

MINUTES OF THE JOINT TOWN OF HULL BOARD,
AND PLAN COMMISSION, COUNTY OF PORTAGE WI,
MEETING HELD ON WEDNESDAY MARCH 2, 2011

Unofficial

1. Call to order at 6:30 p.m. by Chairperson John Holdridge at the Town Municipal Building, 4550 Wojcik Memorial Dr., Stevens Point WI 54482

Present: Chairperson Holdridge, Supervisors Dave Pederson, Dave Wilz and LaVerne Syens; Plan Commission Members Shelly Binder, Bob Bowen, Bob Enright and Al Stemen; Portage County P&Z Staff, Jeff Schuler Director and Tracy Pelky Assistant Zoning Administrator

Excused: Supervisor Mel Bembenek and Plan Commission Members Al Stemen and Jocelyn Reed.

Others present: John Oberthaler, Tiffany Broecker, Dan Hebbe, Jerry & Teri Kozickowski and their attorney Matt Fleming of Madison WI.

2. Citizens wishing to address the board non-agenda items. Agenda items are for discussion with possible action. (This opportunity for citizens to ask questions, express opinions is a 21st Century version of the opportunity citizens had in historic New England town meetings.) Current Wisconsin law requires government action cannot be taken until a topic is placed on the Town Board agenda and published 24 hours in advance of the Town of Hull meeting.

No non-agenda items.

3. Discussion of the decision of the Portage County Planning and Zoning Committee at their meeting on Tuesday February 22, 2011 – Modification request of Chopper Farms LLC, David Firkus, Michael and Marie Gawlik, Daniel and Kelly Hebbe and Lance and Tiffany Broecker to construct a cul-de-sac greater than 1,000 feet in length.

**Note from Clerk Wolle – please review the maps when reading the minutes:
Map 1 – As proposed by developers and presented to P&Z Committee
May 2 – Update following February P&Z Committee meeting**

Jeff Schuler, after a considerable amount of time at the Portage County Planning & Zoning Committee meeting, there are 5 committee members however one was absent

- ✓ Initial discussions
- ✓ First vote taken was to postpone for one month, there seemed to be some lingering issues, that motion died 2 to 2
- ✓ Next motion was to approve as proposed – that motion died 2 to 2
- ✓ There was a recess and an opportunity for parties involved to meet in the hallway and discuss the possibilities for this as at that point in time it was not moving forward with all of the work that was done at that point, it was no
- ✓ Ultimately this was the compromise that was brought back to the committee and voted on – the 3 basic parts are:
 - Cul-de-sac as originally suggested
 - Section from the cul-de-sac to the east, to the Kozickowski property, also included as a dedication

- As previously discussed to the west of the northern extended road that would be designated with dotted lines as reserved for future public road, not as a dedication, but as an idea of where a future road might go.
 - The purpose for that is if the owner were to build anywhere around that area maintain a property setback, so if someday a road would go in the building constructed would not be in the way.

Bob Bowen, please comment on the no votes. What were their reasons for opposing the request?

Schuler:

- ✓ The first no vote was because they did not want to put this off for a month because it was the opinion of the people in attendance that we don't really think a lot is not going to change if we talk about this further.
- ✓ Some people felt there should be time and the others said no I don't think we need to take more time.
- ✓ The opposing vote for the first postponed voted, voted to approve with two other people saying we don't think is ready right now because of the issues.
 - There were never votes against the project but the final details; there were some questions that weren't resolved.
- ✓ The third vote was the compromise which the committee felt inclined to approve plan but there were some issues that prevented them from unanimously or majority approving it as was originally proposed.

Bob Enright, was it determined that it is possible to build a road there?

Schuler, it is a devise that is used in planning to try to say you can run that road that far north and you like to think that in the future there may be possible ways to create a larger network, access back to a larger road, etc.

Dave Pederson, is dedicated correct on the map?

Schuler – yes to the east.

Holdridge, in regard to the dedication “final acceptance of road right-of-way” is subject to Town of Hull approval.

- The cul-de-sac at the east end of existing Firkus Road Hull agreed to put that in provided four landowners contribute land – three have committed and we are still trying to get the commitment from the fourth.

Schuler, the dedication is being proposed and is not part of P&Z Committee – that was part of the negotiations by parties involved.

Tiffany Broecker, the map as it reads is not as understood at the P&Z meeting, the dedication east from the cul-de-sac appears as though the four parties would be agreeing to build a road heading to the east and that was not my understanding of the agreement. The land going east would be set aside. The only portion to be built at this time is the road going north (center of Oberthaler twenties) from Firkus Road ending with the cul-de-sac.

Schuler, this has nothing to do with the construction of the road it has to do with the extension of the road right-of-way that will allow the road to be built. The actual road itself has to do with the negotiations with the town. The question to the county was can you extend a dead end

road? Their decision is yes, in this configuration. It has nothing to do with who is responsible for building of the road or the actual building of the road.

Broecker, but P&Z is not saying that you can't just build the road to that point of which was proposed.

Schuler, they are saying if a road gets built it can go that far.

Broecker, but not that it has to go that far.

Schuler – correct.

D Pederson, if and when that road were built it would be subject to Hull's subdivision ordinance.

Matt Fleming, Attorney with Murphy-Desmond in Madison WI, representing Jerry and Teri Koziczkowski.

- Concerned about plans to vacate portions of right-of-way that currently abut their property (between their property and Chopper Farmer's property)
- Concerned about verbal discussion about Koziczkowski's contributing to some of the cost of the proposed road that is subject to the Plan Commissions motion
- Shared concern about what might happen to the value of their property if the existing ROW is discontinued
- Advised I could not see any reason why they would ever contribute to the cost of putting up any road, any utilities, anything that is not abutting their property – do not believe they have any such agreement
- Currently understand there is a dedicated 33' right-of-way although I think there may be reason to believe there actually exists a full 66' of right-of-way adjacent to their property – will investigate that further

Holdridge – recap events at the Planning and Zoning Committee meeting when the individuals involved apparently went to the hallway (at the PC Annex) and reached some kind of agreement and went back in to the meeting and, I believe, stated the agreement publically.

