

OTTAWA PLAN COMMISSION
February 2, 2015

Chairman Arrowood called the meeting of the Ottawa Plan Commission to order at 6:30 p.m. Roll call attendance was taken. Plan Commissioners Hausser, Hanson, and Mundschau were present as well as Supervisor Goodchild. Commissioner Weber arrived at 6:35 p.m.

The first item on the agenda was for Badger Kart Clubs (BKC) Annual Report and request for extended hours on three special race weekends. George Sieracki was representing BKC and presented the Town with a Plaque of Appreciation. He stated that their requests were for time changes during three weekends in 2015. May 15-17, 2015 for 9:00 a.m. to 6:00 p.m., May 29-31, 2015 for 8:00 a.m. to 6:00 p.m. and September 11-13, 2015 for 9:00 a.m. to 6:00 p.m. Chairman Arrowood added there were no added dates requested. Planner Scherer stated that the requested schedule complies with the approved Conditional Use. Supervisor Goodchild asked if there had been any complaints against BKC? Deputy Clerk Geyman responded No, there have been no complaints. Supervisor Goodchild made a motion to approve the 2015 schedule as requested. The motion was seconded by Commissioner Hanson, and carried. Commissioner Weber abstained from the vote.

The next item on the Agenda was for William Schultheis proposed conveyance of land and necessary waivers (tabled from January meeting).

Planner Scherer read or explained the changes in bold from her report as follows:

TOWN OF OTTAWA
REVISED PLANNER REVIEW AND REPORT
CONVEYANCE - SUBMITTAL NO. 2
(POST TITLE REPORT)

SENT VIA EMAIL

DATE: February 2, 2015

OWNER/SELLER/PETITIONER: William and Ann Schultheis
W391 S4560 CTH ZC
Dousman, WI 53118

OWNER/BUYER: David Ashley
PO Box 79
S46 W39084 CTH ZC
Dousman, WI 53118

TAX KEY NO(S): OTWT 1660.999.002 (*Schultheis*) and 1660.998.008

(Ashley)

LOCATION:

The land to be transferred is a **20 acre parcel**, and also the use of the 66' wide strip that runs from **the 20 acre parcel** north to CTH D. **The 20 acre parcel** is currently owned by *Schultheis* and is part of the SE ¼ of Section 19, T6N, R17E, Town of Ottawa. **The 20 acre parcel** and use of the 66' wide access strip is to be acquired by the owner (*Ashley*) of Lot 7, CSM No. 2895, Volume 21, Page 222, located in the SE ¼ of Section 19, T6N, R17E, Town of Ottawa. More specifically, **the 20 acre parcel** to be transferred is located at S46 W39028 CTH ZC.

Note: It is not clear if it is even possible for *Schultheis* to sell the 66' wide access strip. A title search/report may have to be done to clarify this issue.

LOT SIZES:

The Schultheis parcel to be transferred is 20 acres (not including the use of the 66' wide access strip), and the Ashley parcel is 7.8 acres in size.

EXISTING USE(S): Vacant (*Schultheis*) and residential (*Ashley*).

REQUESTED USE(S):

To convey a **20 acre parcel** of land, and use of the 66' wide access strip to CTH D, from *Schultheis* to *Ashley*. I was told by the petitioner that *Ashley* has no plans to develop the parcel, but may rent it to the farmer to the west. However, at the January meeting, *Ashley* indicated he did not know what he might do with the property (farm, lease, rent, etc).

ZONING CLASSIFICATION(S):

Schultheis 20 acre parcel - AD-10 Agricultural Density-10 (minimum lot size = one acre, density = 10 acres per dwelling unit, minimum average width = 150 feet), and *Ashley* seven acre parcel – A-5 Mini Farm (minimum lot size = five acres, minimum average width = 300 feet) all under the Waukesha County Zoning Code.

