stayed that way. They're platted lots.

**Sampson:** Just one more, not really a question but a comment, this is a situation where we are reducing the acreage down below that of a farm and the detached accessory building issue comes into play again which I think we've spoken with Mr. Allen about applying for a variance.

**Meyer:** Do you understand that?

**Allen:** Yeah, we have to apply for a variance. Is that another meeting?

**Sampson:** That would be a hearing before the Zoning Board of Adjustment.

**Allen:** Ok. I'll have to apply for that then.

**Appearing in favor:** Rich Schomburg, W3679 County Road C, Chairman, Town of Hamilton. We brought this before our committee and they approved it. And, the Board approved it. And, I talked to Claire Sweet on that so called easement there and he pays taxes on that so, I mean he owns it the way I look at it. Now, he should probably put a deed restriction on if he wants to keep it. I don't know what's the procedure on something like that. He owns it and pays taxes on it. I'm kind of confused on what he should do.

**Meyer:** Nate do you want to respond to that?

**Sampson:** Well, the legal description that we have for the CSM lot number 2 states that that parcel is together with a 66-ft wide easement and it doesn't explain in the CSM or in the legal description that it is exclusive to an agriculture easement use or any other exclusive..

**Schomburg:** So he should probably put a deed restriction on it or what would be the solution?

**Sampson:** That may be a question for an attorney because I think the legal description with that lot number 2 already authorizes that easement.

**Schomburg:** Well, I know Irvin when he put that lot up there, when he built his house originally where Sweet lives right now and that was one of the things that Sweet wanted, was to be away from everybody and not have any neighbors at that time. That's why it got in there I think when they bought it. Mr. Sweet had trouble with neighbors on Gills Coulee that time and that's why he moved up there to get away from some problems. So, he really wants to keep that as his own. So, I don't know how he's going to do it but that's just one of the questions I need to know.

**Handy:** I think access to any of this, if this zoning is approved, can be done a couple of different ways. That's really not something that we can solve here tonight. The debate here is whether this should be rezoned or not. The access can be figured out later because the Allen's have that frontage along Fennigkoh Road. I guess what I would recommend is that we leave that discussion about the access to the private attorneys to figure out and solve for us and not worry too much about it here.

**Meyer:** Ok. Are you ok with that Mr. Allen?

**Allen:** Yes.

**Meyer:** Ok.

**No one else appearing in favor or in opposition.**

**Correspondence (Sampson):** Mr. Chairman I have one piece of correspondence here from the Town of Hamilton that was addressed to me and dated January 23, 2012 basically repeats what Chairman Schomburg state tonight (read into the record). No further correspondence.

**Staff Recommendation (Sampson):** Staff recommendation is to approve. We found that the planning class was not mapped correctly on this and that will be corrected to a residential future land use planning class. The staff also finds that the continued residential use of the existing farm house is consistent with the comprehensive plan and the recommendation of approval is to the Agriculture District "A" conditional upon the recording of deed restrictions indicating the following:

1. Two (2) residential lots only, one (1) containing the existing residence and outbuildings and the second residential lot not to exceed 1 ¼ acres in area; and
2. Continued agriculture use of the property is allowed.

**Meyer:** Mr. Allen, did you hear all that?

**Allen:** Sure.

**Motion by Bina/Pedretti to approve with conditions.**

**Wehrs:** So, when you say the first condition was one (1) lot with the outbuildings, is there any way we can say this now so he doesn't have to go get a variance?

**Sampson:** Really is a dimensional standard that has to be acted upon by the Zoning Board of Adjustment. We may revisit that in the future at a future date.

**Wehrs:** But not with this specific application?

**Sampson:** Correct. The zoning ordinance grants that authority to the Board of Adjustment to grant relief from that dimensional standard.

**5 Aye, 0 No, 2 Excused (Keil, Manthei). Motion carried unanimously.**

**CONDITIONAL USE PERMIT NO. 852** Chris O'Hearn of Family Radio, Inc., 201 State Street, La Crosse, WI 54601, acting on behalf of Thomas Kendhammer, N3510 Peters Road, La Crosse, WI 54601. Petitions to operate a broadcast radio tower with one antenna as a back-up tower only, on an existing 100-ft. self-supporting telecommunication tower originally authorized under CUP #710 to Airborne Datalink (terminated June 16, 2011), along with an 8-ft x 12-ft wood frame building to house equipment, all enclosed within a 30-ft. x 20-ft fence. Property is a 1.012 acre parcel zoned Agriculture District "A" and described as Lot 1 of Certified Survey Map Volume 12, page 159. Tax parcel 9-1094-1. Town of Medary

**Appearing in favor:** Chris O'Hearn, Chief Engineer of Family Radio, Inc., 201 State St, La Crosse, WI. Essentially we found this tower and we proposed to use it as a backup to two (2) of our FM facilities. I actually didn't notice in the public hearing, this does say one (1) antenna as a backup only. I guess I'd ask if it's possible to modify that to not preclude additional antennas because we would need a means to get our signal to the site.

**Sampson:** I think that modification could be made by the committee.

**Bina:** I'm not exactly sure what you mean by that, could you explain it a little more thoroughly?

**O'Hearn:** Yeah. I actually brought some pictures if anyone wants to look. The top two (2) are what the FM signal, this would be for two (2) of our FM stations.

**Meyer:** Could we put that on the screen?

Break to set up Elmo to show pictures on screen.

**O'Hearn:** Ok, the first three (3) are types of FM broadcast antennas like your Z93 station. We could be using up to three (3) of those mounted to the tower. We would still call that one (1) antenna but there's up to three (3) different pieces to it. And then everything down below it are various means we would use to get the signal from our studios up to that tower or receive signals from where that tower can see it to get it back to the studio building. So, nothing like a big cellular array or anything but certainly more than one (1).

**Meyer:** Alright, did you have two (2) pieces of paper?

**O'Hearn:** No, I just made copies because sure how...

**Meyer:** Ok, that's fine. I didn't know what else you had there. Committee any more discussion on this? Nate you want to hold on to the motion until we get to it or have that done now?

**Sampson:** I had a couple of questions for Mr. O'Hearn if I could?

**Meyer:** Ok.

**Sampson:** Chris, we had emailed and since this is a preexisting tower it doesn't really fall well or situate well within the confines of the telecommunications ordinance. In other words, to retro fit to meet the conditions that are required under that ordinance many things may not apply. One of the questions we had were regarding 28.07 (6) of our ordinance that requires FCC license numbers or registration numbers. I believe you're exempt from obtaining those?

**O'Hearn:** Not entirely, the FCC doesn't really issue license numbers there's call signs but not a license number per say. There are antenna structure registration. If a tower exceeds, generally if it exceeds 200-ft, it's required to be lit by the FAA and have a registration number assigned to it. Because this is underneath that threshold and it's not within critical air space there is no FCC registration number for it. Proposed facilities there would be licensed by the FCC under a call sign under an auxiliary facility I guess, and auxiliary transmitting station. So, I'm not sure if that helps answer that or actually makes it more confusing.

**Sampson:** No, that helps thank you.

**Meyer:** Nate, would you want that in writing from them?

**Sampson:** We have that in a confirmation, in an email from Mr. O'Hearn.

**Bina:** You talk about having this as a backup?

**O'Hearn:** Yep.

**Bina:** So you're not going to be using it all the time then?

**O'Hearn:** Correct.

**Bina:** When and where, I don't know if it makes any difference when and where you would use it but are you anticipating bad weather or when would you use it and why would you use it in certain times and not others?

**O'Hearn:** If our main station goes down one of the proposed stations is an 800-ft tower over in La Crescent and the other one is a 250-ft tower over in Reno. If those were to develop a problem or even regular maintenance we would utilize this tower but because it's so much shorter, we definitely would be a backup – our service wouldn't be the same so we wouldn't ...

**Bina:** Alright.

**O'Hearn:** Thank you.

**Meyer:** Any other questions? Ok, I guess that's it for now.

**O'Hearn:** Ok.

**Appearing in favor:** I'm Mark Kendhammer on behalf of Tom Kendhammer, N3585 Peters Rd, the owner of the property. And we just basically approve to have this approved.

