

ONEIDA COUNTY BOARD OF ADJUSTMENT
PUBLIC HEARING SUMMARY
NOVEMBER 11, 2021 1:00 PM
3RD FLOOR CONFERENCE ROOM
MINOCQUA CENTER
MINOCQUA, WI 54548

Chairman Harland Lee called the meeting to order at 1:00 PM in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Mr. Hansen, “here”; Mr. Albert, “here”; Mr. Ross, “here”; Mr. Pazdernik, “here”; Mr. Viegut, “here”; and Mr. Lee, “here”

Members absent: None

County staff members present: Todd Troskey, Assistant Director; Carla Blankenship, Land Use Specialist; Mike Fugle, Corporation Counsel; and Julie Petraitis, Program Assistant

Other individuals present: See Sign in Sheet.

Chairman Harland Lee stated that the meeting will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment asks that only one person speak at a time because of the difficulty in transcribing when several people are talking at once. The Board of Adjustment consists of five regular members and two alternates. Anyone wishing to testify must identify themselves by name, address, and interest in the appeal and shall be placed under oath.

Chair Lee swore in Austin Barkley and Meron Demissie, Representatives of Tesla; Todd Troskey and Carla Blankenship of the Planning and Zoning Department; Bob Jaskolski, President and CEO of T.A. Solberg Co., Inc.; and Mark Hartzheim, Minocqua Town Chair.

Secretary, Phil Albert, read the notice of public hearing for Appeal No. 21-006 of Tesla, Inc., appealing the denial of a Zoning Permit application for the placement of Tesla supercharger location 34’8” to the centerline of Plaza Road and 2’1” to the right-of-way of Plaza Road. The property is located at 8707 Blumenstein Rd. further described as Section 10, T39N, R6E, PIN MI 2155-1, Town of Minocqua, Oneida County, Wisconsin.

The Oneida County Board of Adjustment Rules of Procedure, Section 178.05(12), Chapter 17, Oneida County Code of Ordinance, provide that a timely appeal shall stay all proceedings and furtherance of the action appealed from, unless such stay would cause imminent peril to life or property.

The Board of Adjustment will conduct an onsite inspection of the property involved in this appeal beginning at approximately 10:00 am prior to the hearing. Pertinent property

boundaries and locations of existing and proposed structures shall be clearly identified. A representative or the appellant must be present. The inspection shall be open to the public. Following the adjournment of the public hearing, the Board will vote in open session for a decision on this appeal. Information on the decision can be had by calling or visiting the Planning and Zoning Office during normal business hours on or after the next or a later day set by the Board at the hearing. The appellant will be notified of the decision via certified mail.

Copies of appeals and related documents are available for public inspection during normal business hours at the Planning and Zoning Office, Oneida County Courthouse, Rhinelander, WI 54501. The Oneida County Zoning & Shoreland Protection Ordinance is available on the internet at www.co.oneida.wi.us. All appropriate media outlets were notified and the inspection was conducted between 10:00 and 10:20 a.m. this morning, November 11, 2021 at property located at 8707 Blumenstein Rd. further described as Section 10, T39N, R6E, PIN MI 2155-1, Town of Minocqua, Oneida County, Wisconsin. All Board members; Austin Barkley and Meron Demissie; Bob Jaskolski; Todd Troskey and Carla Blankenship were present at the onsite. Observations by the Board: Property boundaries were adequately mark with colored flags. The Highway road right-of-way was adequately marked. The well and sanitary facilities are not applicable in this situation. Outline of proposed construction/structures were adequately marked. The new facilities were exhibited by the maps (Exhibit A). The topography is a parking lot for trucks and trailers. The existing structures are electrical boxes and electrical poles. Other observations by the Board were that it is a parking lot for trucks and trailers. In terms of questions, there are questions of structures and public utilities. That concludes the observations of the onsite vision.

Chair Lee informed the Appellant (s) how the hearing will be handled. He stated it will be a little bit different than they normally do it. He is going to ask Todd to outline what the concern is in this particular matter.

