

VILLAGE OF TWIN LAKES JOINT PLAN COMMISSION AND SPECIAL VILLAGE BOARD MEETING MINUTES

July 1, 2024 – 6:30 p.m.

Village Hall, 105 E. Main Street, Twin Lakes, WI

CALL TO ORDER AT 6:30 PM BY TRUSTEE KAROW/PLEDGE OF ALLEGIANCE/ ROLL CALL:

Present: Trustees Barb Andres, Kevin Fitzgerald, Aaron Karow, Bill Kaskin, Ken Perl, President Howard Skinner. Absent: Trustee Sharon Bower. Also Present: Administrator Laura Roesslein, Attorney Chirs Geary

ROLL CALL PLAN COMMISSION: Present: Commissioners Carl Smith, Aaron Karow, Ken Perl, Howard Skinner. Absent: Commissioners Bill Busse, Todd Destree, Bran Richter

Public Comments

Laura King, new owner of the Sand Bar spoke about their excitement with taking over the business.

Attorney Chris Geary stated that this hearing involves changes to the village zoning and building code ordinances. It addresses a matter that is currently the subject of litigation involving the village and potentially additional litigation. He advised the boards and the public to focus their conversations on the ordinance, discussing its pros and cons.

Discussion and possible action by the Village Board regarding Ordinance 2024-7-2 An Ordinance to Create Chapter 10.45 of the Twin Lakes Code of Ordinances Pertaining to All-Terrain Vehicles and Utility-Terrain Vehicles.

Trustee Fitzgerald is still open to the idea but questioned if it's wise if the county is not on board. President Skinner stated that as the villages approve these measures, we are hoping the county will join in to allow connectivity. Attorney Geary mentioned that Walworth County adopted an ordinance stating that if the municipalities approve an ordinance allowing ATV/UTVs, then the County is okay with it. Although they didn't formally approve it, they approved municipalities taking the initiative. Karow noted that it looks like many communities in Walworth County have adopted similar ordinances over the past year. Those ordinances are similar to ours. Trustee Andres mentioned an email she received regarding ATVs and OWIs. Attorney Geary stated that the first offense for an OWI on an ATV results in a fine and the loss of some privileges, but it does not affect the privilege to drive a car. A discussion followed on insurance requirements. The topic will be brought back to the next meeting with additional information from the attorney.

Plan Commission/Village Board Public Hearing

Karow/Fitzgerald motion to open the Plan Commission and Village Board Public Hearing: Ordinance 2024-7-1 An Ordinance Amending Sections 17.12.041, 17.12.080, 17.20.030, 11.04.115 of the Twin Lakes Code of Ordinances Pertaining to Residential Construction Standards. Motion carried 7-0 to open the Public Hearing at 6:31 p.m.

Bryan Neal, 142 W. Park Drive, expressed opposition to amending the ordinances as proposed. He believes it will result in homes being built closer together, an increase in impervious coverage, more flooding, less green space, and increased runoff into our lakes. The amendments will adversely affect the quality of life and the quality of the lakes in Twin Lakes.

Aaron Karow has considered the ordinance changes and looked into West Park Drive and Mt. Mariah Drive to see how many driveways there are and their conditions. He feels this is micro-focused on that area. Out of 120 properties that have driveways along there, 69 of them appear to be within 5 feet of the property line, whether at the road or further into the lot, and 51 of them seem to be further away. This is just his opinion based on his review, not a formal survey. It appears that 58% of existing driveways are within 5 feet of the property line. It seems counterintuitive to create an ordinance that would put the majority of the driveways in the area in non-

compliance. He tried to understand why the driveways are so close to the property lines and noted that it's because the lots are so narrow. As the lots get bigger, the driveways aren't as close to the property lines. He believes it's more a function of lot width than whether the road is private or not. Many of the driveways were shared, with paving across one lot to the other. The ordinance is more geared towards new subdivisions with wider, more standard lot widths. Applying this ordinance to older, denser areas seems problematic.

Kevin Fitzgerald looked into a couple of other municipalities. The two that he spoke with do not regulate private roads, just like we don't regulate state roads. State roads are regulated by the state, county roads by the county, and village roads by the village. Private roads, guess what, they don't regulate. He doesn't understand why we would want this kind of control when the main purpose for us at the village level is to maintain the public part of the easement for ditches, curbs, and similar infrastructure. All of those should be handled by the private subdivision, whoever owns that private road. I don't know why we feel the need to interject ourselves into private property issues.

Bill Kaskin stated he agrees with Kevin.