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CONFORMANCE WITH THE WAUKESHA COUNTY COMPREHENSIVE DEVELOPMENT PLAN (WCCDP) AND THE TOWN OF OTTAWA COMPREHENSIVE DEVELOPMENT PLAN:

The Town of Ottawa's Comprehensive Development Plan is incorporated into the WCCDP. The WCCDP designates **the 20 acre parcel** as Rural Density Residential and Other Open Lands (5-34.9 acres per dwelling unit density). The Town's Plan designates **the 20 acre parcel** as Agricultural 10 acre density (10 acres per dwelling unit density). The *Ashley* property is

designated as Suburban II Density Residential (3-4.9 acres per dwelling unit) on the Town and County plans. The proposal conforms with both plans.

SOIL TYPES:

Within the parcel of the conveyance, the soils are well drained (MvB and MxB) with slopes between 2-6 %. The submittal of soil tests are not required for this conveyance if the parcel is not built on.

PLANNER ANALYSIS:

HISTORY OF PARCELS

In 1951, *Gerdes* purchased the N1/2 of the SE1/4 of Section 19 (roughly 80 acres south of CTH D and East of CTH Z). Prior to 1941, a *different owner* had adjusted the lot line between the two western most 20 acres tracts of land to create a 13 acre parcel and a 7 acre parcel creating two tax key numbers which today are OTWT 1660.999.001 and 1660.999.005.

In 1975, it appears the *Gerdes'* son was granted a land contract by the parents for the W1/2 of the N1/2 of the SE1/4 of Section 19 (40 acres).

In 1980, 20 acres of the land contract was quit claimed, creating what is now tax key number OTWT 1660.999.003.

In 1979, *Gerdes* sold what is now 1660.999.002 (**the subject 20 acre parcel**) by land contract to *Schultheis* by metes and bounds description. There was an "Exhibit A" (see attached) attached to the Land Contract that stated "the purchaser agrees to maintain road to all governmental standards and requirements." It further stated that "the purchaser assumes responsibility for maintaining area of 66 foot easement."

In 1988, the Town of Ottawa approved a two lot CSM (No. 5710) for *Gerdes* that was recorded in the Waukesha County Register of Deeds office describing the outer boundary of a 20 acre parcel of land south of and adjacent to CTH D and north of **the subject 20 acre parcel** described above. The CSM created Lots 1 and 2 and included lands to the centerline of CTH D. Lot 1 of the CSM was 9.8627 acres in size, and Lot 2 was 8.3074 acres in size, and the CSM also included a 66' "easement" (actually it appears as an access/ownership strip on the CSM created) that we believe was meant to serve **the 20 acre parcel** to the south so that it was not landlocked. **The 20 acre parcel** was not part of this CSM. *Schultheis* eventually purchased Lot 2 of the CSM.

In 2006, the 66' strip of land (then owned by *Schultheis*) serving **the 20 acre parcel** to the south (also owned by *Schultheis*) was "absorbed" by the new owner of Lot 2 via a quit claim deed, **Schultheis Conveyance – Town** **February 2, 2015** **Page 3**

essentially landlocking the 20 acre parcel, although a 66' "easement" was retained across Lot 2 to serve **the 20 acre parcel**. It is not certain how this transaction occurred or if it was even legal, and therefore its value questionable, but we did find an **Agreement document** (see attached) recorded in the Register of Deeds office between, and signed by, the *Havnen* and *Schultheis*' that calls for certain things to occur with the 66' strip that may not meet the letter of the law. **First, the Agreement appears to violate "Exhibit A" of the land contract used to purchase the 20 acre parcel.** Second, the parties agreed to attempt to "move" the access easement to (only) the easterly 33 feet of the *Havnen* parcel. **They were to present their proposal to the Town and the County or other agencies requiring approval** and then terminate the westerly 33' of the easement on the *Havnen* parcel. Nothing was presented, **nothing was approved**, nothing was "moved", and **therefore nothing** was terminated.