Mr. Troskey began his testimony by stating that this appeal is more basic in terms of the denial letter. The denial was based on some of the features being talked about are considered structures in the ordinance and there are minimum setback requirements for structures of any sort. That is why we had to deny the permit. The setbacks to the center of the road and right-of-way could not be met for the features we are looking at today.

Chair Lee said, that is in a nutshell. They are within the 20-foot setback to the right-of-way. As far as Tesla is concerned, you have asked for a request for interpretation of Section 7A of Chapter 9, which is the Oneida County Zoning and Shoreland Protection Ordinance. Section 9.70 deals with highway setbacks.

Mr. Barkley, representative for Tesla, began his testimony by stating that they are basically requesting the interpretation of what is a structure. He said they have had this question come up on other sites in Wisconsin. They are asking what is a structure within a setback. In other cases, their power equipment is not considered a structure; it is more in line with

utility infrastructure, which is allowed within the setback. That, in a nutshell, is what they are asking for is for their equipment not to be considered a structure.

Chair Lee said if they can talk about the language and the highway setback and structure rather than get into a variance it can be very easy or very difficult.

Chair Lee introduced Mark Hartzheim, Minocqua Town Chair. Obviously, the Town of Minocqua has an interest in this.

Mr. Hartzheim stated that he does not have an official position of the Town of Minocqua because this has not been before the Planning Commission or Town Board. He has had some communication with Bob, representative of T.A. Solberg, Inc., who had asked some general questions about the Town's reception to this concept. He said that the Town would be very welcoming of this type of facility. There is a need for it. He thinks it would get used and it would be an asset. From the Town's standpoint, there are requirements from the County. There are setbacks and they would expect them to be complied with. That would typically be the Town's response, unless there is some unusual hardship or physical reason why they could not be met. They would consider that. Without this being presented at the Town Board, he is not aware of any reason that compliance could not happen.

Chair Lee stated that as you look at the situation out there, there is the road, the curb and a grassy area and then you get to the blacktop in the parking area. It is his understanding that no part of these units would be into the grass, they would be on the blacktop. He asked if that was correct.

Mr. Barkley said that was correct.

Chair Lee stated that there are some utility boxes in the grass already, not on the blacktop. There is an exemption to the 20-foot setback for public utilities and if the Board were to rule that this is a public utility, this could all be over. He is just pointing that out to Mr. Hartzheim. He asked if Mr. Hartzheim had any thoughts on that.

Mr. Hartzheim said that he thinks the Board has to decide how it would classify as a public utility when it is for users of something particular. It is a Tesla facility. It only serves Tesla vehicles. He thinks the easements for utilities, rights-of-way are granted for specific public utilities, and they have records, such as Wisconsin Public Service for gas and electrical utilities and things like that. Having private facilities in the right-of-way, he would be concerned about the precedent being set. Where are you going to draw the line with some of this stuff? It appears to him that there is ample real estate to meet the setback, whether it is on blacktop or not. Again, these are his thoughts without it having been in front of the Plan Commission and Town Board. That presents a difficult situation for him.

Chair Lee said he thinks later on in the testimony they will hear that Tesla will be making accommodations for other than Tesla vehicles for these units. You might look at that as more of a public thing.

Mr. Hartzheim said that he thinks that somewhere in the future Tesla has a plan to do that.

Chair Lee stated this is new technology and our rules and regulations are not written for all this.

Mr. Hartzheim stated that this is supplying fuel for people's vehicles. It is basically an electric gas station. Does that mean a gas station is a public utility? People are going to be able to come here and use it. Whether it is electric or gasoline does that make it a public utility like Wisconsin Public Service?

Chair Lee said they are using a public utility themselves.

Mr. Hartzheim replied, as is every home and business in the County. He said he worries about the precedent that would be set. That is his concern. The facility, he thinks, is needed and would be used here but he is more worried about setting a precedent for what he really thinks is a private service.

Chair Lee asked if the Board had any questions for Mr. Hartzheim.

Mr. Ross said it was a totally logical position.

Mr. Hansen asked if this issue or any permits would come before the Town Board.

Mr. Hartzheim stated that this was Mr. Jennrich's decision to go directly to the Board of Adjustment.

Chair Lee stated that pending the outcome of the Board's decision today it does not have to go back to the Town. This is the final, right here.