4. Review of agreement between participants (Oberthaler, Broecker, Hebbe, Koziczkowski) re: development and cost sharing of road and cul-de-sac going north from Firkus Road

T Broecker – felt we had to come up with a solution that would work for all.

- ✓ Koziczkowski concerned about being landlocked
- ✓ The reason the proposal was submitted was concern with safety factors beyond the 1,000 feet
- ✓ We thought Portage County Planning and Zoning would prefer a shorter distance
- ✓ P&Z talked about extending the road to the east in order to give Jerry potential access in the future
- ✓ Costs involved from all parties included purchasing land
- ✓ Encouraged with the P&Z Committee to come up with a solution
- ✓ Came up with a solution we all thought was fair
- ✓ Jerry K wants to have land so he can access his strip and that would allow him not to be landlocked to develop a minimum of 75 acres of his land to offset any development costs of this stretch on the north side of the eastern parcels to the east side of the proposed cul-de-sac

- ✓ Knowing there is a cost the developers are incurring of over one hundred thousand dollars to construct the road because we are known as subdividers even though we are two families who are trying to get access to landlocked parcels
- ✓ If that then allows someone else to benefit they should also incur part of the cost
- ✓ That night we were charged with the task of trying to come up with what was fair to all of the parties, fair and reasonable
- ✓ Through much discussion Jerry and Teri Koziczkowski had agreed they would contribute 15% to the construction cost of the road and everything involved except for the utilities and they would pay \$4,000 an acre to purchase the strip that would run from the east of the cul-de-sac to their property

Holdridge, at that time Jerry agreed to pay 15% of the road running north to the cul-de-sac?

Broecker, this would be based on actual cost, any savings we would incur J Koziczkowski would also incur.

Holdridge, to Jeff Schuler, Director Planning & Zoning was that your understanding?

Schuler, the Planning & Zoning Committee was not really interested in the details of the arrangement, just the understanding that an arrangement had been made. But, the data provided by Tiffany Broecker was basically what was represented at the meeting.

Broecker – I stood up and publically presented it, anyone had the chance to dispute

Holdridge a call was received the next morning from a Planning & Zoning Committee member who stated it was on the record that this agreement was made in which Koziczkowski's would pay 15% of that road. This was a verbal agreement.

Broecker, the reason that agreement was made was because then the strip of land that was required for both Dan Hebbe and John Oberthaler would be affected in order to sell the land to Koziczkovskis.

Matt Fleming a point in terms of what was talked about and the representation of the fairness of the deal and what was advised to Koziczkovskis. I don't know there is total agreement on the specifics on what was represented – that is why for real estate you are required to have agreements in writing before

Holdridge, this was from a meeting that went from 4 p.m. to 8 p.m. John Holdridge, LaVerne Syens and Dave Glodowski were at the meeting. Hull had a meeting at 6:30 so John and LaVerne left the P&Z meeting, Dave Glodowski Hull's civil engineer stayed through the entire meeting.

- ✓ Then the parties came back in and stated the agreement.
- ✓ What we heard was there was going to be a 15% kick in.
- ✓ There is nothing in writing on this but I can assure you before we go anywhere with this there will be a written agreement that will also have to be guaranteed through some line of credit that the road gets built, etc and Hull's board will formally approve it.

Fleming, the agreement was hammered out under duress during a meeting, go out there and try to work this all through. The Koziczkovskis afterward did not feel comfortable either with the circumstances under which the deal was struck or afterwards the terms.

- Generally representing townships
- Have been through subdivision process and CSM's countless times

- Talking about the benefit that Koziczekowskis well get from the road, right now they have right-of-way that abuts their property, runs right along the entire length of it
- What is being proposed is to give them something that abuts right in to their property
- If you build a road along the two property lines the cost generally would properly be shared by the two abutting land owners
- I presume that part of the deal that the road going eastward would ever develop would be their cost (Koziczekowski)

Holdridge, Hull's ordinance says if you are a developer you are going to pay the cost of developing the road.

Fleming, that is not unusual. What is unusual is where neighboring landowners have to shoulder the entire burden development of right-of way that does not go in to their property if it simply abuts at the end of it.

- Every single certified survey map or plat that has been approved in any township I have represented, without exception, there is some kind of road connection to the abutting property so there can be connectivity
- That cost of dedication and building the road to the property line is always the developer of the property upon which that abuts

Holdridge, the road we are talking about is the road going east from the cul-de-sac right? What is your position on that? Who should pay for that?

Fleming, the developer of the property upon which that road sits.

- They certainly should pay for the dedication
- If the town were putting in that road and special assessing it you do it on a front foot basis – there probably would be some assessment to the Koziczekowski property but the bulk of it would be paid by the development of this property (Hebbe-Oberthaler)
- Now you are going to have additional abutting

John Oberthaler, I am not interested in that road being there. It does not benefit my property.

Fleming, it may not benefit your property from the perspective of what you plan to with the property are, but in terms of assessment purposes

Oberthaler, I am not interested in selling that property.

Holdridge it sounds to me what is happening tonight you've come in and you are going to balk at the verbal agreement.

Fleming I don't believe that that agreement is fair at all to my clients.