Buster Amore, 307 Knobbs, stated, like Kevin just mentioned, it's private roads. I have a situation with my subdivision; it's a small street. It's a private road, and the same thing is happening to us. So if you are going to change it for private roads, you better start changing it for village streets too. Why are you doing it for all private roads and only private roads? It should be uniform within the village. Why change the ordinance when you can't maintain it? This is the rule, sorry.

President Skinner replied, that's great, but that's not how it was ever interpreted or enforced, and that's where the problem lies. It wasn't enforced, but it's a private road with zero setback.

Trustee Fitzgerald stated, it's not just Twin Lakes Park. They don't have ditches, so they are not having to maintain the ditch lines, and that's the main reason for the ordinance. Once you get into your property, you can go zero lot line with your driveway. The only purpose for this is to maintain the ditches and public side of things, and we don't own the ditches in Twin Lakes Park or any private roads, so why do you want the government involved in that? The water is going to be there one way or another, and there are no ditches.

Bill Poekter, 1607 E. Lakeshore, asked what the ordinance was that wasn't enforced. Attorney Geary said, what it currently is, is 5 feet for both public and private. That has not been how it has been applied historically. Due to some recent issues, that's not the case anymore. Going forward, it will be applied as written, which is a 5-foot setback for both public and private. The question before the board tonight is whether or not to change that, essentially reverting back to what had been the historic interpretation and making the code reflect that interpretation.

Bill Poekter replied, but we had a comment that it wasn't historically interpreted correctly and it wasn't enforced, and we've had ongoing discussions in this village for 3 years about code enforcement. We hired someone to do it on a part-time basis. I also think it's the building inspector's job to make sure these codes are enforced. If that's not being done, you all are culpable for a building inspector that is not doing his job.

Fitzgerald stated, the driveway permits are not handled by the building inspector; the driveway is handled by the public works side.

Michelle Cochara, 2115 Matthew Ave, stated that when she built her house, she had to obtain a permit from the previous building inspector to widen her driveway. She said Matthew Avenue is a public road.

Aaron Karow mentioned that the coordination is likely between the Building Inspector and Public Works.

Todd Little, 201W Park Drive, asked at which board meeting these ordinances were introduced. President Skinner replied that the Village Attorney recommended considering these changes. Attorney Geary stated that they had examined this issue at the village staff level and found a disconnect between how the ordinances have been applied and what they actually state. Going forward, they want everyone to be on the same page.

Kevin Fitzgerald stated that before this issue arose, about three years ago, the village board was already planning to review the entire ordinance comprehensively. They even budgeted money for that purpose, knowing that there were areas within the ordinances that might not align with current practices or contained conflicts. He mentioned that local boards are always reviewing ordinances. A couple of years back, they changed the setbacks.

Todd Little asked what benefit the village would gain from changing this. Fitzgerald replied that the issue was straightforward: he believes the government should not be involved in areas where it doesn't belong. In his view, when a private subdivision maintains its own roads, government involvement is unnecessary and not beneficial. He pointed out that current issues demonstrate that government shouldn't be involved and questioned why taxpayers should bear the cost of what is essentially a dispute between two neighbors.

Todd Little said he had come before the board seven years ago to get a variance, and one of the conditions was that he had to install a permeable driveway, with no issues regarding setbacks. He stated that this is a drainage issue and expressed concern that the changes would not help with drainage in the community. Fitzgerald responded by acknowledging the permeable aspect of it.

Todd Little asked if the changes would help with drainage issues. Fitzgerald replied that the changes would neither help nor hurt drainage. Todd suggested that not enforcing existing regulations or changing new construction wall-to-wall might not be effective. Fitzgerald stated that it is up to private organizations to develop their own codes for their associations.

Aaron Karow stated that at the top of Mt. Mariah, the lot lines are only 14 feet wide. The narrow nature of the lot lines, being just 14 feet, presents a challenge.

Todd Little asked if that isn't what the variance process is about. He noted that the process exists to acknowledge that while there are laws applying to everyone, there are exceptions. He argued that this doesn't mean the law should be changed just because people want variances.

Aaron Karow responded that he believes it's a function of the narrow nature of the lots, which are narrower than what current village standards allow. By creating ordinances that place most of these lots in pre-existing non-conforming uses, it gives people the illusion that because it was allowed previously, it should be allowed now. This causes much consternation, which they are dealing with currently.

Mary Brennan, of 341 Indian Point, stated that she isn't very knowledgeable about these ordinances and questioned whether lot coverage addresses drainage issues. She pointed out that this is an ordinance that supersedes HOA rules. She asked if, when a driveway takes up too much space and exceeds the 35% lot coverage, this addresses the issue.