**Sampson:** If I could just ask a question quickly? You are not the tower owner though that would actually be owned by the radio company, correct?

**Mark Kendhammer:** Correct. They just rent the parcel that it's basically built on.

**Sampson:** Ok, thank you.

**Pedretti:** Is there road maintenance with that?

**Sampson:** Road maintenance?

**Pedretti:** To get to the tower.

**Sampson:** That will be addressed in a few minutes.

**Pedretti:** Ok.

**No one else appearing in favor or opposition.**

**Correspondence (Sampson):** I have approval from the town in the form of a copy of meeting minutes from a town board meeting that was held July 5, 2011 in the Town of Medary (read into record). Did not get a copy of the letter referenced in the minutes but the minutes confirm that it was acted upon. No further correspondence Mr. Chairman.

**Staff Recommendation (Sampson):** Staff would recommend approval of this Conditional Use Permit subject to ten (10) conditions as follows:

1. This permit is granted specifically to Family Radio Inc, 201 State St, La Crosse, WI 54601 on behalf of Thomas Kendhammer, N3510 Peters Rd, La Crosse, WI 54601 to operate a backup radio broadcast tower with two (2) antennas on an existing self-supporting tower not to exceed 100-ft in height, along with an 8-ft X 12-ft wood frame building all enclosed within a 20-ft X 30-ft fence;

2. Since this is a preexisting tower, the co-location requirement for additional antennas is waived, but proposed co-location of any additional antennas would require amendment to this Conditional Use Permit;
3. A bond, letter of credit or other suitable financial guarantee in the \$5,000 shall be filed with La Crosse County Zoning, Planning & Land Information Department by the tower owner;
4. Annual reports and the annual reporting fee shall be required pursuant to Section 28.10;
5. This permit is transferable per Section 28.14;
6. The access to this site shall be kept cleaned, maintained and accessible to vehicular traffic in the event of any emergencies;
7. No hazardous materials shall be stored on site other than batteries and items normally found in such facilities such as propane;
8. A sign that lists contact information in the event of emergency shall be attached to the fence;
9. No advertising on the tower is allowed; and
10. The owner of the tower shall completely remove the facility, including subsurface structures and restore the site to its pre-construction state when the structure is no longer used for this permitted use.

**Meyer:** Mr. O'Hearn can you live with all those conditions?

**O'Hearn:** Not necessarily. Do you want me to go back to the podium or do you want me to use this one?

**Meyer:** You can use that one right there.

**O'Hearn:** Ok. I guess I hadn't seen the proposed conditions before. As far as access to the site, that's maintained or not by the conservancy possibly? (Asking Tom Kendhammer)

**Tom Kendhammer:** What's that?

**O'Hearn:** The driveway, up...

**Tom Kendhammer:** N3585 Peters Road. The road belongs to the conservatory but we all have, the Christianson's, myself and the conservatory, have a legal agreement that we all get to use the road and anybody that either of says can use it can use it. So that's access but it's actually once you get to the top of the hill, then they're on my property from the gate on County B up to the top of the hill is actually conservatory land but we have a written agreement to use it.

**O'Hearn:** I guess I'm not sure that it's necessarily plowed or...

**Tom Kendhammer:** Actually, the ones plowing it are C106 – they have the other radio tower up there and they plow it.

**O'Hearn:** So would your condition be the entire access from the public highway or...

**Sampson:** So that can be accessed during any weather.

**Tom Kendhammer:** When you talk to me, I don't hear good so you got to talk loud to me.

**O'Hearn:** Their concern is they need to be able to get to the site in any weather. But I'm not sure how we can necessarily ensure that considering our lease is only.....

**Tom Kendhammer:** You can get to it but you got to get a key to the gate.

**O'Hearn:** They have a key, the fire department...

**Tom Kendhammer:** Oh yeah, the fire department got their lock on there and they've approved it the way it's been so far.

**O'Hearn:** But I'm saying I can't guarantee that somebody would be able to walk up to the base of this tower. A lot of that is just a driveway that we are using. It's well outside of our control.

**Tom Kendhammer:** The Onalaska Fire Department has a lock on the lower gate and they also have their lock on the upper gate and they've approved it. It's been there for six (6) years and they've approved it.

**Sampson:** I guess the condition recommendation is that access road be accessible in the event of an emergency so I guess that's really at the discretion of the committee. I think that's an important thing.

**Tom Kendhammer:** Well I believe the other radio tower, I see their trucks go up there probably once every other week and I've never heard from them that they had a problem getting up there.

**Sampson:** Ok.

**Pedretti:** Ok, so we want to clarify for the record, MVC owns the access basically?

**Tom Kendhammer:** Yep.

**Pedretti:** You will have the right to get to your tower?

**Tom Kendhammer:** Right.

**Pedretti:** So this condition says that, it's not saying who has to keep it clean, but part of the condition is that it needs to be kept clean. You need to work that out with MVC or with the landowners or what have you. You need to be able to have access to this tower.

**O'Hearn:** We don't necessarily need to have access to that tower. I mean we'd like to, but we've understood going into this is that a good portion of the winter months you probably can't get there. I guess I wasn't aware that it was plowed. My concern would be having a condition to our condition, if you will, be that the road be kept open. I would hate to have somebody not plow it and have our use of our site up on top of the hill be in jeopardy, if that makes sense.

**Pedretti:** The condition reads that access is to be kept clean, maintained and accessible. Correct?

**Sampson:** Correct.

**Pedretti:** So, it's up to the discretion of what that means by accessible.

**Sampson:** Accessible to vehicular traffic.

**Pedretti:** Not just a snowmobile.

**Sampson:** It's a vehicle.

**Pedretti:** Ok, thank you.

**Bina:** I guess the question I have, if this tower is only going to be used in case of an emergency with another tower....

**O'Hearn:** Emergency or maintenance work.

**Bina:** Yeah. Then it's not necessarily going to be used during the winter time unless you got a problem with another tower?

**O'Hearn:** Correct. And that would all be remote control.

**Bina:** And, you're right so you don't need to get there and keep the road open because the air waves are what makes it run. The only time you would need to get there is if something went down on the tower.

**O'Hearn:** Correct.

**Bina:** Then you would plow the road. If you would put an amendment on that piece you had there talking about keeping access open, and if you don't need it open, just put an amendment on there that says something like when needed for repair work or something then it would be open so that you wouldn't have to plow it every day of the year because you don't even go up there for anything except sending your signals up there in case you got a problem with another tower.

**O'Hearn:** I believe Zoning's concern is to get emergency personnel up there not so much our access that's our own challenge to figure out. For emergency purposes I understand their desire and I'm not disputing that. I guess I'm again just concerned about our ability to have any control over that.

**Bina:** Well it's an issue that has to be worked out.

**O'Hearn:** We're not the only facility up on top of the hill. I guess that's another thing to point out. There's some unregulated towers up there as well.

**Pedretti:** Do we know this?

**O'Hearn:** They're preexisting.

**Pedretti:** Ok. I'm looking at the number six (6) condition again. Is it unreasonable if we just take out "and accessible" so we say that it needs to be kept clear and maintained? I'm trying to understand what the accessible part is like he said there's not a need to go up there in the winter perhaps.

**Sampson:** Cleaned and maintained for vehicular...

**Pedretti:** I would just say yeah. Whether or not it's accessible in the middle dead of the winter and you have a 3-ft snow fall or something. I'm just trying to understand why it is you would need it accessible? I don't want to put something in danger.

**Sampson:** The intent is to keep it accessible for emergency vehicles.

**Pedretti:** I can understand like a 300-ft tower or something in there and some kind of an accident but a 100-ft tower, I'm not seeing maybe, that kind of a need but is anybody else on the committee seeing that?