Bob Bowen, please repeat what the records shows as the standard (*numerous people talking at one time*) abandon

Holdridge, you have the whole history on this as the attorney. There are 75 pages of minutes. This back forty was owned by a brother and sister and two young couples wanted to buy the land, there was a trail that went back, so their option was how do they get there and we had the 33' as a dedicated 33'. There is some question on how that happened – Jerry Koziczekowski has a view that he was forced in to it. The board at that time wanted to collect

state aid. Then there was a cable put across the 33' and that became 33' of a half of a road that became a private road.

- ✓ In the Town of Hull in order to have a road you have to have 66'
- ✓ Going through and looking at the situation in terms of state road aids, the certification that is complete every December, says the road has to be open
- ✓ A letter was written to DOT stating the town no longer wanted to receive road aids on the 33' strip
- ✓ When we first started this there was strong interest in people would buy land and use a cul-de-sac
- ✓ There was not great response from Jerry Koziczowski on this
- ✓ The group paying the cost said okay if you don't want to do it we will take the middle route
- ✓ They agreed to pay for this road
- ✓ The big hook is the modification that the PC Planning & Zoning Committee had to give and was given at the P&Z meeting
- ✓ Oberthaler, Hebbe and Broecker are ready to build the road and put in a cul-de-sac
- ✓ Apparent problem is we don't have an agreement

Bowen – what is the status of the 33'?

Holdridge – it is still there, it is off the tax roll.

Bowen – but it is still under the jurisdiction of the Town of Hull?

Holdridge – yes.

Pederson, historically there was some suggestion that there may have been a dirt road serving a farmstead further back, at one time.

Dan Hebbe – Mr. Gollon spoke up at the Portage County meeting and said he remembers in the '80s that that actually was plowed.

Holdridge – has talked with Casimir Nowicki, road foreman for Hull for many years, he indicated that was never plowed.

Fleming – I don't think that whether or not you plowed it ends the inquiry of whether the road still exists. I understand the road has been shown on county maps for a very long time. Has a search been done of town road records, do we know whether any town road order was ever created opening that road?

Clerk Wolle – I am not aware of anything being open.

Fleming – this could be in the 1930s, 1920s, etc.

Wolle – I have not gone back that far.

Holdridge – the only thing we know is that it was dedicated in 1991.

Fleming:

- we have 33' of dedicated roadway but I generally find in these situations where you have a road shown on maps, it is not unusual either to have an unrecorded road that

does not get open but more times than not, searching the town road records I tend to find some record of town board action opening a road.

- Generally when that is done, unless there is a description given that is something different than 66', the presumption is, is that the town board has opened a 66' road right-of-way.

Holdridge, it is pretty clear this is 33'.

Fleming, yes from the 1991 dedication and that would make sense.

- Usually with CSMs we have that dedicated even though we know there is a town road easement there, just so it is shown on the map and it doesn't allow for any ambiguity.
- If these are long standing forties (acres), it would make sense that it would straddle that line with 33' on each side.

Holdridge that may be something you will have to investigate. We've done some investigation and the best we can determine is that it was 1991 and dedicated.

Holdridge in terms of the agreement:

- ✓ At the P&Z meeting people left saying we have a verbal agreement
- ✓ Where does the verbal agreement stand?

Jerry Koziczowski:

- Trying to get access to my property
- They? are forcing me in their negotiations to pay for a road I am never going to use
- I can possibly develop my land with that dedicated road but I don't know if I am going to do that or not
- I might want to do it tomorrow – I can't answer that right now

Teri Koziczowski – a member on the County Board, also a member of the P&Z Committee, told us not to go ahead with this (verbal agreement?) and we should get assistance.

Jeff Schuler, Corporation Counsel was present at the P&Z Committee meeting for the entire meeting.

- As this progressed we asked, are they (PC P&Z Comm) anywhere other than where they should be as a committee on this.
- He (Corp Counsel) said it was unusual, but no they were not, they did not participate directly in any of the negotiations.
- It is to their direct credit they said, instead of letting this die because it has no way of being approved at this point, try and take some time, a very unusual gesture on their part, but they were trying to say how much time has been invested in the process to get to that point.
- They felt to just give it a chance to see if something could happen.
- Obviously we are in a situation now where that totally blew up and it will always be my counsel to the Planning & Zoning Committee in the future, that if the applicant has to reapply again, pay again and come back and it dies at the meeting, that is just what is going to happen because this is a turn of events that is very unfortunate.
- They were trying to get something done and they in no way directly participated in the negotiations they just sat and waited for something to come back to them (P&Z Comm.).

Holdridge – the agreement between the four parties is not the Planning & Zoning. That is something that is between the four parties, Hull's Plan Commission and Hull's Board. Any agreement on that road will be from the Town Board to the participants.

Broecker – from my understanding and what I was sensing during that meeting is P&Z did not know the whole history.

- They (P&Z) clearly had not reviewed to the depth of what is going on and they were having some compassion for Jerry (Koziczowski) not wanting to take land from his garage.
- They knew he could make his own 66' right-of-way but it would be too close to his garage.
- Their compassion was how can we meet his needs too?
- Nobody wanted to give up any land. Nobody wanted to have to sell land. We were looking at a solution that would benefit everyone and allow him to not drive a road through his garage. He still has the same access that he had

Holdridge and the question of landlocked, keeps coming up, unfortunately Hull's attorney was not at the P&Z meeting, but his view via his opinion is Jerry is not landlocked. If that 33' is vacated he J Koziczowski still has access to all of his land because he can go right across his land.

Broecker – if Jerry doesn't want to pay 15% of that road, that is fine, then no one is going to sell him access for that dedicated piece. He does not have to contribute at all.

J Koziczowski – their position at that meeting was their concern for us is that a road, isn't it a road. They were talking about the tax (hwy aid) that was taken since the 70's, somebody said since the 40's. They were concerned about the legality of closing the 33' strip.