Fitzgerald said, that is what he is saying; properties are still bound by the 35% lot coverage rule.

Mary Brennan expressed her concern for the health of the lakes, emphasizing the importance of keeping the lakes clean. She pointed out that proper drainage is crucial to this goal and stated the Village has an existing drainage ordinance that supersedes an HOA. If the driveway takes up too much space and we are outside that 35%, that ordinance should address this.

Fitzgerald replied that, as someone else had mentioned, a driveway can be made permeable, which is entirely possible. He noted that a driveway can extend from one lot line to the other and be fully permeable, so the five feet in question doesn't matter as long as the 35% coverage rule is maintained.

Fitzgerald said that the way he views it, the road is private, so it functions as a lot line. Essentially, you have one parcel owned by multiple people, and then you have individual lot lines. It's up to them to figure it out.

Mary Brennan asked if I build and overshoot that 35%, it comes back to the village ordinance, right?

Fitzgerald replied, Correct.

President Skinner said that the reason they are having this discussion is because of code violations at 200 W Park. These code violations have a time limit from the court that they have to be corrected, and if not corrected, fines will be issued. The code enforcement will issue tickets through the police department. This will move that process forward. Regarding the ordinances on overhangs and setbacks (zero to five feet), this will not be addressed now. The Kings need to come into compliance with their violations first, and then we will move on from there. That's the best I can tell you.

Attorney Geary stated that the ordinance change would impact that property if enacted. It depends on the decision of the governing bodies. If the ordinances remain unchanged, the Kings must comply with the existing regulations. If the ordinances are changed, then the new regulations will apply.

Fitzgerald used an analogy: if he received a speeding ticket for going 55 mph in 1980 and the speed limit changed to 65 mph on January 2, he wouldn't be excused from the ticket because he got it when the limit was 55. He then asked the Attorney if changing the code now would let the Kings off the hook for their current violations.

Attorney Geary stated that it's not necessarily the case; it depends on what the code change is. This gets complicated. You mentioned the legal non-conforming status, which is previously grandfathered in. If someone has the condition today—for example, a lot of these driveways we're discussing are very old and have zero setbacks—maybe they have been there for 60 years. We don't know if that was legal or not 60 years ago. Let's assume that 60 years ago it was legal when the driveway was put in with zero setbacks. That driveway was legal at the time. However, as we sit here now, because the code says there should be a 5-foot setback for both public and private, it looks like that driveway is in violation. Moving forward, if we change the code so the 5-foot setback requirement is removed, it would appear that the property is now in compliance. To effectively be a legal non-conforming use means that you have a condition that is not allowed under the current code, but you are allowed to keep it because it was legal at the time it was established and predates the code change.

Fitzgerald stated he does not want to change the ordinance and let someone off the hook.

Attorney Geary stated that part of the issue you have to grapple with tonight is up to you completely. It's the issue we talked about previously—the inconsistency between what the code says and how it's being applied. When that property was being built, it was subjected to the standards that all properties were being subjected to, which differed from what the code stated. So, if the property was built in a certain manner and, after much discussion, it turns out there were some aspects that weren't necessarily per code, do they have to correct the property to reflect what the code currently reads, or do you want to change the code to reflect what had been the practice rather than the code?

Fitzgerald asked how far back can they go. If another neighbor finds out that a neighbor three doors down didn't follow the code, what happens then?

Attorney Geary stated that you would have to look at whether it was legal at the time it was done. If the codes change after the fact, you can't make something illegal that had been legal at the time. You can make something that was illegal at the time legal going forward by changing the code. Again, this will not solve all the problems, as there are other issues that need to be addressed, but regardless, this would have an impact on the situation.

President Skinner stated the Kings need to bring their property into compliance. We are not going to make any decisions tonight. We are still dealing with litigation for Mr. Neal. Thank you very much; I appreciate it. We are not going to do anything until the litigation is resolved and the issues at hand are brought into compliance.

Bryan Neal said I has several points to clarify for everybody. I don't think there was a court-ordered date of compliance, and I'm pretty familiar with the court order as it's my lawsuit.

President Skinner replied that is why he brought that up.

Bryan Neal said, It sounded to me like you said there had been a court order, but to my knowledge, there has not been one up to date.

Attorney Geary replied you are represented by an attorney, so I don't want to say anything.