The Agreement goes on to state that if such approval cannot be obtained that the parties will work with the Town and the County or other agencies requiring approval to reduce the width of the 66' strip to a 33' easement on the far west side of the *Havnen* parcel. **If the parties do not obtain approval for this to occur**, then only the westerly 33' of the easement shall be used for driveway access purposes, and *Schultheis* agrees to terminate rights to the easterly 33' of the easement. Nothing was presented, **nothing was approved or not approved**, and **therefore nothing** was terminated. In the Agreement, *Havnen* is permitted to construct berms, plant trees, and other vegetation in the east 33' of the easement area. This probably is not a good practice (or even legal perhaps) until the status of the 66' strip is resolved.

The Agreement goes on to further state that should the 33' access easement become an access driveway to **the 20 acre parcel**, then those benefiting shall pay their share of proportionate taxes and the proportionate costs of maintaining the shared driveway. To my knowledge, it is not customary for someone benefiting from an easement to pay the taxes and, again, I'm not certain it is legal in this case, or any other case, as you must allow a parcel to continue to have access to a public road if it has always had access to a public road.

It is also interesting to note that **the parties agreed in that Agreement to limit the use of the 20 acre parcel for not more than one single family residence on the 20 acre parcel.**

Schultheis does own 38.944 acres adjacent to the south of **the 20 acre parcel**, but there is no practical way to access a public road through that property from **the 20 acre parcel**, and once *Schultheis* sells **the 20 acre parcel** to another party, depending on the legality of what has occurred with the 66' strip, the parcel may be considered landlocked, unless the purchasing party (legally) abuts a public road.

It is worth noting the 2006 quit claim deed noted above was only one of six deeds/documents recorded that day in 2006 involving Lot 2. Another was the assignment of the original 1979 land contract in 1993 for Lot 2 only (and not including any mention of the 66' strip), and two others were warranty deeds, also not including any mention of the 66' strip. Only the three quit claim deeds filed that day included mention of the 66' strip. The first of which was a quit claim deed of the strip/easement from *Riehle* (serving as a Special Administrator for *Gerdes*) to herself

(*Riehle*) which we have been told is something that cannot (legally) be done. Because of the quit claim action, Lot 2 is now listed as **10.807 acres** on the County Tax Roll, and a Plat of Survey created in 2007 also includes the 66' strip in the legal description for Lot 2, reflecting this (potentially illegal) "transfer" of the 66' strip. The 2007 Plat of Survey is also not platted to the centerline of CTH D as the original CSM is described to be. Since the conveyance of the 66' strip may not be a legal

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conveyance, it is uncertain whether or not **the 20 acre parcel** to the south is landlocked.

There is another plat of survey created in 1979, and submitted by *Schultheis*, that shows Lot 2 and **the 20 acre parcel** to the south, with a 66' "**easement**" serving **the 20 acre parcel** – half of which (33') is shown as part of Lot 2 and the other half (33') assumedly would be part of Lot 1. This survey does correctly show Lot 2 platted to the centerline of CTH D as per the CSM. It is assumed this Plat of Survey was created to accompany the 1979 land contract mentioned above, and describes "Parcel 1" which is **the 20 acre parcel**, and "Parcel 2" which describes the 66' "easement".

The warranty deed recorded in 2007 does include the 66' strip, but obviously, there are quite a few questions about the property transactions that have taken place with Lot 2 and the 66' strip in the preceding years. In addition, when a residence was constructed on Parcel 2, the well appears to have been located within the 66' strip, the septic field appears to be just outside of the 66' strip, and the driveway was partially constructed within the 66' strip. Fortunately, the residence was constructed

25' from the 66' strip as the AD-10 zoning district requires a minimum offset of 20 feet from an "easement". If the 66' strip would ever become a public road, the minimum road setback requirement is 50', and the County did mention this fact to the the owners of the parcel at the time and when they started inquiring about permits for Lot 2.