- Also in that meeting somebody drew up that we could go an extra forty into our property and make a road.
- Not once did my wife or I ever state we wanted that.
- Somebody was putting stuff to make it look like we are getting more than what we wanted.
- We wanted that road dedicated that is what we wanted. At least so we have some legal access to our property.
- At the second meeting in Hull I stated the best place for that road was right where it was dedicated. After that second meeting that was my position.

Holdridge, that was your position, but who is going to pay for the road? Where are you going to get the other 33'? We made it clear that a Town of Hull road has to be four rods that has been our position from the beginning.

- ✓ If we would have done something there, you'd have had these folks helping to pay for the road.

J Koziczowski – they want it where they have it right now.

Holdridge, I think there was some flexibility at the first meeting and maybe even the second meeting.

- ✓ There is no agreement among four parties there is still agreement among three parties. Is that accurate?

Oberthaler, Hebbe and Broecker – that is correct.

Oberthaler, we have an agreement between the three of us to put the road up to the cul-de-sac and disregard any of the access over to Jerry. That part doesn't really matter to us. What we went to the county for was to put that road in. They suggested other stuff – that was the reason for the negotiation. We have two separate issues:

- If Jerry wants a road over where Jerry has a road (33' strip) he can take it legally and talk with Hull legally and put the road in.
 - I'm not interested in selling 33' of my property to Jerry on the east side. I will not participate in the cost of the road at that place.
 - If the road ends up on the east side of my property Jerry can find another 33' or the attorneys can go back in to the town records and find that someplace there was 66' dedicated there.
 - The year before I bought twenty acres that had a certified survey and it had nothing on road dedication on my property.

5. Review of agreement on the development of a road going east from the proposed new cul-de-sac between the parcels owned by Oberthaler and those potentially owned by Hebbe (a 66' right-of-way with 10' for electric utility easement) – Role of Town of Hull

Holdridge from your perspective Jerry that agreement is dead? Wasn't there an agreement, based on Hull's ordinance if the road is going to be put in to serve your parcel, that idea came up very early in the Plan Commission, that there should be a road going on the west of Kozickowski property to serve their 75 acres.

T Kozickowski – 75 acres buildable property.

Holdridge, now we are saying no participation, right?

J Kozickowski – I am not necessarily saying there is not no participation, I need access.

Holdridge – what are you saying?

Oberthaler, if he (J Kozickowski) does not participate in the construction of the road going there and to pay for 66' of right-of-way that we were asked to dedicate to him and construct that entire strip (600') above our property, we have no deal.

Holdridge, what was the verbal decision at the P&Z Committee meeting?

T Broecker the verbal agreement that everyone was on board with, while we were all under the same duress, this was negotiation, not where we started but where we ended:

- ✓ The Kozickowski's would absorb 15% of the construction of the cul-de-sac (1,320')
- ✓ This includes all land/road construction except for the power
- ✓ They would pay \$4,000 per acre for the 76' (66' for the road way and 10' for the easement) (38' north side of Oberthaler and 38' south side of property to be owned by Hebbe)

Oberthaler – a little over one acre is there.

Bowen, on your side John?

Oberthaler – no a combination on both properties, a half acre on each.

Broecker, is that what you understood Jerry?

Koziczkowski, no. It was actually \$4,000 for John's acre and \$3,000 for Dan's.

Broecker - \$4,000 per acre.

Holdridge but isn't there only one acre?

Oberthaler, yes. So it would be basically \$2,000 to Oberthaler and \$2,000 to Hebbe.

Holdridge if that were the case, I think the Town of Hull position would be, we will not dedicate that, we will not take it off the tax rolls. If you (Jerry) want to buy that 66' and work that out and it would just sit there. When you get ready to develop it, then we would require a certain timeline, just like we are going to require with you folks, 2 or 3 houses or a 3 year period, you could put the base in to develop there. Once you reach a certain threshold, and that could vary based on certain circumstances, then we would require blacktop (3" of asphalt) and we would have a guarantee that is going to happen, we have a line of credit. There would be a signed agreement between you folks and the Town of Hull.

Fleming, I understand there may have been some differing opinions on putting a road up along the east side of the property. Are you saying now that is not a possibility? The frontage they have, if they can subdivide and develop land, it would be only fair that they have to pay half of the cost of developing the road.

Holdridge are you talking about the east side? The 33' from south to north? How are they going to get 33' if John O doesn't sell it to them?

Bob Enright, you wouldn't sell it to him, it would be on his side

Fleming I don't know if Oberthaler is donating/dedicating

- It is my understanding that he is dedicating a full 66' of right-of-way going north/south (middle plan)
- I'm asking if it is a possibility that he dedicate 33' on the east side of his property to match up with the current 33' dedicated strip of land and the cost would be split

Oberthaler, we tried to work this out. We are where we are because of all of the meetings.

- When the road was going up the middle I have a net investment into the road where I benefit the most
- I don't have to sell any land to anybody. They asked me to come in and figure this out.
- The way it stands now, my exposure to this road construction and land and burying and grubbing is approximately \$34,000.
- I am not interested in the road going over there (east) so somebody is going to have to pick up that expense.
- This is a total different agreement from what we had as far as what the agreement is concerned and I don't care for the road to go there (east)

Fleming because now you have frontage on two sides of a road rather than just on one side and you get a greater cost contribution of course you are not paying much of the cost of installing the road.

Oberthaler right. I'm not interested in the road being on the east, I don't care if it goes there but I am not going to participate in it. When I bought the land I thought there was a town road there on Jerry's property. It showed up on the plat book.

Fleming that is the other issue, I am not entirely sure that there is not a full 66'

Holdridge let's go back to the question we asked, John has stated that position at every meeting except for maybe the first one. He is not prepared to sell any land there.