Bryan Neal said, along with Trustee Fitzgerald's statement, first, regarding not wanting to regulate the private roads, you have to follow all other codes: setback of the garages, setback of the houses, height of the houses, every other village code applies even though we pay for our own road. So I am a small government person. We have to have some codes, and we want to follow some codes for ordinary processes. All the other codes apply, except this one regarding the five-foot setback, which you don't want to follow. Our Twin Lakes Cooperative says we follow the village code, so that's already written. The last thing is the permeable driveway. You are not quite right; it is a very sticky legal point. If you have an asphalt driveway in the public, you are supposed to be five feet off. Even if you make it permeable, if it's a driveway, it's supposed to be five feet off. Then it gets into the weeds of what is permeable and what is a driveway. I don't want to discuss that tonight. Trustee Kaskin, Public Works, both before and after 200 West, there is somebody before 200 and after where this village forced people to be five feet off on Twin Lakes Park. You have affidavits from both those homeowners.

Glen Coarson, of 2122 Matthew Ave, stated he is trying to understand, are we saying that if this ordinance passes, all the driveways that are not compliant will have to be corrected?

Attorney Geary stated, no, it would be grandfathered in. Zoning codes are introspective instruments, at least when you start changing them. You can't make something illegal that had been legal at the time. So if the driveways out there were legal when they were constructed, even if you change the rule to require all driveways to have a 10-foot setback, any driveway with less than a 10-foot setback would become nonconforming.

Glen Coarson asked if it was something the inspector missed and it was required, would the homeowner have to correct that?

Attorney Geary replied, it depends. If the code is changed so that it's not illegal anymore, then no.

Glen Coarson followed up, if this is something the village missed and it was supposed to be enforced but wasn't, then those homeowners would have to fix it?

Attorney Geary responded, no, it goes back to when the driveway was constructed. The property we are talking about is relatively recent construction, and there has been much litigation about what the code says and what it doesn't say, and what's required and what is not. As we sit here today, the code requires a 5-foot setback from driveways on both public and private roads. The property in question is on a private road and was initially allowed to not have a 5-foot setback because historically, the village practice has been that a 5-foot setback is not required on private roads, only public roads. After much litigation, it was determined that this is not the case; the rule says what it says. The village accepted the fact that the code requires a 5-foot setback for both public and private roads. As we sit here today, that property is in violation. Unless this board chooses to change the ordinance so that it no longer applies to private roads, that property remains non-compliant.

Glen Coarson is concerned that his neighbors might have to fix their driveway due to several missed inspections. People make mistakes; he understands that. He asked can the driveway be grandfathered in until it either needs to be replaced or repaired, or until another permit is submitted? In other words, if it was missed, can it be overlooked until a change request necessitates that the driveway be addressed in the future?

Attorney Geary stated that this is a matter of enforcement discretion and that it is not grandfathered.

Glen Coarson mentioned that if this were approved tomorrow and a driveway was missed or not properly approved, it should be ignored until the driveway needs to be replaced and a permit is obtained. At that point, the ordinances would need to be followed.

Attorney Geary responded that there is pending litigation on this very issue, which is part of the reason enforcement has not yet occurred on that property. We need to determine what rules should be in place. If we are changing the code, that would be relevant here. If we are not changing the code, that is acceptable as well.

Aaron Karow noted that the rule being discussed, as it is currently written, would only apply to private roadways. Public roads would remain unchanged.

Glen Coarson expressed his concern that this decision is being made due to legal litigation, and he acknowledged that it needs to be addressed. He is worried about other issues that inspectors may have missed and feels that a precedent may be set. For example, if a house with aluminum wiring now needs to have copper wiring, the homeowner would be required to make the change by next week and face penalties if they don't comply. He is concerned that this situation might set a precedent for other issues, and he would hate to see residents penalized. This is why he is asking why it can't be grandfathered in. If the village made a mistake, he suggests letting it go until another permit is pulled, rather than setting a precedent for other matters.

Kevin Fitzgerald said that once your driveway is on your property, outside of the public right-of-way, you can extend it to your property line. Aaron Karow responded, I don't know; I can't answer that. Fitzgerald added that the ordinance pertains to the public right-of-way, and while past building inspectors may have enforced it differently, the five-foot setback only applies within the road right-of-way. In Twin Lakes Park, for example, any private road does not have a roadway right-of-way. Instead, you have two lots coming together: an association lot (a common element) and a separate private lot, with no roadway right-of-way.

Bill Poetker, of 1607 E Lakeshore Drive, addressed the issue as a taxpayer in the village. He mentioned an occupancy permit and expressed uncertainty about how long ago it was issued, whether it was temporary or permanent, and the duration of its validity. He wondered about the tax base of the house and how long it has been in use, as taxpayers like himself are contributing to the tax bill if the occupants have been living there for a couple of years without proper compliance.