Although the 2007 Plat of Survey indicates on its face that the surveyor certifies that the map is a "true and correct representation" of the property, and "shows the size and location of the property, it's exterior boundaries, the location and dimensions of all visible structures thereon, apparent easements and roadways, and visible encroachments, if any", there is also a note on the face of the Plat of Survey stating the following: "A complete, current title commitment was not furnished to On Target Surveying pertaining to this survey. This plat of survey may not reflect easements of record, encroachments, restrictions, ownership title evidence, or other facts that an accurate, complete and correct title search may disclose."

Havnen also provided another Plat of Survey at the January 5, 2015 Plan Commission meeting, prepared for *Schultheis* as the owner at the time and dated July 31, 2003, indicating the 66' "easement" as "part" of Lot 2. However, the legal description states, "Part of Lot 2 and part of easement of Certified Survey Map No. 5710 recorded as Document No. 1515086, Page 217, of Vol. 46...." What this means is although this Plat of Survey appears to show the "easement" to be part of Lot 2 (but if you look closely, it is actually hooked to Lot 2 across the platted line lot

as stated on the survey), it is legally described separately from Lot 2, otherwise if the “easement” were legally part of Lot 2, it would all be described as Lot 2, but legally it cannot be described that way. So technically, the map is correct, but it can be a little confusing, if nothing else. This Plat of Survey does not indicate whether or not the owner of Lot 2 also owns the 66’ “easement”. The Plat of Survey is simply showing the adjacent 66’ “easement”. In fact, one could infer from the Plat of Survey/legal description that the owner of Lot 2 does not own the 66’ “easement”.

CURRENT PROPOSAL

The *Ashley’s* seven acre parcel contains a single family residence and two outbuildings, and is accessed from CTH ZC via a 33 foot wide ownership strip (i.e., it’s a flag lot) that runs through a 66’ x 40’ common driveway easement adjacent to CTH ZC which is shared with Lot 6 (see [CSM enlargement attached](#)). **The 20 acre parcel** is accessed from CTH D via a 66’ wide strip of land, the legal status of which is questionable as outlined in the History Analysis [above](#). The *Ashley’s* are **Schultheis Conveyance – Town** **February 2, 2015** **Page 5**

proposing to purchase **the 20 acre parcel** located just to the northeast of their property from *Schultheis* and add it to their holdings (see [the revised proposal and the 2010 aerial showing the proposed conveyance, both attached](#)). As noted [above](#) in the History Analysis, **the 20 acre parcel** may currently be landlocked, (as the 66’ wide strip was somehow “absorbed” into the Havnen parcel to the east of the 66’ wide strip as an “**easement**”, and it is unknown if this was a legal transaction), and there is no feasible access from *Schultheis’* other 38 acre residential property to the south which does have access to CTH ZC.

The 20 acre parcel therefore does not have at least 40’ of frontage on a public road, and is not at least a minimum of 60’ in width at the base setback line. The design and lot configuration being created would also be somewhat irregular. It should also be noted, if anything, the Town prefers ownership strips to easements for lots not abutting public road, which **the 20 acre parcel** no longer appears to have.

There was mention in an email I reviewed about creating a separate access easement to **the 20 acre parcel** through the *Schultheis* 38 acre residential property located to the south of **the 20 acre parcel** from CTH ZC. This is not recommended for several reasons. First, the Town prefers ownership strips to easements. Second, the easement would be at least 1,300 feet long, and at the most approximately 1,950 feet long. Third, a lot not abutting a public road would still be created with all of the other issues attendant to doing that. Finally, unless the existing *Schultheis* driveway was utilized, one would likely have to disturb environmental features on the property such as PEC, wetland, high groundwater [conditions](#), and/or steep slopes to create the new easement, which would not be considered sound planning practices.

