

West Lakeland Township Special Meeting

May 1, 2020
Special Meeting, 30th Street

9:00 AM.

Web Conference

Present: Chairman Dan Kylo, Supervisor Marian Appelt, Supervisor Dave Schultz; Carrie Seifert, Clerk; Ms. Viet-Hanh Winchell, Township Attorney; Mr. Ryan Stempski, Township Engineer; Mr. Dan Gregerson, Gregerson, Rosow, Johnson and Nilan Ltd

Call to Order:

Chairman Kylo called to order the meeting at 9:08 AM. The special meeting was called to address concerns surrounding the realignment of 30th Street between Neal Ave and Manning Ave. Ms. Winchell explained the purposes of the meeting, the justification for the virtual platform for the meeting, and the procedures to be followed during the meeting. All participants but board members and key staff will be muted to manage the discussion.

Ms. Seifert, the clerk, called the roll. Chairman Kylo, Supervisor Appelt and Supervisor Schultz reported as present.

Chairman Kylo noted that the meeting will focus on supervisor discussion surrounding the questions and concerns raised by residents provided to the board. Chairman Kylo has provided a compiled list of the questions and concerns. Supervisor Appelt asked for clarification if the intent was to provide a single response to the concerns raised. After discussion, it was determined that because the comments include statements, opinions and questions and that there are differences in opinion, the intent was to have a discussion around those concerns, with the intent for the board to gather additional information and understanding regarding the decisions confronting the township regarding the easement for 30th Street.

Township Position on the Lake Elmo Airport Expansion

In response to the question on the board's stance on the airport expansion project and the realignment of 30th Street, Chairman Kylo noted that the board's opinion has not changed. The board has always been opposed to the expansion and the road realignment. Chairman Kylo stated that the reality may be that the Township will not be able to stop the project, but will need to work with MAC to provide the best possible solution moving forward. Chairman Kylo noted that the Township has actively opposed the project, including hiring lawyers and expert consultants to address the issue. The township actively opposed the EAW, but were not able to prevent the project from moving forward. In addition, board members, particularly Supervisor Schultz, and residents, such as Mary Vierling, have actively worked with MAC, Valley Branch Watershed District, Washington County, State and Federal agencies and elected officials to oppose the expansion project. The expenditure of time and money have been well worthwhile, but options have been limited.

Supervisor Appelt noted that the fact that the board and staff have been in discussions with MAC does not mean that they are in favor of the project, but legal advice has indicated that the Township would not have much of a chance of stopping the project, so the board is trying to get the best possible option. Because we are negotiating with MAC does not mean that the township no longer opposes the project.

Supervisor Schultz noted that with the effort of the board and residents, he does not know what more could have been done to oppose the project.

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Purpose of the Airport Expansion

Questions were raised by residents regarding the purpose of the airport expansion, and the nature of the public good provided. Chairman Kylo noted that MAC, who has the authority to condemn the easement, does believe the project is for the greater good of the region. The township has tried to dispute the purpose with little success. The long term capital improvement plan for MAC indicates that the need is for updating infrastructure, ensuring safety and supporting airport capacity. MAC has indicated that the need to lengthen the runway is a safety concern. Supervisor Appelt noted her belief that the status as a reliever airport may be dependent upon the expanded runway.

Concern was raised over the size of the aircraft using the facility. Supervisor Schultz noted that MAC has stated that the airport would be used by nothing larger than a 10 passenger or 12,500 lbs maximum weight aircraft. MAC cannot restrict aircraft from landing, but the landing is restricted by the runway capability. Chairman Kylo noted that the limits of the classification of aircraft using the airport has been an item of discussion with MAC.

Supervisor Appelt expressed concerns over the hours of operation. If there are hours of operation, they are voluntary. The Facebook page for Lake Elmo airport indicates it is always open. Chairman Kylo will include the hours of operation in the discussion with MAC.

Authority of MAC

Questions were brought forward as to MAC's authority to do the condemnation. Mr. Gregerson noted that MAC is a public corporation under Minnesota Statute 473.603. This statute sets out the authority of MAC to enter into contract, sue or be sued. The statute also provides the authority to acquire, lease, purchase, gift, devise or condemn to acquire property. The statute specifically calls out the authority to use eminent domain to acquire property. Chairman Kylo noted that MAC is not subject to property tax.

Zoning

With regard to zoning, Ms. Winchell noted that in the township code, the land owned by MAC is zoned as single family estate with an airport overlay. The airport overlay provides for restrictions on construction that may impact the airport, and does not address what the airport can or cannot do. She noted that there are state and federal statutes that will take precedence over local zoning restrictions. Mr. Gregerson noted that FAA and federal law trump local authority. Local authority to zone for an airport is very, very limited when related to aeronautical purposes. He noted his firm had a client municipality that was unsuccessful in challenging that authority.