Mr. Hartzheim stated that Mr. Jennrich relayed to him is that more or less, no matter what the Board of Adjustment does that it will be going back to the Town.

Mr. Troskey said he was going to add exactly what Mr. Hartzheim said. This did not go to the Town just because of the fact it is just a simple Zoning Permit denial. If it were a Conditional Use Permit or even an Administrative Review Permit then the Town would be notified of that. What will happen is whatever the decision is, if there was another Zoning Permit that needed to be applied for then that would come back to the Planning and Zoning Department for them to review.

Mr. Hansen asked if it would go to the County only.

Mr. Troskey said yes.

Mr. Albert stated that Mr. Hartzheim raised a question in terms of placement on the property, if it would be appropriate for Tesla to respond to that in terms of moving them or not moving them. He understands why they put it in that corner, because of the electrical

but it is a question of away from the right-of-way or not away from the right-of-way. He asked Mr. Lee if he wanted Tesla to answer that now.

Mr. Barkley said the question is not what is possible it is a question of space efficiency, it is a question of cost and scope. If they move outside of the setback it is going to result in them need to tear a significant portion of the lot up, build and take away space for trailers and future development. The reason they are here and have not moved it already is that they feel there is a significant gain in efficiency, cost and lastly customer experience for someone being closer to the store on a day like this, cold and rainy.

Chair Lee stated that there is a drainage swale that is in the parking lot that creates an issue as placement is considered.

Mr. Hartzheim said that it looks to him that if they were to go eight feet to the west that they would meet the setback. It is not a significant amount.

Mr. Barkley said that from his interpretation of the setback they would not be able to utilize any of the perimeter. They would not be able to shift it east or west. It would have to come to the center of the blacktop. It is the only other viable option.

Mr. Albert asked if he was saying that they could not just move it into the blacktop area that they would have to go to the center of the blacktop.

Mr. Barkley said essentially they could not move anywhere along the perimeter row, it would have to come out and they would have to get it further enough away from the drainage easement. The reason they are hoping not to move is space efficiency and the need to not put their pre-assembled units down they would need to dig out and trench fairly deep conduit in order to make the site possible.

Mr. Hartzheim said he did not understand why they could not move eight-feet straight west.

Mr. Barkley said the setback in question runs along the roadway so none of the perimeter area is possible on the north side and there is a drainage and access easement around the remaining perimeter. So, essentially the entire perimeter row is either (cannot hear).

Mr. Hartzheim asked if he was right in saying the very northeast corner of the property, where they have the electrical box, (cannot hear).

Chair Lee said the blacktop is actually in the setback itself.

Mr. Hartzheim replied that is the case in many places.

Chair Lee said the setback not only comes from Plaza Drive it comes from Blumenstein.

Mr. Hartzheim replied that it is not clear to him because the dimensions from the right-of-way from Plaza Drive, for example, you have the property line in here but he is not sure

where the right-of-way 20' setback is. It does not look to him, that on either side, Plaza Drive or Blumenstein Rd. they are not far from meeting the requirement.

Chair Lee stated that the question is, as he sees it, is that if the Board decides that this is a utility then it is exempt from the 20' setback and that would resolve the whole issue. He feels the Board needs to address that in the beginning. One of the questions that was asked before is right now this would only service Tesla vehicles but there are plans in the future to service other vehicles. It would be good to know what that future is.

Mr. Barkley stated that they are hoping to build this site before the summer of 2022 so they can serve what is likely peak season drivers. Their network, as within the last few weeks, recently opened up a pilot program to allow electric vehicle manufacturers to have their vehicles charge at the Tesla sites. That is happening in Europe and the Netherlands. His best estimate is within the next one to two years Tesla superchargers would be open to other manufacturers. He does not have a set date in which the State of Wisconsin or this region is going to be able to charge any other vehicle.

Mr. Albert asked if it is the power line or the plug itself.

Mr. Barkley said it is what goes into the vehicle, the adapter.

More than one person talking here...the power flickered.

Chair Lee stated that he knows Walgreens has chargers at some of their stores around the Country. He asked Mr. Barkley if he knows if those are available to charge Tesla vehicles as well as other vehicles.