**Wehrs:** Yeah.

**Pedretti:** That we would need to have it accessible all the time?

**Wehrs:** Just because, I'm just thinking of maybe like for example, like a kid to think it was interesting to go hiking up there in the middle of winter or like a fire or something. But, it sounds to me like somebody is plowing it now. So, maybe we just need to figure out who is plowing it.

**Mark Kendhammer:** Again, on behalf of Tom, there's another radio tower up on that parcel of property, it's 106, I believe is their call sign, they are more frequent to visit their tower than what these guys would be, they plow the road when they go up there.

**Wehrs:** They plow it when they go up there?

**Mark Kendhammer:** Yeah.

**Pedretti:** Was there a condition on that one when they put that tower in?

**O'Hearn:** They don't fall under the...

**Mark Kendhammer:** That I guess I'm not sure, that's been up there a long time.

**Mach:** I don't know how to word this because it's like we want it accessible but it doesn't necessarily have to be accessible every day of the year because they're using it whenever they need it. So what do you think Charlie?

**Handy:** If you're thinking accessibility for emergencies, there's a lot of vehicles that can access things for emergencies including snowmobiles, quad runners, emergency type vehicles, helicopters are vehicles so if you're thinking emergencies like a kid being hurt or a fire or something like that, there's a lot of vehicles that can get there in a lot of different conditions, so I guess I wouldn't worry so much about this condition as much as, you know, they'll maintain it for maintenance and those types of things which is a lot different access than for emergencies.

**Meyer:** Thank you Charlie.

**Handy:** Are there other conditions that he's concerned about?

**Meyer:** Well, let's get this one done. Nate, would you read what the condition is going to say now? I saw you making some changes there.

**Sampson:** Well, actually with that caveat of Charlie's explanation, is there a real need to change it? Vehicular access is four-wheeler, snowmobile.

**Meyer:** Ok, any other conditions, I hope not, but...

**O'Hearn:** You did say two (2) antennas, I guess I'm...

**Sampson:** Yes, I did clarify that.

**O'Hearn:** I don't know how many. I mean obviously we're not going to deck this thing out but we don't have any equipment or anything to put there. We kind of fell into this deal. I don't know how many it will require.

**Bina:** What is the maximum?

**Handy:** How many do you want?

**O'Hearn:** Is five (5) unreasonable?

**Sampson:** It may be. We don't have any engineer. This is a rebuilt tower I believe?

**O'Hearn:** Yes.

**Sampson:** And, we don't know the, we don't have any engineering studies that would support possible; we don't know we're talking about for weight?

**O'Hearn:** I realize a lot of this is trying to adopt a radio station to an ordinance that's really kind of designed for a cellular company. We're just looking for a little bit of...like I said we don't have an actual plan yet. We got step one was to get the tower because it became available. We obviously don't want to load the tower up to the point of causing a structural problem and we do have consultants and such who can help us with that. We're not looking to do anything crazy but just we don't want to be limited in our ability to utilize this when we do come up with a plan.

**Sampson:** That really should have been part of the application at the on-set. The application we received I think was for one (1) and we didn't have the engineering studies to back up additional antennas. My concern is that we approve something and then something happens and we see a structural failure. I don't have a problem coming in and reapplying with those things if those are proposed additional antennas so the committee can certify that the tower is constructed to withstand that additional weight.

**O'Hearn:** Well the existing antenna that's on there is I believe 80 pounds and an 80 pound single antenna is going to be way more impact upon a tower than us adding five (5) VHF receive whips. As an example of, the existing antenna will come down, that's for the wireless system and so I think that trying to define what is an antenna...

**Sampson:** And these are all things that should have been included in that application also. You know I really don't...

**O'Hearn:** I know you have engineering drawings from the tower with a professional engineer's stamp on them. And on my email back and forth it did specifically say antennas or antenna, a plural.

**Sampson:** In the application we received was to operate a broadcasting tower to be used as a backup.

**O'Hearn:** Correct, a tower, a single tower.

**Sampson:** I guess the number of antenna isn't a deal breaker.

**Meyer:** Well, is there going to be a maximum that he can put up there or...?

**Sampson:** He requests five (5)?

**O'Hearn:** If you're comfortable with five (5), I really can't see exceeding.

**Meyer:** I don't know if...

**Sampson:** We can live with five (5).

**Meyer:** You can live with five (5)?

**Mach:** Should we add what Charlie had said, something about with...what did you say? Approved engineering advice or what?

**Handy:** I didn't say anything on the record. I think if, what he said is it's 80 pounds that's there, five (5) either with an engineer's approved certification or five (5) less than 80 pounds. Either way.

**Meyer:** But the 80's coming off did you say?

**O'Hearn:** Yes, 80 will be coming off and there is some other miscellaneous stuff on there too.

**Meyer:** Ok.

**Pedretti:** So in other words, it's structurally sound up to 80 pounds that we know of?

**O'Hearn:** Thus far, yes.

**Sampson:** So, five (5) antennas not to exceed 80 pounds.

**Meyer:** Is that?

**O'Hearn:** I would say so, yeah.

**Meyer:** Well you're the expert.

**O'Hearn:** It's just hard, an antenna could be a two pound thing it could be 150 pound thing. So, by putting that weight in there, I think that protects you as well. I'm comfortable with that.

**Meyer:** Ok. Mr. Bina, did you have something?

**Bina:** You were working on the issue and I agree with Nate that we should have had something more than what we had at this point and time. But, if you are agreeable to having what we just talked about, I guess my question kind of went away if you're agreeable to that.

**Meyer:** More conditions. Additional conditions you're concerned about?

**O'Hearn:** The annual reporting and fee. That wasn't actually defined in the ordinance.

**Sampson:** It is actually, report is filed every year. Chad from our office is the code compliance enforcement specialist; I think he may have talked with you about that too.

**O'Hearn:** Yes. I have the report and we actually do that on non-fee towers, I guess – our existing towers. But the annual fee I did not find in the ordinance.

**Sampson:** Oh, that's set by the County Board.

**O'Hearn:** Ok.

**Sampson:** And that is a \$500 annual fee.

**O'Hearn:** Wow, can I just ask if there's room for that...?

**Meyer:** No.

**O'Hearn:** No, ok.

**Meyer:** Well, if we do it for you, we have to do it for someone else.

**O'Hearn:** Well, this ordinance is designed for telecommunications; it was kind of a stretch to fall under a telecommunications facility for us anyway. It's really set up for your cellular companies that are using this in a fairly full time basis.

**Meyer:** Any more questions from the committee?

**Pedretti:** Just to clarify, if there's other radio stations out there and they have cell towers, they pay an annual fee?

**Sampson:** They do if they fall under the Telecommunications Ordinance, Section 28 of the Code of Ordinances.

**Pedretti:** Ok. So this is falling under that Chapter?

**Sampson:** Yes.

**O'Hearn:** I don't believe any other broadcast facilities have fallen under this ordinance to date.

**Sampson:** To date. And this is the first broadcast tower that I'm aware of that has been permitted under Section 28.

**O'Hearn:** Correct.

**Pedretti:** Then explain the difference to us please.

**Sampson:** There really isn't a difference as far as what we have to do to generate that annual report request, ownership information. Again, additional antennas that may or may not go on there, we have to track that on a continual basis. The committee might recall the problems we ran into initially on this specific tower as a cellular communication tower when Airborne Datalink had it. And, the bonding wasn't there. There were a number of things and you know we have to track all those things to make sure we don't run into that same situation.

**Pedretti:** And in the future, if radio companies come in and ask for a tower now we'll be charging them under this act?

**Sampson:** That's correct. If they meet the requirements for permitting under the telecommunications section, yes.

**Pedretti:** Thank you.

**Meyer:** If you're putting a tower up for communications or radio, is it a different type of tower?



**O'Hearn:** The ordinance defines a telecommunications facility as a facility that is focused on like consumer wireless devices as opposed to a wireless...

**Meyer:** What I'm saying is one structurally stronger than the other? Are they about the same or what?

**O'Hearn:** Well, the tower is a tower.

**Meyer:** That's what I was wondering

**O'Hearn:** You design it for what you're hanging on it. A cellular company in going to have a many hundred pound array of antennas, kind of triangular shaped generally. They come in all shapes but – yes and no I guess. I'm sorry. Each tower is generally going to be designed for its particular application.