Pederson, I think at the first meeting that was a distinct possibility but

6. Discussion of abandonment of the 33' road, ¼ mile long, between the parcels owned by Chopper Farms and the Koziczkowski family

Holdridge we do not get any tax off of the 33' strip, it has been tax free since 1991.

- Concerned because we have had minor incidents out there.
- I don't want our road crew and I certainly do not want the Portage County Sheriff's Department dealing with issues there.
- Somebody said there might be an alternative use for that, but I don't think we should leave that as a public 33'.
- That should be given back to J & T Koziczkowski. He has the whole thing then.
- For all intents and purposes it has been a private road over the years.
- He still has access to his property.
- If he wants to use that 33' and I think it was mentioned at the P&Z Comm. meeting he might have to take part of his building out to get 66'.
- We have had incidents of that with people building on the bluff line and have to remove half of their building because they violated the zoning ordinance.

Oberthaler, I said if there is going to be that road going over to the east, why not just leave the path (33' strip) and call it a walking path. There would be a quarter mile walking path around that 20 acres.

- I understand the liability position
- I don't own the land. I would buy it from the town.
- It is a dead issue as it doesn't make any sense to have a walking path there if we have no road to Jerry's property either.

Enright when we discussed this issue before, we were not able to come to an agreement. The motion that I made at that time was that we support the middle road but that we not abandon the one to the east.

- John you said Jerry has access to his property. Does that mean he can drive a 4 wheel drive up there?

Holdridge, Bob Konkol's opinion is that those 75 acres back there are contiguous to his other acreage in the front so Koziczkowski is not landlocked. He can put a road across his acres to get to the undeveloped.

Enright but as the Plan Commission we were told the commission would not accept having two roads there. If Jerry decides at some future point he wants to build a road where that non road is now and dedicate it, is there an objection to that?

J Schuler our object was based on the rule itself that says dead end roads should not be longer than 1,000 feet.

- P&Z position as staff given the nature of the rule is that you would have to have a compelling reason for extending a road.
- The reason we supported this particular circumstance is the new cul-de-sac essentially replaces what was anticipated to be a road at some point.
- We felt that it is not an introduction of the new road, so we could support this but only one road.
- In the future if another road wanted to go in our opinion at staff may be similar to that but it's up to the Planning and Zoning Committee. I think they were predisposed through the length of their discussion – there were graphics on the wall that showed the development constraints in the general area and showed this as an isolated topic.
- If there would be another road in the area, they would go through the same process application for a modification to extend that road.

Holdridge don't you think the telling point is if there is development up there? If all of a sudden Jerry lays that out and starts selling lots, you have a whole different situation. The law is very clear if you are going to have a road it's dedicated and it has to be open. The way you open it is you have development there.

Enright I'm trying to understand we were told you could not have a cul-de-sac longer than 1,000 feet and now you are saying that was the reason the north/south road on the east side was rejected but at the same time

Schuler it was not rejected. There was never a road on the east side. There is 33' of town owned property. We felt it was appropriate given the history out there of the supposed road, that the new situation would duplicate what was assumed to be out there already so we found that to not be in complete conflict with the regulation. That is why we could support it.

Enright if the new cul-de-sac is built there, and at some future date Jerry wants to develop the area in the northeast area are there obstacles that would prevent him constructing a road to get to that area? Are there legal obstacles?

Schuler it is a decision by the Planning & Zoning Committee and he would have to make his case as to why it would make sense. I can't speculate what our staff opinion would be because if he is requesting the extension of roads, because circumstances have changed in that area. There could be a compelling reason why it makes great sense and we would support it.

Enright suppose he wanted to do it now.

Schuler I think if you saw the Planning & Zoning Committee discussion, I think they felt whatever road would be up there would make sense because it is at a closed off pocket. You have natural features that prevent going anywhere, connecting in any direction except perhaps crossing wetlands to get back to North Reserve. I think they have a favorable inclination toward that type of request, but it all comes down to the circumstances of what you want to do.

Oberthaler - Jerry would have to go to Planning & Zoning and make a modification request. Are there any hurdles? Yes there are. The hurdle would be going to the modification and talking with those people and seeing if there are compelling reasons to put a road in there. Just like our recommendation. We asked for our cul-de-sac and we thought we were over asking because we were extending a dead end road. They (P&Z Comm) came up with the idea of why don't you draw (extend) it over here to Jerry's land? We didn't ask for what they gave us. They just saw that this is a unique situation with kind of water locked, natural feature locked area that there is developable land back in there. They said you don't want to cut this developable land off so we are going to make an exception to our exception. They didn't really, which surprised me, take the recommendation of their own staff and they made a decision that was completely contrary to the 8 or 5 meetings that we had with Portage County recommending what we should ask for. We were all taken off guard by this.

Holdridge, the difference is we have two couples that want to buy land back there and want to develop. If Jerry had two couples that want to buy land and wanted to develop out there, this would be a different situation from the Planning & Zoning standpoint and probably from our standpoint.

Enright the reason to abandon this road is that the town is liable for something that happens

Holdridge first of all it is not a road by our standards. We have to have a 66' road. If Jerry develops 75 acres back there we will have buses, fire trucks, garbage trucks etc. That is our standard every time we develop a road.

- It may have some standing from county stand point
- It has never been open for travel
- Why wouldn't the town develop it? Because there is nothing back there.

Enright what is the name of what we call this now?

Schuler it is a dedication. When the land was split they said this specific amount (33' strip) is dedicated to the Town of Hull for public roadway purposes.

Enright and it doesn't change the status of the ability of Jerry to build a road there one way or the other.

Holdridge he can build a road if he wants to but if he wants that to be a public road Hull has to accept it. We won't accept it if it is not 66' built to our standards. The same is true of their cul-de-sac.