At the January 5, 2015, Plan Commission meeting, the petitioner was asked to have a full Title Search/Report conducted that answered all of the questions the Plan Commission had at the January 5, 2015 meeting to their satisfaction. A Title Commitment dated December 2, 2014 ([attached](#)), was submitted to the Town on January 13, 2015. Upon review of that document, it

does not appear that there is any more new information than we had before, and none of the outstanding questions have been answered. Therefore, it is recommended the Plan Commission require a Certified Survey Map be prepared and submitted for this request.

Depending on the action of the Plan Commission, relative to the Town's adopted Land Division Review Checklist and review of the conveyance, the following is a list of comments/questions/concerns that need to be addressed and/or submitted to the Town Planner either (1) prior to the recordation of a deed conveying the property in the manner proposed in the Waukesha County Register of Deeds office (in the event the conveyance is approved by the Town) or, (2) in conjunction with the submittal of a Preliminary Certified Survey Map for consideration by the Town (if the conveyance is denied and the petitioner wishes to still move forward with a CSM proposal and the Plan Commission allows the Conceptual phase to be waived):

1. The **20 acre Schultheis parcel**, created in 1979, does not abut a public road and does not appear to have ever received approval of a lot not abutting a public road. So while the non-conforming lot does exist, it is uncertain if it is a legal non-conforming lot. In addition, the lot was originally served by a 66' access strip which appears to have since, through a number of transactions, become an "easement" over time instead. Current access to this parcel is suspect at best. Therefore, since a parcel must be conforming prior to the conveyance and conforming after the conveyance, the Town should not approve this conveyance according to the Town's Land Division and Development Ordinance. Further, **the 20 acre parcel** would

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not be able to be divided or built upon according to **Exhibit A** of the land contract of 1979, as the 66' "easement" has not been maintained, in addition to the fact that it does not abut a public road.

2. In this case, even if the 20 acre parcel were legally created, it may not be possible to convey the 20 acre parcel, even if the new owners wanted to simply utilize the parcel for open space or agricultural use, as the non-conforming issues of access, etc would continue to be issues due to the fact that even though the parcels would be "joined", they would now only abut a public road (CTH ZC) by an ownership strip, and the Zoning Code states such narrow portion shall not constitute frontage (on a public road), even though the *Ashley* parcel was approved in that manner (**the 20 acre parcel** was not). In addition, the owners would have to respect the common lot line that would remain because a CSM was not created to eliminate the common lot line and therefore any structures would have to meet offsets/setbacks from that common lot line. As noted **above**, **the 20 acre parcel** could not be separated from the *Ashley* parcel and built upon separately as it does not abut a public road, and there are other land transactions that occurred over the years that created other possibly illegal situations, or at the very least non-conforming or awkward land transfers, and further, **Exhibit A** prohibits it, as the 66' "easement" has not been maintained.

3. If the conveyance were approved and recorded, a Plat of Survey shall be required noting the acres and square footage of each lot, post-conveyance; the lot numbers and dimensions; and

the required established ROW of the CTH's. The *Ashley* ownership strip shall be properly labeled as such, and the vacated 66' wide access strip to CTH D shall be properly labeled as either an ownership strip or an easement based on the outcome of a title search/report (see below) and that its existence is terminated. A note shall be placed on the Plat of Survey stating a Driveway Maintenance and Access Agreement (Condition No. 9 below) regarding the *Ashley* ownership strip has been recorded in the Register of Deeds office in conjunction with this document and the new deed.