**Meyer:** Nate, did we ever get to recommendations or not?

**Sampson:** We did, I read all ten (10) conditions.

**Meyer:** Oh, the ten (10) conditions. And we've ironed out number 6 and he's ok with the other ones?

**Sampson:** Yes.

**Motion by Bina/Wehrs to approve with conditions.**

**5 Aye, 0 No, 2 Excused (Keil, Manthei). Motion carried unanimously.**

**CONDITIONAL USE PERMIT NO. 853** Michael P and Karla M Stewart, N6796 County Road C, West Salem, WI 54669. Petitions to operate a gunsmithing business to be known as Stewart Custom, LLC, to include firearm repairs, sales, and transfer in an approximately 17-ft x 15-ft shop area that is part of the residence located at N6796 County Road C. Property is a 21.34 acre parcel zoned Agriculture District "A" and described as part of the SE of the NE in Section 11, T17N, R6W, more fully described in Tax Parcel 7-585-1. Town of Hamilton.

**Appearing in favor:** Michael Stewart, N6796 County Road C, West Salem, WI. The gentleman already pretty much summed up my purpose. I guess if there's any questions. I'd like to start a gunsmithing business out of my house. I've already got my state seller's tax, Wisconsin business tax registration and Federal Employee Identification number. The only thing I'm waiting on is my approval from the Board tonight so I can send in my application to the BATF.

**Meyer:** You want to just kind of sum up what you intend to do at your home there?

**Stewart:** Currently, I can work on guns right now out of my house but I can't keep anything overnight. Basically, if somebody brings something in they could leave and go get a cup of coffee but they really have to come back the same day to pick up any firearm. Mainly, the majority of what I do is gunstocks, refinishing and repairing wooden gunstocks mostly. I'm not going to say that's all I'll do; I do have a lathe for barrel work and metal work and milling, stuff like that. So, as far as any general gun repair and gun building, it will all be in federal compliance with the law. Basically what this allows me to do is keep guns on my premises overnight. And, I can also do transfers. Currently like if somebody orders a gun on the internet, they can't be shipped directly to them; it has to go through a federally licensed firearms dealer which is what I would be. At that point I can take in their guns and transfer them to the individual with a background check and everything like that.

**Wehrs:** Just have a question on what your plans are for securing them then?

**Stewart:** I do have a built in gun safe. It's fireproof. It's built into the wall and secure. I don't think I would have to worry about theft; it's bolted to the floor and bolted to the wall.

**Wehrs:** For up to how many can you keep in there?

**Stewart:** It's listed as like a 32 gun safe, realistically it's more like 25.

**Wehrs:** And do you plan to only have that many enough that would fit in that safe and plan to lock them up?

**Stewart:** Well, I have to keep my personal firearms separate from customer firearms so that safe would be designated for customer firearms. I can't imagine ever exceeding the number of guns it would take to fill that. That is all in compliance with federal law. If I do exceed that and keep guns outside of the safe, I would be in violation of the BATF.

**Bina:** Do you plan on putting a sign up for business?

**Stewart:** I do not. If I ever did I would probably have to come back to the County Board and request that and I mean I want to keep it a little bit low profile on the road there. The only thing I would do at this point is put the name on my mailbox.

**Bina:** Ok, because that was a problem with another guy we had a couple of years ago. He didn't want a sign either. You're more apt to have people come in if they know you're a dealer or something and steal.

**Stewart:** Exactly. That's why I don't want it, it's a busy road that I live on and I would just as soon try to maintain as low profile there as I could. Most of my business honestly is going to be by appointment and it's going to be a drop off/pick up type thing. It's going to be a pretty low profile business.

**Sampson:** Do you plan on having any inventory, any firearm inventory for sales on the premises?

**Stewart:** Probably.

**Sampson:** Ok. Any idea how many?

**Stewart:** Probably 10 or 12.

**Sampson:** You mentioned machining too, running the lathe and the mill and that will generate some metal filings and use machining oil to do that, how do you plan on handling that waste?

**Stewart:** Basically the chips or whatever are contained in the, there's a chip tray in the lathe. The last thing I want to do is handle that so you basically take it out, you take it to the scrap. Everything gets recycled and the same with the waste, I mean you take it to the Town of Hamilton, right? The dump there and it's very low, I mean like the waste oil. I couldn't imagine using more than five (5) gallons a year. It's a one man shop. It's not a high production facility.

**Sampson:** Ok, thank you.

**Stewart:** Any other questions?

**Wehrs:** I just have a, I guess this isn't really regarding this but if you have a new inventory of ten (10) to twelve (12), are you required to run the background checks and stuff?

**Stewart:** Exactly, yeah if I buy a gun from Stewart Custom LLC, I have to do a background check on myself. So if I transfer it from business to inventory, I have to do the paperwork, background check, all of that on myself. So it's exactly right, it would be taking in an inventory, anything transferred out, even to myself or a family member, would have to be background checked, would have to be logged in the bound book. Everything is pretty strict with the federal compliance on all that stuff.

**Wehrs:** And you had to get licenses already for that or you're waiting for this before?

**Stewart:** You have to have an established business in order to get the federal firearms license.

**Wehrs:** So then you would have to apply to get the federal license, so this application, if approved, would be contingent upon you getting the federal license?

**Stewart:** The BATF, yes. And basically I can, even regardless of the BATF approval, like I said I can still do gunsmithing business out of my house and I would still be in compliance, it's just that I cannot keep anything on premises overnight which makes it real difficult.

**Appearing in favor:** Rich Schomburg, W3679 County Road C, Chairman, Town of Hamilton. The committee has approved this, our Planning & Resource Committee approved it and the Board approved it and there is very little traffic in front of the house or anything. I recommend you approve it. Thank you.

**No one else appearing in favor or opposition.**

**Correspondence (Sampson):** One piece of correspondence, and again from the Town of Hamilton, dated January 20, 2012 addressed to Sampson and signed by Sara Schultz, Town of Hamilton (read into the record). No further correspondence.

**Staff Recommendation (Sampson):** Staff recommendation is to approve subject to the following eight (8) conditions:

1. This permit is issued for a firearms gunsmithing business that will include firearm repair, sales and transfer known as Stewart Custom LLC and located at N6796 County Road C, West Salem, WI;
2. Hours of operation are from 4pm – 10pm Monday thru Friday and 8am – 6pm Saturday and Sunday;
3. Any outdoor advertising shall be unlit and shall comply with Chapter 33 of the La Crosse County Code of Ordinances;
4. Hot-bluing is specifically not allowed by this Conditional Use Permit. Prior to introducing this process into the business, this permit shall be amended by the applicant through the regular application process;
5. All waste generated shall be recycled or disposed of in a code compliant manner;
6. All firearms and ammunition shall be stored in a secured manner or location in accordance with any Bureau of Alcohol, Tobacco and Firearms issued permit;
7. Any findings of non-compliance by the BATF, of an BATF permit conditions will result in re-hearing and possible termination of this Conditional Use Permit; and
8. This permit is non-transferable.

**Meyer:** Did you hear all those.

**Stewart:** Yes, perfect.

**Meyer:** So, recommend approval with the conditions?

**Sampson:** With the eight (8) conditions.

**Motion by Pedretti/Meyer to approve with the eight (8) conditions.  
5 Aye, 0 No, 2 Excused (Keil, Manthei). Motion carried unanimously.**

**ZONING PETITION NO. 1886** Leon H and Ruth Pfaff, N8694 County Road DD, Holmen, WI 54636. Petitions to rezone from the Exclusive Agriculture District to the Agriculture District "A" for residential development, approximately 14.6 acres of a pending 15.10 acre, three (3) lot Certified Survey Map with proposed lots of 3.78 acres, 5.41 acres and 5.91 acres and described as: Part of the NW of the SE, part of the NE of the SE, and part of the SE of the SE all in Section 14, T18N, R7W. Part of tax parcels 5-1498-0, 5-1501-0, and 5-1505-0. Approximately 0.5 acres of the pending 15.10 acre, three lot CSM are zoned Agriculture District "A". Town of Farmington.