Environmental Assessment/Environmental Assessment Worksheet

Questions were raised regarding the approval of the EAW process. A consulting engineer, Mr. Stu Grubb, was hired to review the EAW and his review indicated that there were no critical issues that could not be mitigated in the EAW. The EAW was approved with no significant findings. Supervisor Schultz asked if MAC can be a public corporation and also the RGU approving the proposal. That answer was not known. He believes this is a conflict, and may make the EAW invalid. Mr. Gregerson was asked to investigate.

Acceptance of the Realigned Road

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Supervisor Appelt asked if the realignment of the road would be considered part of the aeronautical use or if the road construction would be subject to local regulations. Mr. Gregerson noted that the acceptance of the road is part of a potential resolution of the matter. If an agreement is reached, he expects that acceptance of the road and a new easement will be part of that agreement. If MAC proceeds in condemnation, the current easement is lost. Currently 30th Street is a town line road, and under state statute, the County has final authority, and can require the townships to accept the road after the realignment.

Mr. Stempski noted that with a subdivision, the developer's agreement provides for detailing a preconstruction agreement on the road construction. As the township engineer, Mr. Stempski reviews the plans and construction of the road, and advises the board of the acceptance. Chairman Kylo noted that with MAC, if the road were not built to standards, we would have grounds not to accept the road. Like with a development, if the road is built to specifications, the township cannot refuse to accept the road.

With this road, in that there is no development, there was not the opportunity to require that preconstruction agreement. That being said, Mr. Stempski indicated he has been part of the engineering, planning and construction process and has been able to add additional engineering, analysis, technical work and support. He has required additional work warranted by the soils in the area. The technical process to design and construct this road has been adhered to. There is a township inspector on site overseeing each critical step in the process. Mr. Stempski feels he is in the position to ensure the Township that the road is built to Township standards, and has the testing and documentation to support that recommendation.

Ms. Winchell noted that the township ordinances do not address a specific road permit. There is a grading permit noted in the ordinances, however, there is no grading permit application or procedure in place. With MAC's project this gap came to light. The planning commission is working on filling that gap. MAC did not file a grading permit, but it has been built into the process because MAC does have other permits from other agencies that address the issues such as erosion control and water management that would have been addressed by a grading permit. Mr. Stempski added that in West Lakeland Township we use the Valley Branch Watershed District as a partner. The Watershed District standards are included into Section 9 of the township ordinances, and would be the exact same standards he would use for Township review. The road construction is being reviewed, with an inspector on site. The process and intent of the grading permit, from an engineering standpoint, has been adhered to.

Supervisor Appelt noted that the new road will not be in the RPZ. It will be present in what would have been legacy safety zones.

Road Construction Issues:

Chairman Kylo noted MAC and its contractors are responsible for tree and vegetation clearing. Mr. Stempski noted they have done some clearing, but for the most part have stayed out of the existing prescriptive easement for clearing purposes until this issue is resolved.

Mr. Stempski addressed the screening to the east of the MAC property closer to Neal and at Neal and 30th Street. It is two rows of plantings. The rear row would be around 30 ft at maturity, and the front row of screening would range from 10 to 15 feet in height. Maintenance is expected to be minimal.

Mr. Stempski noted that the road does not need MnDoT approval in that it does not move into MnDoT right of way and state aid funds are not being used for the construction.

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Chairman Kylo noted the Township does not require a noise permit. Usually, this is addressed in the developer's agreement. Supervisor Appelt noted that the hours of operation are extensive in her perspective, with work going from early in the morning to past supertime. Mr. Stempski has had the discussion with MAC and the contractors for hours of operation, but there was not a reference in the ordinance where it is not allowed. Supervisor Appelt noted the planning commission is addressing that gap.

Regarding asphalt, there is no requirement to put pavement on private property. It is the next natural step. The contractor will not tie into 30th Street until the issue of the prescriptive easement is resolved.

Mr. Stempski noted that he has reviewed and approved the signage plan. The plan has also been reviewed and approved by Washington County engineering staff.

Road Safety:

Mr. Stempski addressed the concerns over road safety. Based on the constraints and the realignment that was necessary, the road design has met industry standards. The design is not what is preferred by the township, but there are standards and guidelines to make the curvature of the road safe. The plans meet those standards. Washington County has also reviewed and approved the plans for this road realignment. Although not ideal, they are meeting the engineering requirements of a road of this nature.