4. **The 20 acre parcel** does not contain the required 40' of road frontage, even though this is an existing situation, **and a waiver would be required.**

5. **The 20 acre parcel** is not 60' in width at the base setback line (100' from the centerline of CTH D), even though this is an existing situation, **and a waiver would be required.**

6. The Town **and the County** must approve of a lot not abutting a public road for **the 20 acre parcel.**

7. The design and lot configuration of this proposal are somewhat irregular **and the Town Plan Commission should determine if this is acceptable in accordance with the Town's Land Division and Development Ordinance.**

8. No soil tests are required **if the 20 acre parcel** is not proposed to be built on and the parcel will be used for open space or agricultural uses. A note should be placed on the Plat of Survey noted in **Condition No. 3 above**, stating **the 20 acre parcel** shall not be further divided unless suitable soils are provided for a septic system on each lot, and ~~a public road is built serving~~ all lots not abutting, **and having have** access to a public road, and the land division must meet all other requirements affecting land divisions in effect at the time of the

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proposed land division. Finally, a note shall be placed on the Plat of Survey noted in **Condition No. 3 above**, stating **the 20 acre parcel** must always be owned by an adjacent property owner until and unless it is further divided as noted **above** and provided with septic, access to a public road, and the land division meets all other requirements affecting land divisions in effect at the time of the proposed land division. **If a CSM is required, soil tests will be required as well.**

9. **If the 20 acre parcel** is determined by the title search/report required **below** to be a legal non-conforming parcel, and is approved to be conveyed as proposed, and thus must utilize the *Ashley's* ownership strip and access easement for access to CTH ZC, a Driveway Access and Maintenance Agreement, including all parties that utilize the ownership strip and/or the access easement, shall be drafted and submitted to the Town Attorney for review and approval on behalf of the Town prior to recordation of the conveyance in the Register of Deeds office. **The same would be required for a CSM. However, no new parcel could be created or principal residence built unless the access serving more than one parcel is a minimum of 66' in width (driveway 16') per the Zoning Code. Further, no approvals for any businesses would be granted on an easement**

or ownership strip as lots must front on a public road.

10. An Access Permit may be required from the County DPW for an additional user (**the 20 acre parcel**) of the *Ashley* ownership strip and the access easement adjacent to CTH ZC. The County DPW shall be contacted and a decision rendered and transmitted to the Town Planner prior to recordation of the conveyance/**CSM** in the Register of Deeds office.

11. A complete title search/**report** shall be conducted for **the 20 acre parcel** and the 66' strip to determine their legal lot status at this point in time, and whether the 66' strip is an ownership strip or an easement. If the title search/**report** determines **the 20 acre parcel** to be a non-conforming legal lot of record in regard to the **County Zoning** and **Town Land Division Ordinances**, the petitioner may proceed with **Condition No. 12 below**. **The results of the Title Commitment did not provide any new information and did not answer all of the Town Plan Commission's questions satisfactorily.**

12. **If the conveyance is approved**, a Plat of Survey shall be prepared by a Registered Land Surveyor in the State of Wisconsin indicating the conveyance of **the 20 acre parcel** to the *Ashley* property and a legal description that shall reflect the same. The Plat of Survey shall contain all of the revisions discussed herein (**in particular note Condition No. 3 above**), and shall be submitted to the Town Planner for review and approval prior to any conveyance documents pertaining to this request being recorded in the Register of Deeds office. In addition, if the outcome of the title search/**report** reveals the 66' wide strip is now legally part of the Havnen parcel, a Deed Restriction shall be recorded along with the new deed for the conveyance, both with language stating the former granting of a 66' wide access for **the 20 acre parcel** to CTH D is null and void, and the only access to **the 20 acre parcel** will now be from the *Ashley* parcel to **CTH ZC**. The Town Planner will draft the Deed Restriction. If the title search/**report** reveals the 66' wide strip is still an ownership strip as originally created and **the 20 acre parcel** still have rights to utilize the 66' strip to access CTH D, then the 66' wide access strip may remain. However, if others **legally have** rights to utilize the 66' strip, a Driveway Access and Maintenance Agreement, including all parties that **legally can** utilize the 66' wide ownership strip for access to CTH D, shall be drafted and submitted to

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the Town Attorney for review and approval on behalf of the Town prior to recordation of the conveyance in the Register of Deeds office.