J Koziczkowski when this last proposal went to Planning & Zoning the east border of mine and John's there was a dotted line there with reserved for future roadway. That was completely taken out because Planning & Zoning said there would only be one road. That is the only thing I can go off of right now. That tells me I can't have a road there. I had that because there was a dotted line for future use and I would buy that from John. John won't sell it. Now John can resurvey those lots and when I resurvey mine you took that 31' (actual 33') and made sure it was put in there. Why can't we do the same thing when John resurvey's his into smaller lots?

Oberthaler - the point has to be made that you have to find out if there is a road there. I have looked but you might be able to look better than I can. When I bought the land I had title insurance on 20 acres, they must have also looked, but maybe they didn't. There are legal issues here:

- ✓ Prove to me that there was a road there; show me the documentation that says that I should have done that.
- ✓ I will go back to my title insurance and sue them. Why did they tell me I had 20 acres and I only have 19 acres?
- ✓ All of this happens – who pays for the road?

Holdridge it is clear to us who pays for the road. If it is used for his development he (Jerry) pays.

Oberthaler, Jerry and Teri say they do not know when they are going to develop but they want to have that right-of-way there. How does that help Gawlik and Firkus get their land unlocked? There is Broecker and Hebbe who pay for the whole road because Jerry wants it over there?

Fleming if the road goes over, abutting their property, they will have to pay for half of the road.

Oberthaler, but it also abuts my property and I don't have any interest in having the road there.

Fleming that is the problem. If you can get the other folks to pay your share of it being you don't want it there to begin with

LaVerne Syens if you look at the east boundary assuming the road would go up to that, what is now drawn as a cul-de-sac on the east boundary, we now have the potential of land locking Broecker. If Hebbe and Oberthaler will not sell land to access the 20 acre parcel that Broecker owns we have land locked.

Broecker not only that it makes our costs considerably different. It is not an option. We won't participate. Then we have to run across a 20 acre

Syens, I can't address costs but I can address land locking.

Fleming they are already land locked. We are sitting with land locked parcels

Numerous individuals talking at the same time

Fleming a question keeps coming up. When looking at the county ordinance I found conflicting language. Does the county in order to permit (or in zoning code) a land division require a lot to actually abut a public road?

Schuler – yes.

Fleming okay that was how I was reading it, this leaves me with concerns about abandoning this 33' because even though technically it is in common ownership, these two parcels, they are not land locked you can get easements. It is going to affect the ability to develop these lots later.

Holdridge if we abandon it, the 33' goes back to Jerry.

Fleming if you abandon it there are 3 different procedures to follow, all of them except for one requires consent of abutting landowners and the last option requires, presuming they object which they would, a 2/3 vote would be required to pay the town any diminution of value caused by the vacation of the roadway.

Holdridge we certainly would explore all of that.

Fleming that was the other question I had. I wasn't sure you were planning on taking action on the road vacation tonight since there are, depending on which procedure you use

Holdridge we might well start the process of vacating the 33'.

Pederson, I want to clarify that the zoning board did not require the abandonment of that easement. Correct?

Schuler – correct that was not part of their action.

Holdridge but the letter from Jeff Schuler was the departmental position

Pederson, but their decision did not include that as one of the conditions.

Schuler – correct.

Holdridge I'm not sure they even have the authority to do either/or of that.

Schuler basically they were assuming the town had already taken specific action on the abandonment of that piece of town land if it is a dedicated piece of road right-of-way that has standing and has to be vacated in a certain way – I'm not sure. Mr. Konkol will have to determine if that is simply a piece of town land that was never really accepted as specifically for road right-of-way. That is part of the speculation that needs to be resolved before that issue can go away.

Holdridge this really was what was supposed to be the decision that was, the authority to come up and create this cul-de-sac. Then in the interest of making sure that Jerry has some access here. This was not part of the original proposal. All they wanted was the modification and the cul-de-sac (middle route). The Planning & Zoning Committee wanted one over here (east of here).

Pederson our abandonment is contingent upon resolving this.

Schuler, construction of the road base is our position. Something has to go in before that could be vacated.

Enright I want to be convinced of why it matters if the town abandons the road. What damage is being done by just leaving on the map dedicated for future roadway?

Holdridge first of all it's off the tax levy since 1991.

- 1) It has never been a public access. Jerry has had a cable across there. We don't need to have public land set aside when the public doesn't use it.
- 2) We have had some minor issues out there. If you have the cable there and that's not accessible to the public we are going to have some issues involving the Sheriff's Department probably. From Hull's standpoint I think we should cut the losses, start the process of abandoning the road, put it back on the tax levy and we will be out of it.

- 3) People had some suggestions about a path, but if that road is not treated as a public access then we are going to have problems. You will have more people out there, Broecker and Hebbe are building, Oberthaler will probably develop some, and pretty soon we will have some neighborhood issues potentially. We have neighborhood issues now on different things.
- 4) This strip has been there; J Oberthaler says he will not sell any land; we are not going to go to any kind of eminent domain or whatever the legal basis is to take his land to build a road there; we haven't done that and I don't know we have the authority to do that; do we want to get involved in something like that?
- 5) That 33' strip might go back to Jerry and if he wants to put a road in there at some point all of the land is his – he can put a private road up there – sooner or later the public is going to want a public road. If it is a public road it is his costs and he has to meet our standards.

Tracy Pelky, Portage County Planning & Zoning, if the town decides to vacate that 33', give it back to Jerry, it doesn't mean down the road at a later date Jerry couldn't come back rededicate that to the town for road purposes.

Holdridge – he isn't losing that land, what Hull is getting is a slight taxing on that which we have not had for 20 years.