Mr. Barkley stated that it depends on the manufacturer but likely so.

Chair Lee asked if there were some kind of universal adapter in those units.

Mr. Barkley said that the biggest difference between those units and what they are proposing to install is simply the power level. Walgreens, from what he has seen, is typically charging stations that take a few hours to charge a vehicle. A typical Tesla supercharger is 30 minutes. The level of power was something that when they started to develop the supercharger was not available on the market. Tesla now has a CCS, charging common standard plug and that is what they will be providing so other vehicles can also charge at their station. Tesla provides the adapter.

Mr. Albert asked Mr. Fugle about the definition of public utility being maintained by the public utility.

Mr. Fugle replied that is a public utility structure. It is something that is maintained by the public utility.

Mr. Albert said that raises the question of whether this is a public utility or it is a privately owned service.

Chair Lee read the definition of public utility into the record.

Mr. Albert said maintained by who. You are going to maintain that addition to providing electricity to the vehicle.

Mr. Fugle said public utility is not defined as specifically in the statute. There is room for interpretation. One question would be is does a gas station serve as a public utility. It depends on what is a public utility. We think of public utilities as phone and electric and gas and something regulated by the public utilities commission but there is a broader meaning of what is a public utility.

Mr. Pazdernik asked if cable companies are a public utility or enterprise. They have their green boxes in the right-of-way all over.

Mr. Fugle said Mr. Lee has identified that one of the difficulties we face is that as things change how does a definition from thirty-years ago fit with what we have today.

Mr. Hansen said if a public utility is governed by the public utilities commission are cable companies regulated by a public utilities commission.

Mr. Fugle said he does not know if Spectrum, for example is. WI-FI he is not sure if it is a commodity that is sold to people or if that is more like a public utility.

Mr. Viegut said that is where he is having a problem. What is private or public? If he does not have a Tesla the charging station does not do him any good. But, at the gas station if you have a different vehicle you can still get gas.

Mr. Pazdernik said it is the same as the green cable boxes. Not everyone has cable but you still have to see the boxes and they are still in the right-of-way.

Chair Lee said he thinks to make a rule or decision based on today and not consider the future, which you know if going to change, is not maybe the smartest thing to do.

Mr. Pazdernik said he thinks it is just the opposite. You should see the future and be proactive.

Chair Lee said he would be willing to bet that this might be the first charging station but it will not be the last in Minocqua. There will be others that will come along.

Mr. Albert that said the part that bothers him is that the last sentence in the definition of public utility is that it is maintained by. Tesla is not a public utility. Are they maintaining it for WPS or are they maintaining it for their own benefit.

Mr. Pazdernik said it is the same thing for the cable services. It is the same analogy.

Mr. Fugle said there are some places pushing to have cable companies, especially their broadband functioning to be transferred to become subject to the public utilities commission. Specifically Spectrum, there is a push in some areas for Spectrum to be separated from Charter and to have it be a public utility.

Mr. Hansen said then their structures would be exempt, according to the definition Chair Lee read into the record. He agrees with Phil. It should be maintained by a public utility. He does not see it any different than a gas station. You pull up and get a charge or you pull up and get gas in your car. It is a business that is developed delivering a service.

Mr. Ross stated that all zoning is time referenced and the zoning rules keep changing as time goes on. Everything is only as good as when it was made. If this is difficult, which it is, it seems to him moving forward the rules are going to change. The point is he does not feel the Board should be in the situation of saying what the rules should be. That is the Zoning, County and City officials. They will change but the Board is faced with what they have right now. The question is, and again the Board is not setting precedent.

Mr. Ross asked Mr. Barkley which would be his second option for location of the facilities. Looking at the maps here. Mr. Barkley said he would choose five (5) or six (6) for his second option.

Mr. Ross asked if either of those locations would have any problems with setbacks.

Mr. Albert said that they would be moving it to the other side of the parking area.

Mr. Barkley said in essence the entire perimeter is really off limits given the easements for setbacks. They found themselves with the only alternatives shown on the maps. He would choose five (5) or six (6) to help address the question of accessibility.