Attorney Geary stated that it is a factual matter, and he does not have the answer. It is a legal issue that is part of the ongoing litigation.

Bill Poetker responded that it affects every taxpayer in the village and should be addressed.

President Skinner agreed, saying, "Amen, Bill, amen. All of us sitting up here too. Like I said before, thank you very much."

Laura Lenz, of 216 West Park Drive, questioned the enforcement regarding remodeling and temporary occupancy permits. She asked how long a temporary occupancy permit is valid and if there is a set timeframe. Attorney Geary replied that there is no fixed code; it depends on the circumstances.

Laura Lenz noted that in the situation she is referring to, the temporary occupancy has lasted more than two years. She suggested a time limit, such as 30 days, authorities should follow up after that period to ensure compliance. She emphasized the need for accountability, as it is concerning that homeowners could still be living there on a temporary occupancy permit after two or three years.

Kevin Fitzgerald said that when you pull a new home building permit and the lot is valued under \$100, the assessor is supposed to assess the improvements as of January 1st. Your next tax bill should reflect that assessment. Then, the following year, on January 1st, if the house is 80% completed, you would be taxed on 80% of the property's value. The assessment is supposed to occur on January 1st, but he is not sure how it ends.

Laura Lenz clarified that she is not discussing the tax assessment but is concerned about residents not complying within the given timeframe. When they are given temporary occupancy, what is the definition of that timeframe? She noted that enforcement seems to falter after this point. There is no follow-up unless someone specifically reports non-compliance. She questioned what incentive homeowners have to comply if they can live in the property for years without consequence, especially when the tax bill might not reflect the property's true status.

President Skinner responded that these homeowners would want to be in compliance because the house is likely to be sold. The owner may be going through a divorce and wants to sell the property.

Laura Lenz clarified that she was not referring to this particular property but rather to other properties, including one three houses away that has been non-compliant for literally three years.

Attorney Geary recommended that Laura Lenz contact the building inspector or zoning inspector.

Laura Lenz said, it's not still going on, but it did happen, and there seems to be a pattern where enforcement and accountability have broken down. She feels enforcement should be addressed.

Kevin Fitzgerald noted that building permits expire in two years. Attorney Geary stated that each situation appears to be very different.

Laura replied that her question was how long something can be considered temporary and asked can someone live there full-time under a temporary occupancy permit. Attorney Geary responded that it depends on any conditions imposed, but generally, yes. Laura emphasized that her issue is with the enforcement of these regulations, and President Skinner agreed.

Mike Fay, 195 Koch Court, remarked that given the circumstances and comments, there is a dire need for a code enforcement officer in the village. President Skinner stated that they do have one. Mike replied that this

is a consultant working a limited number of hours per week. He added that Trustee Kaskin and he had a different opinion at the time, and the comment was that they couldn't afford a full-time code enforcement officer. Mike stated this question needs to be readdressed.

Bryan Neal made a brief point, saying, Trustee Fitzgerald, I think you are correct about the January 1st date. The tax assessor doesn't find out about improvements until a permanent occupancy permit is issued. In the case in question, there was no permanent occupancy, as I've spoken with the tax assessors. They don't assess the improvements until a permanent occupancy permit is given. If it's not given, they won't change the value. That's why someone might live in a house and not be taxed on it for close to three years. They are living under an expired temporary occupancy permit.

Skinner/Karow motion to close the Plan Commission and Village Board Public Hearing. Motion carried 8-0 to close the Public Hearing. Motion carried 7-0.

Karow/Skinner motion to table the discussion and possible action by the Plan Commission to approve Ordinance 2024-7-1 An Ordinance Amending Sections 17.12.041, 17.12.080, 17.20.030, 11.04.115 of the Twin Lakes Code of Ordinances Pertaining to Residential Construction Standards. Motion carried 7-0.

ADJOURNMENT BY PLAN COMMISSION

Skinner/Karow motion to adjourn Plan Commission. Motion carried 7-0.

Karow/Skinner motion to table the Discussion and possible action by the Village Board regarding Ordinance 2024-7-1 An Ordinance Amending Sections 17.12.041, 17.12.080, 17.20.030, 11.04.115 of the Twin Lakes Code of Ordinances Pertaining to Residential Construction Standards. Motion carried 6-0.

ADJOURN – Skinner/Karow motion to adjourn at 7:49 p.m. Motion carried 6-0.

/s/Sabrina Waswo, Village Clerk