**Appearing in favor:** Leon Pfaff, N8694 County Road DD, Holmen, WI 54636. Here to rezone these. What was done here in the last year was, I put in a road and the town approved the road and as they were approving the road they asked that there be more valuation that the road would create. The object to start with, if you see the existing property, the farmstead that was my, where my father and mother lived. I've owned it for a few years now and what I wanted to do really was to sell the farmstead and in order to there was only one access to that. And also the farmland, the remaining approximately 100, I think it's 157 acres that I own on that side of the road, in order to access the farmland and to sell the buildings, the farmette so to speak, I needed to, no one could really get a loan with a joint ownership of the road. I proceeded to put the road in and then the planning commission up there and then the town board themselves asked that I create more valuation there. So that is the object of creating of those three (3) lots which are, according their plan, they wanted them clustered like that, and what that will do is, Farmington rules are now that for every 35 acres you can have one (1) lot, or sell one (1) lot to a non-family member and this would be all the lots I could sell on that side of the, or on that particular parcel of land that I own. So that was what their object was. To create more valuation off this road. That's why we're here to do that. Did you visit the property, out on the tour?

**Bina:** No, we didn't go out there. We were up there, we looked at the road.

**Pfaff:** I see.

**Pedretti:** So, eight months ago when you were in here and you said that you weren't planning to develop?

**Pfaff:** Right.

**Pedretti:** You just wanted to put this in order to get to the farmette.

**Pfaff:** That's correct.

**Pedretti:** Now you're saying the Town of Farmington talked you into adding on these lots.

**Pfaff:** That's uh, is that in their town minutes, did they, are they specified what the planning commission in those?

**Pedretti:** We'll get to that, I would imagine.

**Pfaff:** Right.

**Pedretti:** I'm just trying to figure out because eight months ago, I mean I'm looking at the minutes and I asked if you were planning to develop and you said no.

**Pfaff:** No.

**Pedretti:** So, I'm kind of surprised to see this come back so quickly as a development but you're saying that the town talked you into that.

**Pfaff:** Yes, they didn't really talk me into it, that was really part of the acceptance of the town road. The town road was put in that way. You can understand that they want valuation in the township also; and what their object was to create valuation. And they wanted the lots in a clustered area such as that off the road. Yes, that's the reason.

**Pedretti:** So your cluster is the 157 acres your allowed three (3) building sites on that 157 so that's taking out your....rights, your development rights?

**Pfaff:** See what I have for sale is the farmette, which I have drawing out, that can vary, but the way I have it drawing out right now is I got it in 20 acres, that doesn't show there. So that would reduce me to a 137 acres. And 137 divisible by 35 would be just a little bit short of 4. So that's what the township said,

that particular, that side of the road, see on the other side of the road it won't affect that side of the road either. But that side of the road, according to the town plan, that would be it for those lots. Or for that farm. If you understand what I'm saying?

**Pedretti:** So you're still trying to sell the farmette?

**Pfaff:** Yes.

**Pedretti:** Which is 20 acres. And there's a little spot between the farmette and proposed lot number three (3) – that's going to go into never never land?

**Pfaff:** No, there shouldn't be...

**Pedretti:** It says Sour Creek Tributary? Between that, (refers to overhead) it looks like existing buildings and it's kind of squared off and there's a...

**Pfaff:** Yeah, that would go with the 20 acres. That's a section forty line is what you're seeing on your map.

**Pedretti:** Ok, so it's all part that?

**Pfaff:** Right.

**Pedretti:** So that would come off the cul-de-sac?

**Pfaff:** Yes, the farm buildings come off the cul-de-sac, that's a forty line what you're seeing there, cutting through there.

**Pedretti:** Ok, so you're talking about four lots coming off this town road, what's now a town road?

**Pfaff:** Well, three (3) lots and the farmette.

**Pedretti:** Right, so that's four (4) lots. I'm counting how many houses will be coming off this road.

**Pfaff:** Yes.

**Pedretti:** Ok. And then the 137 or some odd acres is still going to be farmed?

**Pfaff:** That's all staying Exclusive Ag.

**Pedretti:** There's no plan, there can be no other developing then because that's what the town said. You're clustering them here and that's it?

**Pfaff:** Yes, that was their request.

**Pedretti:** That's all I have for now.

**Meyer:** When did the town tell you that? Before or after you built the road?

**Pfaff:** Well, they don't accept the road the way, I think Don would know that, the town accepts the road after it's put in according to state and county and township specs. And then after you put it in, they accept it or they don't. They don't instruct anybody to do it, but if you put it in according to the plan, their plan, and Berg Engineering done that, and everything was done to specs and it's blacktopped. That's what they done.

**Meyer:** I didn't get it yet. So is that a criteria that you built the road and then...?

**Pfaff:** You build it and then they will accept it. Or, they will accept it, if it's done according to par. (Asking Rich Schomburg, Chairman for the Town of Hamilton seated in the audience.) Is that the way it's done in Hamilton?

**Schomburg:** Yes (rest is inaudible on both recordings)

**Pfaff:** See you don't – you're not accepted and then build it, you build it and then get accepted, correct?

**Meyer:** Did you know when you built the road that you were going to have to do this to the lots?

**Pfaff:** Not necessarily to do that with the lots, no.

**Meyer:** So they dropped it on you later?

**Pfaff:** Well, that was, I can see their point was to, I'm not blaming them, that's fine because if you look at that there's only about three acres of, see the majority of it is non-tillable land. So that's the object again of Farmington's comprehensive plan is to, if you look at the design, the only one which, the one in the front there has about an acre and a half of tillable land on top right where she is there (referring to the overhead). And if you go over to the other one, that's less than two acres on that one and the other one I believe, it maybe says on your sheet, about three acres. The design, well they come off, they all come off the cul-de-sac, which is tillable. They could possibly create, this is just discussion we don't know for sure, but it could create a, if you sell off four of them, the farmette and somebody builds houses on those lots you could create a million dollars worth of valuation. You know if you just figured each one at 250 which returns money not just to the town but to the county, the state everybody.

**Meyer:** Questions?

**Sampson:** Mr. Pfaff, the remaining farmette, you intended to sell off approximately 10 acres?

**Pfaff:** Yeah, I'm very open to that if someone wants six (6) acres, yes, or I could sell 20.

**Sampson:** If I could ask, will that be an object of a future zoning petition?

**Pfaff:** No because that will be, that I believe, you're the boss of that but that can be sold as Exclusive Ag as long as they're not, what would change the zoning on it?

**Sampson:** Under the old Chapter 91, the Farmland Preservation Statute, you were allowed to split off a CSM lot of five (5) acres or less with pre-existing farm residences or farm structures.

**Pfaff:** Ok.

**Sampson:** Without repaying back any of the tax credits that were claimed on that, so there wasn't the requirement to rezone those smaller lots. In 2010, that was done away with, with the working lands initiative. In order to be compliant with the district regulations, that remaining farmette would have to stay on a parcel of at least 35 acres without a rezone.

**Pfaff:** Ok. That's not what we're rezoning now though.

**Sampson:** Correct.

**Handy:** With the town's recommendation the only way to really ensure that the remainder of the farm is tracted as preserved is to put deed restrictions on the remainder. Is that something that you're comfortable with?

**Pfaff:** Yes.

**Handy:** Ok.

**Pfaff:** That was in fact, Charlie; the town board did ask me that at the time, at the town meeting. Yes, I said that's what the town plan is and this one would be virtually at its limit.

**Meyer:** Ok, Leo, I guess that's it for now.

### **No one else appearing in favor or opposition.**

**Correspondence (Sampson):** We have a couple of pieces of correspondence Mr. Chairman from the town, originally from Betty Sacia, addressed to me and dated February 17, 2012. Excuse me, it starts back earlier, I have to remember to that this is email and I have read from back to front. This was dated February 16, again from Town Clerk, Betty Sacia (read into record). There was also an email that I received February 23, 2012 from Mike Raabe to Chad Vandenlangenberg and Charlie (read into record). No further correspondence.