13. If the conveyance is denied and a CSM pursued, there are a number of technical items that would have to appear on the CSM, **to include but not be limited to**: 2' topo contours, soil types, exterior boundary information, name/width of roads, access drives, easements, structures and their uses, lot numbers, square footage, acreage and dimensions, total acreage, owners of abutting unplatted lands, list existing zoning of all parcels involved, list required setbacks/offsets, and septic compliance of any existing septic systems.

14. Town of Ottawa Standard Conveyance/CSM Conditions:

- A. Subject to the Developer satisfying all comments, conditions and concerns of the Town Planner and the Town Engineer, which includes compliance with the Town's adopted Land Division Review Checklist and Land Division and Development Ordinance; and all reviewing, objecting and approving bodies, which may include but not be limited to the State of Wisconsin Department of Commerce per Chapter 236, Wisconsin Statutes and Chapter COMM 85, Wisconsin Administrative Code; State of Wisconsin Department of Administration per Chapter 236, Wisconsin Statutes; the Waukesha County Department of Parks and Land Use (including the Planning and Zoning Division, Parks System Division, Land Resources Division, and Environmental Health Division) and the Waukesha County Department of Public Works; as applicable, in regard to the Conveyance/CSM, and obtaining all necessary permits and approvals, prior to commencing construction of any improvement, whether public or private, or site development or recordation of the conveyance, whichever is earlier.
- B. Subject to the Developer submitting to and receiving from the Town Attorney and the Town Engineer, as applicable, approval of a Developer's Agreement for the improvements (including all public, private, and site development improvements), prior to commencing construction of any improvement, whether public or private, or site development or recordation of the Conveyance/CSM, whichever is earlier.
- C. Subject to the Developer submitting to the Town Clerk and receiving approval as to form from the Town Attorney and as to amount from the Town Engineer, as applicable, a letter of credit or cash for the improvements (including all public, private, and site development improvements), prior to commencing construction of any improvement, whether public or private, or site development or recordation of the Conveyance/CSM, whichever is earlier.
- D. Subject to the Developer submitting to and receiving from the Town Attorney and the Town Engineer, as applicable, approval of the final draft of the deed restrictions prior to commencing construction of any improvement, whether public or private, or site development, or recordation of the Conveyance/CSM, whichever is earlier.
- E. The Petitioner shall, on demand, reimburse the Town for all costs and expenses of any type that the Town incurs in connection with this Conveyance/CSM, including the cost of professional services incurred by the Town (including engineering, legal, planning, and other consulting fees) for the review and preparation of required documents or attendance at meetings or other related professional services for this application, as well as to enforce the conditions of this review due to a violation of these conditions.
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- F. Any unpaid bills owed to the Town by the subject property owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Town; shall be placed upon the tax roll for the subject property if

not paid within thirty (30) days of billing by the Town, pursuant to Section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this review that is subject to all remedies available to the Town, including possible cause for termination of the Conveyance/CSM.

- G. Subject to the Developer applying for and receiving from the Town Plan Commission, Town Board, and Waukesha County, all necessary variances and waivers (if any) to the Waukesha County Zoning Code, the Waukesha County Shoreland and Floodland Protection Ordinance, the Waukesha County Shoreland and Floodland Subdivision Control Ordinance, and the Town of Ottawa Land Division and Development Ordinance prior to commencing construction of any improvement, whether public or private, or site development or recordation of the Conveyance/CSM, whichever is earlier. This review shall not be read as providing any assurance or expectation that such variances or waivers will be granted, and shall not vest any right regarding the grant of such variances or waivers.

Based upon the above information, review of the title document submitted, and in accordance with the Town's Land Division and Development Ordinance, including the 2014 conveyance amendment, it is recommended the Plan Commission require a CSM for this proposal. In order for all of the land division, planning, zoning, and other issues to be resolved by the recordation of a CSM, the CSM should include the 20 acre parcel, the 66' wide strip, the Ashley parcel, as well as the Havnen parcel, and possibly Lot 1. If the Town Plan Commission is inclined instead to approve the conveyance, draft preliminary recommended conditions are also included in the above Planner Analysis. A final draft of these conditions would be provided after Plan Commission approval and would have to be satisfied prior to recordation of the conveyance.