Chair Lee asked the Board if they are not comfortable with saying that this is a utility and therefore it is exempt from the 20-foot setback; how they feel about giving them a variance to put it where it is proposed.

Mr. Pazdernik replied he would feel more comfortable giving a variance.

Mr. Albert stated that in terms of location in Minocqua he did not think there was many locations that you would find that are not much preferred to this one. It is out of the way. He said it is a good spot for it. It is a question of dealing with the regulations. He does not see why it cannot be moved in other than the cost of the blacktop or whatever construction has to be done there. Cost factor, in terms of the variance, is not really a factor that justifies a variance. So, it can be moved in two (2) feet.

Mr. Barkley replied that one issue is cost and two is simply from a space efficiency standpoint. When they are able to be on the perimeter of the road it lets all of those existing truck and trailer parking stalls remain.

Mr. Jaskolski asked what happens to the usability of the parking lot once you move it away from the suggested location. He clarified that the parking lot is not designed for commercial truck. It is designed to be for recreational towing, RV's and those types of things. Once that location gets moved then the question of usable and the ease from which that parking lot can be used for those vehicles coming in. From an efficiency standpoint, location plus the drainage piece is obviously of some consideration.

Chair Lee stated that along the same line as the usability of this space, right now it is a parking lot. Down the line, does Mr. Jaskolski or another owner see this to be utilized for something else, other than a parking lot? If you've got these things in the middle of a parking lot, it rather limits whatever you are going to do with the rest of your space.

Mr. Jaskolski replied that it restricts any other alternative uses. He said that from T.A. Solberg, they do not intend to develop that particular site. It serves two purposes: one, in the summertime for extended vehicles and two it actually gives them a spot to take excess snow off the parking lot and they put it over there to clear more stalls out in the store parking area.

Mr. Hansen said they have a picture of a charging station from elsewhere that is not covered. He asked if this charging station would be covered to keep people out of the rain and snow.

Mr. Barkley said they would not put a canopy on it.

Mr. Hansen asked why they would not have it like a regular gas station where the car pulls up, they come in parallel, you could charge on either side of the charging station, and rather than backing up, you would pull into the charging station and pull out all going forward.

Mr. Barkley said they had attempted a few of those sites in the Midwest. Wintertime driving and snow clearance is not friendly to that. They have the precast pedestals sitting there, which require significant protection and snow clearance ends up becoming a nuisance.

Mr. Ross asked what happens to the snow that is being plowed off the road, since these are so close to the road.

Mr. Barkley said that the property line is set back from the curb by about six feet from the curb itself and then the units are about another five feet long so they have ten to eleven feet from where a plow would go by where the stall would start.

Chair Lee stated that he feels they need to have a motion whether to consider this a utility or not.

Mr. Albert asked what is necessary to place the electric facilities.

Ms. Demissie stated that they will place a transformer and that connects to the green box, that is already existing at the site, and there will be an underground conduit that runs to the switch box where WPS would have part of their equipment in that box.

Mr. Albert stated he does not see the justification for disturbing the blacktop if they are burrowing underneath and coming up at the point where the fixture is placed, there really should not be that much disruption or construction of the blacktop to move the location into the blacktop.

Mr. Barkley said that something that is unique to this area when they have the space behind the stalls they intend to use, which is something they would not utilize in the middle of the lot, are the pre-assembled units. Those do not rely on them going underneath and laying significant conduit. All of that is encased in concrete. One of the big advantages of this type of unit is the ability to use the pre-assembled unit, which actually they grade the surface properly and just set the unit on top of it.

Discussion was held on how the units are placed.

Ms. Demissie stated that they are restricted on the south side by the drainage so they are trying to avoid the drainage easement. They do have a foot to a foot and a half that they can push it south, that gives them about four feet from the right-of-way.

Mr. Fugle asked that when she said pushing it a foot, if that is where the charging station sits.

Ms. Demissie replied that is where they stall is.

Mr. Barkley stated that the square cabinet, behind the proposed stall, bringing that out two feet would not solve the setback issue. They would still have the cabinet within the setback. He asked if the charging posts have a different definition than the cabinets.