**Staff Recommendation (Sampson):** Staff recommendation is for denial based on the town's recommendation to deed restrict land to one house to 35 acres and the fact that this would be considered contract zoning. Deed restrictions currently, under the existing ordinance, cannot be applied to property that is not the object of a petition as recommended. In other words, it's being sought to rezone property and the county would be asking for something in exchange in the form of deed restrictions on property outside the petitioned area. When a conditional rezone is done the conditions apply for that portion of the property that's being rezoned. Some options would be: wait until the Town of Farmington adopts the county's revised zoning ordinance and that specifically authorizes deed restrictions on property that is not part of a zoning petition; or number 2, reapply and include the property to be deed restricted as part of the rezone. Exclusive Agricultural land proposed to be deed restricted could be rezoned to the General Ag district making it part of the rezone petition and then deed restrictions to that property rezoned to the General Ag district would not be considered contractual zoning. Both options would require withdrawing the petition and reapplying, unless a year waiting period went by.

**Meyer:** Did you hear all that Leo?

**Pfaff:** I think I heard it - I'm not sure I understand it because when was this, this was not explained to me before, was this in communication with the Town of Farmington or where did you get this information? Or where did this come from?

**Handy:** Leon, when we received your application, this information was not anything we had; we got this information once we got the correspondence from the town. And, dealing with the deed restrictions on the exterior parcels is not something that was in your application so there's no way we could have relayed this to you anytime before tonight staff recommendation to the committee so that's why. The real question is, if you're willing to deed restrict that exterior property, it would really take you making a new zoning request that included all the property that would be deed restricted.

**Pfaff:** And that would include everything I own? Or, that particular....

**Handy:** Well we'd have to sit down.

**Pfaff:** ....side of the road or....

**Handy:** We'd have to sit down and do the math.

**Pfaff:** Do the math of a....

**Handy:** 35 acres.

**Pfaff:** Ok, the deed restrictions, I have already accepted the deed restrictions from Farmington, but the deed restriction on that particular piece of property then or where were you talking about? My other properties that I own like across the road and the other farm I own in Mindoro?

**Handy:** You could choose whatever acres you want to choose that you own with a legal description that equals the amount that the math would require. So depending on if there's three (3) houses or four (4) houses, and again that's where Marilyn's question before was very important. You know the existing farm house etcetera. And then the size and shape of those deed restricted parcels. You have a couple of options, you can continue with this request as is and take the risk of approval or denial, you can withdraw it and then you don't have that risk. If it's denied you have to wait a year before making the same rezoning request. If you withdraw it, you could come back in as quickly as you can get the process completed to the get an application to us to apply for rezoning of those areas that are necessary to do this based on the math of one per 35.

**Pfaff:** So what you're saying is that by, I would take the deed for that property over there, the 157 acres on that side of the road and take it to who?

**Handy:** You would actually add a recorded deed restriction to that property, whatever property is defined by that math.

**Pfaff:** And that would be taken to the....

**Handy:** That would be recorded in the Register of Deeds Office.

**Pfaff:** And that was not brought to my attention until today.

**Handy:** Yeah, and we didn't know about it until we got the response from the Town of Farmington. We wanted to clarify that response with Mike Raabe, the Plan Commission Chair, we did all that. Once that was done, you can see the late date, you know as far as what we got from the town so this is the earliest we could really discuss it with you.

**Pfaff:** This is the first that I have heard of it also.

**Wehrs:** Does he have to pay then, again if he withdraws? I just have a problem with that, that's not fair because he did not, I mean this what we want people to do is to develop in clusters, which is what he's doing and we're not giving him any, and it sounds to me like he would have come in with that had we told him that in the first place.

**Handy:** The application that's in front of you though is not consistent with the comprehensive plan and he was told that when he made that application.

**Pfaff:** I was?

**Wehrs:** It sounds to me like he would have come in with that....

**Pfaff:** I was?

**Wehrs:** ....full parcel and he's willing to do the deed restrictions if we would have told him that before he brought us the application.

**Pfaff:** Correct.

**Wehrs:** So we're really punishing him for something that doesn't make sense, it doesn't make sense to me that we'd have him pay again to come back in when he's saying he would have done that in the first place if we would have asked him to do that. I mean I think that sounds to me like a communication breakdown somewhere. Maybe under nobody's fault, just bad timing probably it sounds like. The timing got a little bit close but that doesn't make sense to me to make somebody pay again.

**Meyer:** If he withdraws, does he pay again?

**Sampson:** Yes.

**Meyer:** And, if he doesn't, he's got to wait a year?

**Sampson:** Well...

**Bina:** If he gets denied.

**Wehrs:** If he gets denied.

**Sampson:** It's at the discretion of the committee.

**Pfaff:** Could.....

**Bina:** You talked about having 35 acres; you've got three (3) separate farms, could he use any of the acreage off of any of those three farms to qualify for what he's asking for? It don't necessarily have to be contiguous with the lots evidently.

**Handy:** All of his farms are contiguous, they touch each other so he could use acreage from any of those farms.

**Bina:** Ok. Then I got the same kind of a problem as Tina because somebody should have told you something, someplace and it should have been either in the town or in the county. And if you guys at the county just got this information all put together, then I would probably make a motion to....

**Pedretti:** I have more questions?

**Bina:** Pardon.

**Pedretti:** I have more questions.

**Bina:** Well, ok, I was just going to give you my idea that maybe we should hold this over for thirty (30) days and let Leon complete a plan and bring it back next month. Because I have a problem with zoning to keep getting money out of the people who are asking. They got to be in the system and they got to do it right, but nobody ever told him how to do it evidently and that's the problem.

**Pedretti:** Ok let's clarify. The current Comprehensive Plan for the Town of Farmington says Exclusive Ag. So, Leon you saw the map when you did this application so it says Exclusive Ag?

**Pfaff:** Yes.

**Pedretti:** Ok so you knew that. Town of Farmington wanted you to cluster, but I believe the Town of Farmington was doing was kind of a preemptive zoning because that would be under the new zoning code.

**Sampson:** Correct.

**Pedretti:** However, you're stuck between the current code and the new code. And this is called conditional zoning and we can't do that under the current code that's where we're stuck and that's where the communication might be. But you were told what the current Comprehensive Plan was. I mean you saw the Comprehensive Plan, it's Exclusive Ag. So when you say you weren't told I just want to make sure we're on the same page. What Farmington is doing is going with the new code, which is great, and cluster farming or cluster developing on a farm with a base tract, what you're talking about, is exactly correct under the new code. The problem is how do we pass that today? Even though we're using the old zoning code for that township, that's the question.

**Handy:** There is a way that he can do it without paying a fee.

**Meyer:** Let's hear it.

**Handy:** He can work with the Town of Farmington as they do their town wide zoning map amendment when they opt in to county zoning, they can amend the parcels exactly how he wants without any fee. Doing that town wide map amendment, so if he waits for that process, he has the ability to do it without a fee. And that's exactly what we laid out in option number two is waiting for the new zoning ordinance to go into effect is a way he can do it without any additional fees. Now that timing may not work with his schedule as far as developing. But as far as this petition that's in front of us, that petition is very specific and went out as an advertisement in the paper and the notices to the town, to the residents who are within 300-ft etcetera, etcetera. That's where your fee comes from. This is not revenue for our department; this doesn't even cover the cost of what it does to do a zoning permit. So if we do a new application, which is what this would have to be, and to correct something you said before, we can do conditional zoning, we can't do contract zoning. Contract zoning would ask him to do something outside the limits of the petition and that's what the Town of Farmington wanted him to do. It's a creative idea, it's in the new ordinance, we are able to do it in the new ordinance, but we're not able to do it in the current ordinance.