Attorney Fleming – it is public right-of-way, it has not been improved. I don't think it has been by operation of law abandoned as I understand some people do use it. I do understand it has not been improved and understand some of the concerns you are expressing. My opinions on what should happen, if in fact all that is there is 33' and there is no 66' right-of-way at all, I don't know that I have made up my mind exactly

Holdridge would you think it is a public road when there is a cable across it?

Fleming – no but you don't lose a public road just by having a cable across it.

Holdridge, you deter public access.

Fleming, you absolutely do but that is neither here nor there for this discussion.

J Oberthaler, do we really have anything to talk about here? We came in to talk about the map. There are legal questions that need to be answered in order to resolve their stuff. What I am suggesting to the people have an opinion on where the road was asked for. Are we going to need to go to the county again and say that our agreement did not come to fruition, will you reconsider our road? If Jerry wants a road on the other side, that to me seems like a legal issue. That is not our issue. We cannot resolve that issue.

Holdridge, I understand. I want to make a decision tonight. If there is a legal issue, that is your issue. If you want to research it and go through that, that's fine. We have at least two (2) opinions on this and you probably have them because we have shared them with you and Jerry. You have our best legal thinking on this. We need to move forward.

Jeff Schuler, I have an open question in my mind whether or not the county can sign the CSM if it does not reflect what was approved by the Planning & Zoning Committee. I will ask Corporation Counsel about that because right now their decision anticipates a dedication to the east to the Koziczkowski property.

- ✓ That is one last variable to this whole thing
- ✓ The only way this was approved on that night was with the idea that the dedication would be there, otherwise it had not been approved

Oberthaler, we are dead in the water because without Jerry and Teri paying for a portion of the road that they agreed upon, I am not interested in selling the land or dedicating any land north of there.

- We are talking about a lot of things, than just about how this went along
- We have nothing to talk about as we do not have an agreement by Portage County that we can go to the length of the road that we asked for, correct?

Schuler we have approval based on it being with that dedication going to the east.

- The approval came when it became reasonable for them if the possibility of a road existed from the beginning, to go to the east (the dedicated part).
- When the group came back in the room there was this seeming, at the time, consensus that yes there would be participation and yes this was an agreeable situation to everybody and that right-of-way, if properly followed through on the agreement they had made sense to all parties and they could live with it.
- The Planning & Zoning Committee then said that made sense for us because they really wanted to make sure that Mr. Koziczowski had that type of access.
- I'm not sure if you go in front of them again with this if they would then simply approve the one as originally proposed or not .
- The question now is can it proceed with a Certified Survey Map being recorded to create this road that does not include the dedication to the east.

Oberthaler, could you vote to approve it tonight if legal counsel says it is correct?

Enright we have already done that. If I understand correctly the reason why this body has been convened was to see if we would approve a modified plan that would include the east/west road construction.

Schuler, I don't think so. I think it was to check on the agreement that was made

Holdridge the reason I set up this meeting, I thought we had an agreement, cost sharing, etc. I expected to come in and go through the agenda items and have yes on virtually everything.

Enright presumably we would vote to approve this modification so it can go back to the county. Is that what we are saying?

Holdridge, no it has already been at the county.

Numerous people talking

Schuler the road is in Hull.

Enright, I understand that but if the parties don't want to agree to want to do that, there is nothing for us to act on.

Schuler you are right.

- The process was somebody proposed development; the town had to feel comfortable with just how the road was going in and Hull had many, many meetings just to hammer that out. That was settled on.
- Then the thing that would allow that road to happen was to get the modification from the P&Z ordinance that says “yes an extension of a road like that is okay.” The town did its job. The county did its job. At the meeting based on the discussion, the Planning & Zoning Committee felt compelled, if that road network is going to make sense, that it made sense if it were extended over to the Koziczkowski property.
- The deal that was made allowed that to happen. Now with that resolved, it is not unresolved.
- Now there is a situation of the town voted and approved that single cul-de-sac and ultimately the vacation of the 33’ right-of-way.
- The counties decision as it is now doesn’t force the town to stick with that dedication to vacate that right-of-way and it doesn’t make them not vacate the right-of-way. That is a town issue.
- Right now we have to clarify whether leaving out that dedication of 66’ east to the Koziczkowski property somehow negates the official action that was taken by the Planning & Zoning Committee.

Holdridge we have a lot of authority over town roads, you are saying this is still okay with Planning & Zoning?

Schuler – yes. It became okay with the 66’ to the east.

Enright – do you mean the Planning & Zoning Department or the Planning & Zoning Committee?

Schuler – the Planning & Zoning Committee decision is the only thing that matters. We simply provide information to them and give a recommendation based on our interpretation. The modification is fine with the 66’ dedication.

Enright it passed depending on the dedication but since that is no longer an agreement that has to go back to the P&Z Committee and they have to vote on just the cul-de-sac.

Schuler – that is what we have to find out.

Holdridge but the cul-de-sac they have to vote on is the one that goes east to the Koziczkowski property. The cul-de-sac on the north end of the Oberthaler/Firkus/Gawlik property has already been approved.

Schuler – no (*talking of numerous individuals*)

Holdridge – so it has not been approved?

Oberthaler that is what they are checking with legal counsel to see if we can go ahead without the 600’ dedication

Schuler – my anticipation is they will have to take a reconsideration or further action by the Planning & Zoning Committee because they voted on it as

Holdridge the document from P&Z says the Planning & Zoning Committee has approved the request based on the following being met

Schuler - which includes the dedication of land going to the east and is now off the table. My contention would be now the Planning & Zoning staff cannot signoff on that certified survey map if it doesn't match the decision by the P&Z Committee. That is what we will get clarification on. Right now, if that CSM were submitted without that dedicated strip to the east, it would not be what was approved by P&Z Committee. I say that because the single cul-de-sac was not approved, it was only approved with the dedication to the east.