Mr. Albert said you bring the power to the cabinet and there are two of those.

More than one person talking here.

Mr. Albert continued, you could burrow to those, bring up the power and then at the cabinet distribute it to the four different fixtures. Why that cannot be burrowed like it is from the original source of the electricity.

Ms. Demissie stated that it comes pre-assembled. That is about 9 ½ “s of concrete pad and that is where the wire is. They are bringing in power to the cabinets but beyond that, it is already pre-assembled.

Mr. Barkley asked for clarification if Mr. Albert was asking if they are able to bury the wire would that get them out of the issue of...cannot hear what is being said.

Mr. Albert said yes.

Mr. Barkley said that it was his interpretation that the cabinets themselves that stick up 7.5 feet are the issue. Is that right? It is not where they are burying...cannot hear what is being said.

Mr. Albert said they are labeled SPR 1 and SPR 2. Those are the cabinets that sit within the lack of distance from the right-of-way. They would have to be moved in in order to be in compliance.

Mr. Barkley said that in order to get outside of the setback they would have to move those significantly to the south and that situation...cannot hear what is being said.

Chair Lee said then it would be into the swale.

Mr. Barkley said the only other option they would have would be to move them to position five or six, as in the exhibit.

Mr. Albert reiterated that SPR1 and SPR2 are, in his mind, the issue. It is not a matter of the pumps or the fixtures themselves. They can be moved into the blacktop area without a lot of problem. It is the electrical cabinets that are really the issue within the right-of-way.

Mr. Troskey said this it is both. It is the bigger cabinets plus the eight individual fixtures for each charging unit because there is going to be, not only the pedestal coming up, but there is going to be some sort of a concrete pad for each of those.

Mr. Barkley said that in this case they would all be encased in the 9.5-inch concrete pad. The same foundation for the cabinet is what the charging post would use.

Mr. Troskey said that from an ordinance standpoint it is both the cabinets and the eight individual stations that are considered structures.

Mr. Albert asked about the cabinet that is located at the corner of Plaza Drive and Blumenstein Rd., which is public utilities. That is the public utilities source of power that would be distributed to SPR1 and SPR2.

Ms. Demissie said WPS is putting in new transformers.

Mr. Albert said that what he is getting at is that SPR 1 and SPR 2 could be considered part of the public utilities. He said that if it is the cabinets that are of a concern he sees them more of the public utility exemption than the actual pedestals or fixtures for the distribution. He would think that they could be electrically hooked up just by underground burrowing of the electrical hookup to those fixtures.

Mr. Hansen asked Mr. Troskey if what they are trying to satisfy is the 20' setback from the property line. They are presently proposing it to be two feet from the property line.

Mr. Troskey said he is right and from the centerline. They have to meet both. A 60' minimum and a 20' minimum.

Mr. Hansen said if they have them move two-feet that does not satisfy the 20' setback requirement.

Mr. Troskey said no.

Mr. Albert asked which what he is saying is that is why they continually refer to moving it to the center of the parking area.

Mr. Hansen stated that even if the three cabinets were moved so that they were in between the charging post it does not take care of the 18 feet that they have to be moved.

Motion by Chair Lee, second by Mike Pazdernik to consider the Tesla charging stations a public utility for the purposes of this appeal.

Mr. Albert asked Mr. Fugle if that is doable.

Mr. Fugle stated that ultimately the determination that the Board needs to make is if this equipment that they are putting in utility type equipment. The whole idea with Board of Adjustment is that Zoning is not applied in a manner that precludes the reasonable use of property. You have to decide does this charging station fall under utility or is it not.

Chair Lee asked if there was any other discussion on the motion.
There was none.

On roll call vote: Mr. Hansen, "aye"; Mr. Albert, "aye"; Mr. Ross, "aye"; Mr. Pazdernik, "aye"; and Mr. Lee, "aye". The motion carried.

Motion by Mr. Albert, second by Mr. Pazdernik to approve the variance as requested with the understanding that the three (3) criteria can be met as related to the granting of the variance. With all members present voting "aye", the motion carried.

2:10 p.m. Chair Lee adjourned the meeting.

Harland Lee, Chairman

Phil Albert, Secretary