Procedural Note if the conveyance is denied: *The Plan Commission may consider this conveyance review as the Conceptual CSM review if the conveyance is denied and the Petitioner still wishes to move forward with a proposal (CSM), and allow the Petitioner to proceed with a Preliminary CSM as the next submittal. **The Plan Commission should discuss this** so the Petitioner has clear direction in order to proceed with the next steps, in the event the conveyance is denied.*

Respectfully submitted,

Sandra L. Scherer

Sandy Scherer
Town Planner

NOTE: In the case of this report, changes from the January 5, 2015 report are in blue font.

Attachments: [Exhibit A](#)
[Schultheis-Havnen Agreement recorded 7/13/11](#)
[Ashley CSM enlargement](#)
2010 aerial showing proposed conveyance
Revised proposal showing details
Proposal as submitted
Aerial map w/66 foot access
Aerial map w/o 66 foot access
[Title Commitment dated 12/2/14](#)

Planner Scherer stated that the questions of importance were not with the 20 acres, but with the 66' strip. She pointed out that on Page 4 of her report, the Havnen's have a Plat of Survey dated 7/31/2003 indicating the 66' is part of their lot (lot 2), yet it is legally described separately from Lot 2. At this time Planner Scherer is recommending a CSM.

Supervisor Goodchild asked if the 66' had its own tax key and who the owner is? Planner Scherer responded that the Title Search Schultheis just had prepared shows Havnen's as the owner.

Town Attorney Macy was present. He stated that the last Town approval on this property was in the 1980's. The minutes and CSM were approved then. Planner Scherer mapped the legal description of acreage of lot 1 and lot 2 of that CSM, leaving a 66' strip in between. In the minutes, the Shultheis' separated the strip.

Attorney Gutenkunst spoke on behalf of the Havnen's. She stated there is a Deed from 1979. The Deed was with the Gerdes (who owned lot 2 at the time) by metes & bounds, and there has been a transfer of "ownership" to Havnens. Attorney Macy stated that there has been no approval by County or the Town from 1988 to today. A CSM needs to be done. Ultimately Planner Scherer and the Town want to find a solution. Planner Scherer added that with so many environmental concerns, another easement from the 38 acre Schultheis property to the south would be challenging. Attorney Macy added that the owners of Lot 1 should be made aware of this discussion. Mr. Havnen said he would contact his neighbors on Lot 1, the Hearly's, and make sure they are informed.

Commissioner Mundschau inquired that he would like to know if there is a plan for the 20 acres, and will it be 2 lots or 1 lot? Planner Scherer responded that there is no proposal.

Chairman Arrowood stated that as it is now, one home with some restrictions could be possible with a CSM. The easterly 33' of the 66' strip is Havnen's driveway. This is a situation in the town that now needs cleaning up. Planner Scherer added that the DPW may need to weigh in as well. Supervisor Goodchild asked if we could all agree that we need a CSM to start with. He added that there may also be utility easements to consider. Chairman Arrowood added that there may be shared taxes to consider and a maintenance agreement to look at as well. Maybe we should consider tabling this issue for 60 days to let the lawyers work this out with the Planner. Commissioner Mundschau made a motion to table this item until the April Plan Commission meeting. Commissioner Hausser seconded the motion and it carried.

The list of zoning violations was reviewed.

There was no correspondence.

There was no public comment.

Commissioner Hanson made a motion to approve the minutes as amended. Commissioner Weber seconded the motion and it carried.

Commissioner Hausser made a motion to adjourn. The motion was seconded by Commissioner Weber and carried.

Respectfully submitted, Lori Geyman, Deputy Clerk, Town of Ottawa