**Meyer:** Can we go back to what Mr. Bina had brought up? Delay it for thirty (30), I was thinking sixty (60) because I know how long some of this stuff takes. Can we delay the whole thing for sixty (60) days? So Leo could get his arms around this stuff?

**Handy:** Delaying it is not going to help because this permit application, as is drafted, is for the legal description for those three lots. That doesn't do us any good. We can't apply those conditions to the 35 acres times three without changing the petition. So deferring it or delaying it doesn't do anybody any good. If you approve it, then he doesn't have to pay another fee. We're recommending not to do that. But, if there is anything else involved, any acreage outside of what's petitioned tonight, it has to be a new petition.

**Meyer:** If we approve it with some of these things as conditions?

**Pfaff:** Yes that's what I would suggest.

**Handy:** Adding the conditions makes it contract zoning. To any property outside the boundaries of the application that's in front of you tonight.

**Wehrs:** First of all, I appreciate you bringing that up that this is not, that we're not making a revenue stream on this, but it's still making somebody pay for it. It's still income out of someone's pocket and that's not fair. I mean to me, on this particular, you know being stuck in the middle kind of petition. So the contract zoning is just completely illegal you just can't do it, there's no way around it? If we approved it, there's no suggestion, recommendation that he comes back with the rest of the parcel so we can deed restrict it or are you guys telling us all the options or just recommended ones?

**Sampson:** Those are the options as we see them.

**Wehrs:** Otherwise, our other options are we approve this, we don't approve this and he then can go put, he can go pick 35 acres and start selling off 35 acres and putting one house in between them, which is

exactly what we don't want. Which this is what we want, I'm just struggling with the fact that he's going to have to pay again and this is what we want, this cluster zoning to look like so...

**Sampson:** And if I could go on record with the process through this – I was contacted by the surveyor approximately a week before the deadline and the surveyor was advised of the inconsistency with the comprehensive plan, Mr. Berg.

**Wehrs:** So even you guys didn't realize probably that this was going to come this close and that the town was going to recommend that and then it's actually contract zoning and we're not allowed to that. So even you guys got caught in a time spot so I mean, I guess we're saying we expect everybody else to know everything right away about our new zoning and all this, but we're not helping them to know that.

**Sampson:** We have to apply the ordinance that's in effect at this time and we tried our best to inform the petitioner and the surveyor that this was not consistent with the comprehensive plan.

**Wehrs:** So you recommended to him that he wait, back then?

**Sampson:** Or to amend the plan.

**Wehrs:** Or to amend this application?

**Pfaff:** Excuse me, this was never brought to my attention. You talked to Mr. Berg about this? And when was that?

**Sampson:** Approximately a week prior to the deadline of filing the petition.

**Pfaff:** A week ago now, you mean.

**Sampson:** No, a week before the deadline. Which would have been approximately a month ago.

**Pfaff:** I was never made aware of that by anyone. And when I was in to see Nathan {Jonathan}, nothing was ever brought to my attention. There's no way you can get, I can get that deed restriction put on there if you so desire, that would be no big deal, I have no problem with it. If you can put it down as a condition, but you say you can't put it down as a condition but I would be more than willing to do it because I understood that particular parcel that side of the road is done. I knew that. But I didn't know that there was any problem here because everybody assured me that this is what you want.

**Pedretti:** Ok, but just to clarify, Mr. Berg, who knows there are different town plans, comprehensive plans, he's aware of these things; he certainly should have relayed that to you. And that is unfortunate he did not if that's the case. Question, on these three, that is the actual zoning for tonight, the rezone for tonight, these three parcels, that's all we have under the rezone tonight, if we were to approve them, is there a way that the town can guarantee that those three then would count towards the base tract once they go to the new zoning code? There's no way? So then when it comes to the base tract he's got a whole fresh pallet? Thank you.

**Wehrs:** Leon, do you have time restrictions on this, is there, have you already....?

**Pfaff:** I virtually do have one if not two of them sold and this is what the township wanted to do, is get going. One of them was actually at the meeting there, one of the prospects people that wanted to buy one but. I think everybody, including yourselves are a bit surprised by this. I am – I don't know what to say other than I'm more than willing to do it if I can put it on a condition, put it on a deed and have it done before County Board meeting if you want it done.

**Wehrs:** We were saying that if; I guess you weren't objecting to paying the fee again, I was.

**Pfaff:** Well.....

**Wehrs:** So if you're saying you're willing to pay the fee again, you should withdraw your application. I'm not telling you what to do but if you're willing to pay the fee again and this is what you want and you have lots sold that's what I would do.

**Pfaff:** When would it be acted on, would it be...?

**Mach:** That's my question, if he withdraws

**Meyer:** Oh, Marilyn's next.

**Mach:** Oh, I'm sorry

**Pedretti:** Go ahead.

**Mach:** How much time is needed for the process to start over again?

**Sampson:** What's the next deadline Jon?

**Kaatz:** The next deadline is March 9, for April 2<sup>nd</sup> public hearing and the County Board would meet April 17<sup>th</sup>, I think.

**Pedretti:** I guess I'm surprised this is coming back. You say your surprised at all this, I'm surprised this is coming back so quickly when just less than a year ago you were here and said you weren't going to develop so, I think we're all surprised by how quickly this is happening. And yes, we're in between two different zoning codes and we need to get a picture of this. I know that at the Town of Holland when we do these types of things, you don't build a road first and then plan a subdivision. That's just the usual route, you plan a subdivision, you get the approval from the town, the county then you go ahead and do



the infrastructure. So you don't waste that money if they aren't going to approve it. So it feels like we're going backwards. And I'm struggling with this, you say you're surprised, I'm struggling with the fact that we have to kind of catch up when it doesn't feel like it was done in the right order. I think this cluster thing is fantastic, this is exactly what we're looking for, Tina's right, this is what we want. Under the new zoning code it would be a piece of cake right now. And so that's where we're struggling.

**Pfaff:** When does the zoning code take effect or whatever? I mean if it's in, it's in and if it's not it's not. Are we in between right now and we don't have a code?

**Sampson:** The second reading of adoption was by the County Board on January 19<sup>th</sup>, the notice of adoption went in the paper January 30<sup>th</sup>. The towns have twelve months from that January 30<sup>th</sup> date to either opt, choose to stay out of the new code and adopt their own, choose to nothing or do nothing and at the end of twelve months there's no zoning ordinance in effect. So until a town adopts the new zoning code the old one remains in effect.

**Pfaff:** And which one are we operating under. Now here now, which one are we operating under on this question here? Are we operating under the old one?

**Sampson:** Correct.

**Pfaff:** And the problem with the old one is?

**Sampson:** The problem....

**Pfaff:** This would be accepted under the old one.

**Sampson:** The problem under the old one is that the town has recommended deed restrictions on acreage that isn't part of the rezone petition.

**Pfaff:** The old one would say that?

**Sampson:** The old one didn't allow that. The new one allows it specifically, the old one, by case law standards that's considered contract zoning.

**Pfaff:** This is considered contract zoning?

**Sampson:** It would be if the committee placed deed restriction on property that's not the object of this zoning petition. For example, they could deed restrict any or all of those three lots to say one single family dwelling and no further subdividing but they can't say that the balance of the 35 acres to the north and west of lot one (1) can be deed restricted because that isn't the object of the rezone.

**Bina:** You didn't ask for the 35 outside the area, so you're illegal because that would be contract zoning.

**Pedretti:** I'm just thinking of maybe one more option is, we have done this with some others, is to approve this conditional on the town changing their comprehensive plan and then that has to go through that process. But it seems like the faster and easier route is wait for the town to adopt the new zoning code. I don't know how long it takes them to change their comprehensive plan. That's the only other option at this point that I can clearly see to do this. The same rules that we've been giving everybody else for rezone is you have to follow the comprehensive plan and it has to be consistent. And it would under the new zoning code. Work with that whole base farm tract part.