Broecker (to Jerry & Teri Koziczkowski), you are completely; absolutely interested in nothing? You have zero interest in participating in the road cost in order to obtain dedication which would be a lesser cost of constructing an entire road? I want to make sure.

Jerry Koziczkowski – that is correct. I cannot put any money towards a road that I am not going to drive on until I pay the full cost on half of, on the road I would have to build to get to my property. That is still 220 yards and that is 440 yards long. All by myself I would have to incur all of the cost for myself – so no I cannot put any money toward the road going north.

Holdridge, you folks have to work the agreement out and that would be acted upon by the Town Board.

Oberthaler – there is no agreement, we have nothing.

Holdridge, aren't you still planning on putting this road in John?

Oberthaler – you have already given us permission to do that.

Holdridge, you have to go back to the Planning & Zoning Committee. I assume they will support this. The language in the agreement relating to cost sharing has to be worked on and what is going to trigger it if you don't complete the work at certain times. That has to be between the town board and you folks (Oberthaler, Hebbe, Broecker).

Schuler – this could conceivably be on the March 22nd P&Z Committee meeting.

Bob Bowen, a lot of things we have discussed tonight I felt were thoroughly discussed by Hull's Plan Commission. I don't know what the town board did but we had compassion for Jerry's situation with being landlocked and that is why our minutes said that we would support an extension from the cul-de-sac over to his land at such time as they wanted to do it. Hull's Plan Commission felt that was a very good, very logical, very sensible that everybody would benefit regardless of the cost or the deal that you are making.

Holdridge, I think we would have agreed that Jerry could buy that 66' strip and not do anything with it. Just reserve it and when he got ready to move on it we would officially dedicate and at that time he would want to develop the land so we would have to have some schedule for when the base would go in and when they reached a certain threshold it would be a blacktopped road.

Enright we have spent an inordinate amount of time on this issue. Both sides have changed their minds between meetings. We should not be dragged in to a meeting thinking we are

going to finalize an agreement. We have subsequent repetitive meetings and going over the same material going over the same material over and over again. It seems to be our job is to look at a proposal, weigh all the sides and then make a decision and then we are done on it. I don't think we should have a meeting to discuss this issue until it is agreed upon how it is going to be brought to the table

Holdridge (review of the P&Z Committee meeting action). We met tonight because we were going to reconfirm the agreement at the P&Z meeting.

Hebbe/Oberthaler – minds were changed because P&Z asked us to change our minds from reserved land to dedicated land. We've been trying for 7 months to get a road into landlocked property – this should be cut and dry but it isn't. We get different information from the Town of Hull, both committees. First Hull is going to pay some of it, then Hull is going to pay none of the cost. Who is going to pay the cost – we are (Oberthaler, Hebbe, Broecker). How far can the cul-de-sac be? We recommend one or the other – not both and it can only be a certain distance. Then we go to another committee and we are told it can be drawn over to here. It's not us. We have had an agreement in place since about the third or fourth meeting. Now we have gone through 5 more meetings with the powers to be telling us to change what we are doing. We have been steadfast in direction. I believed the middle route was presented at the second meeting and we asked you to discuss it. The third meeting we knew where we wanted to go. We are still up in the air. What is happening now?

Enright – I recommend that the town send a letter to the Planning & Zoning Committee

Bowen is there anything against a motion being made by the Planning Committee that we recommend to the Planning & Zoning we support the road as we did before with the cul-de-sac and also an extension to the east if that is what they want to do? This is hypothetical; we are talking about the idea. We don't know if the road will ever be built but we would support it if it ever came up

Schuler – P&Z approved that

Holdridge – I'm not sure our agenda is set up that way.

Oberthaler – the only reason we agreed to that is because Jerry & Teri agreed to pay for the property. Somebody has to sell the property and they are not going to claim eminent domain on us, or whatever the legal words are. It got over there because Jerry & Teri agreed to pay for 15% of the road and pay for that. Otherwise I would have said NO at the meeting and it would have stopped there.

Enright, the next step seems to be going back to the P&Z Committee and ask if they will approve without the east-west extension.

Schuler - correct

Enright, they didn't do it the first time but it is up to you to see if they will do it again. Other than that we don't have anything to do

Oberthaler, all I would ask is that you make the same request to them to follow Hull's recommendation to approve the cul-de-sac as drawn, no further jargon. That is what made the last meeting go for five hours.

Enright – the letter of clarification

Numerous discussions at same time

Broecker, someone needs to make sure that PC P&Z Committee understands why we are coming back to them saying

Schuler – that will all be part of the information that goes to them. The most logical way forward at this point is to have another vote by the Planning & Zoning Committee – I will confirm that. As was with the meeting this is an atypical situation obviously.

Holdridge – it is very possible this will be on the P&Z Committee agenda on March 22nd.

Schuler – I'm saying it can be. There is plenty of time to make that meeting if we get the information that is the right way to do it.

Broecker, when you say it can be what would be the other option? To have it approved before the meeting, without a meeting?

Schuler – that is why I'm saying I have to ask.

Broecker, I just want to make sure we don't have to submit another request when the original request that was made is being put on the table. It is not fair.

Schuler – I understand that.

Holdridge, I think the consensus of the Plan Committee and the Town Board is that we strongly support the Oberthaler middle route and the cul-de-sac. Whether the 33' is abandoned, that is a Town Board decision. I will put that in writing so all members of the Planning & Zoning Committee understand it.

7. Adjournment: Motion Pederson, second Wilz, adjourn the joint meeting of Hull Town Board and Plan Commission. Motion carried. Meeting adjourned at 8:15 p.m.

Janet Wolle, Clerk