**Sampson:** The other option is to come in with legal descriptions for the balance of the Exclusive Ag property that he would deed restrict. Rezone that from Exclusive to Transitional Agriculture and then that could be deed restricted. It could be considered part of the zoning petition and we can kind of do an end around on meeting the same thing at that time. But unfortunately, what the town has recommended would be considered contract zoning in today's zoning ordinance.

**Wehrs:** I'm just really struggling with that we're all on the same page with where we want to be – the town, Leon, us and we're letting some paperwork and some bureaucracy right now get in the way of common sense and it's just frustrating that we can't think of way to make this work.

**Handy:** We certainly share that frustration. I mean we have plenty of work to do as a staff, but this is necessary to protect us from law suit. If we take out contract zoning, and somebody comes in opposed to one of these three lots, which anybody could be, they could and would have a decent case to take us to court. And so we have to be protected, we have to protect our citizens.

**Wehrs:** I understand that, but is this our responsibility because of timing or whatever. I guess Leon hasn't said that he's not going to come back in and that he wouldn't pay that and that wouldn't withdraw and come back in April but have we ever done that, where we waive the fee before? Because it's our timing issue.

**Handy:** You've talked about it a few times and your corporation counsel has recommended that you not do that.

**Pfaff:** I have one more question. If I withdraw it then, I don't need to go through the township again, all I do is get the deed restrictions, I don't have to go through the town process again?

**Wehrs:** Even with their recommendation that they already gave?

**Bina:** You'd have to have a new plan.

**Meyer:** Let him finish.

**Pfaff:** When you say I'd have to have a new plan, where are we starting from then? Charlie? Just take the deed to the register of deeds and put that on there or how, what's the procedure? What would I do if I wanted to do it next month?

**Sampson:** We need a legal description of those properties that the town would refer to as being deed restricted Mr. Pfaff.

**Pfaff:** Ok.

**Sampson:** Because those would then become part of the petition to rezone.

**Pfaff:** That would be the deed.

**Sampson:** That would be a legal description for the remainder of what you want to rezone so you would rezone CSM lot number 1 and possibly some other legal description of Ag A property to make up the balance of the 35 acres and that additional property then would go from Exclusive Ag to Transitional Ag and could be deed restricted.

**Handy:** Let me finish the thought. What you would basically do is come in, or Mr. Berg and yourself come in which is what I would recommend, both together, we would work with you to prepare an application. It would be a brand new application request for rezoning. That brand new application would then go on our docket for the next meeting. You would take it to the town of Farmington and they would decide if they need to act on it again or not because it is a new application for rezoning. And I would assume that that would pretty easy because it would be meeting their standards but you would want to make sure of that. We can't guarantee that. So, the process would be, come in – get the new application filled out and applied for – get over to the town and ask them their opinion on what you should do with their meeting schedules and then come back to our April meeting with the request for rezoning based on that new application.

**Pfaff:** Their meeting is the first Tuesday so that will be what, the...2<sup>nd</sup> or no...

**Pedretti:** March 6<sup>th</sup>

**Pfaff:** March 6<sup>th</sup>?

**Meyer:** Can you do it that quickly?

**Pfaff:** I doubt it. We'd have to go back to the – we'd have to go through the entire procedure. Now when you say that would you rezone those, if I took those 20 acres, you're saying I'm going to have to rezone how many acres?

**Bina:** 35 times three (3).

**Handy:** That would be something I think we should talk about at the desk Leon. There's a number of different things of math that we'll have to do and it's going to vary on what you want to do. We talk about that here tonight we'll be here another hour. But I'd recommend that you come in, we talk about the math, we figure out how many residential parcels you want, how much ag acreage and where and we'll look at the legal descriptions and make sure it works out but let's look at that in the office. You can estimate it's roughly going to be 35 acres per residential parcel.

**Pfaff:** Well that changes it, the problem that is that it changes the tax structure on the property considerably because I'm going from Exclusive Ag on the farmland, which is Exclusive Ag, which I am farming exclusively ag, and I'm going to go to residential property on 105 acres?

**Handy:** Your remainder that would be deed restricted would be use value assessed.

**Pfaff:** It would still be under Exclusive Ag?

**Handy:** Or Transitional Ag and either one of those is use value assessed.

**Pfaff:** And also available for farmland preservation?

**Handy:** Yes.

**Pfaff:** What does the committee recommend I do?

**Bina:** That's your decision.

**Pfaff:** It's my decision?

**Pedretti:** Well I think this is one of those instances where we're all learning from it, the new code is going to be absolutely fabulous, and we all can see that coming, I think that the Town of Farmington was trying to look at the new code and do what the new code was. I would have a hard time voting to rezone these three parcels without it somehow being contingent upon the base tract and we can't do that tonight. So I struggle with that. When we have people come in the Town of Holland again, there's a certain process to go through and it's unfortunate that there was little break down in communications somewhere along the way but I would not vote for it tonight. It would be your gamble whether you wanted to have some sort of a motion here tonight or whether you want to withdraw.

**Bina:** You asked for opinions? My opinion would be don't make rash decisions, talk to Mr. Berg, if you and him decide you want to start all over from scratch that's your decision to make. Then call the staff and tell

them you want to withdraw it and start all over. If you don't want to do that then you and Berg figure out what you might want to suggest. It's up to you, you're the boss.

**Pfaff:** I have to make a decision tonight and it looks like I'm going to be withdrawing at this point because it doesn't look like it's well – I guess that's what I'll have to do because this looks to be like there's no debating the issue. The staff has said that – they're working with one plan and Farmington is working with the new plan and your working with the old plan more or less right now.

**Bina:** But it doesn't take anything to talk to Mr. Berg first. He's the guy that's putting it together for you.

**Pfaff:** Yes he did, I was in good hands. And I'm sure Mr. Berg didn't really understand it either. I suppose to make your life easier Don, well I'll withdraw.

**Meyer:** This isn't my life it's your life too, I can see you struggling up there myself – who told you what – what should I have done and...

**Pfaff:** All I did was follow the procedure more or less.

**Meyer:** Well...

**Pfaff:** Well, same way with Marilyn's comment that that's not the way town roads are done, this is the way I was instructed that it was done.

**Meyer:** Let's not get into your road.

**Pfaff:** No, but it's the same issue.

**Wehrs:** I guess this is just opinion too, but I think all of us would take your word for it that you were not going to develop the rest of that and I would have been ok voting and believing you. You seem sincere on that but another thing is that you're in the developing business now so I mean this can just be part of your cost of doing business and the reason you have to rush through this and pay again is because you're trying to help those buyers out by getting them into their house quicker so you can maybe pass on a little bit of the extra cost but in the future I think all of us are having a hard enough time getting our hands on it and we worked with it for how long. I strongly feel we need to really, I mean Leon's on the County Board, he deals with it and there are people that don't work with this everyday and we need to remember that and we need to remember how difficult it is to grasp all this stuff. I mean it really is if you never have heard of this stuff before, it's really hard to understand. So I'm just emphasizing that we really need to try to keep the communication open and I know we do, we try our best but it's difficult and it's tough in these situations but I hope you pass on a little of that cost to the buyers.

**Pfaff:** I'm totally blindsided by this.

**Wehrs:** But it's only two months Leon. At least, you know in two months it should be done and

**Pfaff:** We'll see if we can get it on the March 6 meeting.

**Wehrs:** Yeah, you can do that. I just hope we work really hard with him so we can speed it up.

**Meyer:** Ok, Leon has said he wanted to withdraw.

**Mach:** I just was going to say, I think it's a wise idea to withdraw and work through this and hopefully it can be done fairly quickly. Do we need a motion then if he is withdrawing?

**Meyer:** Yes.

**Motion by Mach/Pedretti to accept withdrawal of Zoning Petition No. 1886.**

**5 Aye, 0 No, 2 Excused (Keil, Manthei). Motion carried unanimously**

**Motion by Pedretti/Wehrs to adjourn at 7:50P.M.**

**5 Aye, 0 No, 2 Excused (Keil, Manthei). Motion carried unanimously**

Hearing adjourned at 7:50 p.m.

*Approved 4/2/12.*

*Annette Kirchhoff, Recorder.*