Speed limits are recommended by the engineer of record based on the curvature and radius of the roadway. There will be additional signage for safety purposes. We are getting the speed reductions for safety with the road design. Ms. Winchell noted that speed limits are set by state statutes, and then in a new construction standard, there are ways to change from the statutory guidelines.

Additional maintenance, including signage, striping and other safety enhancements will need to be inspected and maintained. It is to be expected that there will be more requirements for salting on this road due to the design. The township should be planning for increased maintenance efforts.

Chairman Kylo noted that the road is only as safe as the people that drive it. The drivers using the road need to respect the speed limits and the nature of the road.

Supervisor Schultz noted that turn lanes are programmed to be added at 30th Street and Manning as part of the Washington County Manning Avenue project. That is currently programmed for 2023.

Haul Route During Construction:

Mr. Stempski noted that MAC's current plans are to continue on with additional phases of construction with the last phase concluding in 2022. At that time, they would tie in and do the improvements on the realigned section over to Manning. The contractor would continue to use existing 30th Street as the haul route. The contractor will do seasonal improvements such as addressing potholes and patching. The last step of the phased improvements is to reconstruct the road from the realigned section to Manning after majority of the improvements are completed.

Water Management and Drainage Easements

Mr. Stempski noted that the three filtration basins south of the realigned roadway are intended to be MAC's responsibility in the current settlement agreement. The draft agreement also includes the authority of the township to inspect and require or recharge for necessary maintenance work. As an MS4 community, this is a benefit to the township to not be responsible for the ongoing maintenance. The Watershed District also requires an easement over and across the three filtration basins along with

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a detailed maintenance agreement to ensure the maintenance is done. Mr. Stempski noted that the wetland adjacent to the roadway has an emergency overflow elevation of 919. This allows the wetland to overflow to the west. If the water reached the overflow point, water may work into the base, but not over the roadway. The residents on 27th Street have an easement in place up to the 921 contour to protect those homes. Valley Branch Watershed District will continue to review the future phases of the project, and each phase is being modeled to ensure that flood management is appropriate.

Settlement Agreement

Mr. Gregerson provided a summary of the proposed settlement. He noted there is no executed, signed deal with MAC or Baytown as of today. The discussion is still subject to negotiation and agreement by all three parties. The township has not committed to anything with respect to the proposed road or road easement at this time. The intent is that the negotiation results in a draft agreement for Baytown, MAC and West Lakeland's boards to consider. All three parties must agree to the agreement. If an agreement is not reached, it is expected that MAC will proceed with condemnation.

The agreement is intended to have the townships agree to vacate the existing prescriptive agreement so that condemnation is not necessary and to have the townships receive a permanent roadway easement for the realigned roadway for right of way, drainage and utilities. The townships would receive compensation for the prescriptive easement. The townships and MAC would have agreement on the construction and cost allocation of the haul route portion of the road. There would also be an understanding or cost maintenance agreement for future repair and maintenance obligations for the road moving forward.

With the new road, MAC will continue to own the underlying land. West Lakeland Township and Baytown would have a permanent easement recorded against the property.

The Township does have the right and ability to negotiate for fair and just compensation. That will be measured by what MAC believes is fair and just compensation. Mr. Gregerson's office has obtained a review appraiser to review the MAC appraisal with respect to analysis of the value of the prescriptive easement. That review will be provided to the board. This becomes one of the considerations of the agreement, along with other elements subject to negotiation such as the cost allocation for the repair of the haul route and the cost and risks of litigation.

MAC is not going to interfere with the current prescriptive easement until there is an agreement or condemnation is undertaken.

West Lakeland can request that there be no future airport expansion and no additional road realignment. MAC is the owner of the underlying land, and they have rights and obligations, and will follow those statutes as well as FAA and other federal guidelines.

At this point of time, the request of the Township is that MAC indemnify the township with regard to claims of loss of access. MAC would have that obligation anyway if they move forward with condemnation.

At a high level, Mr. Gregerson noted that all parties, West Lakeland, Baytown and MAC are operating on a dual purpose path of reaching an agreement or proceeding with eminent domain. MAC has a project they intend to move forward with under the powers of eminent domain. It is his opinion that the township work along both lines. If the township can reach an agreement that is acceptable, it should be considered. It is reasonable to assume that an agreement will include acceptance of the road as a part of that agreement. If the agreement is not acceptable, the township can reject the agreement and MAC will proceed with eminent domain. The township will need to weigh the value of a new road from MAC, considering the specifications of the road construction and design, financial compensation

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for loss of the easement, financial participation in the reconstruction of the haul route and ongoing cost sharing for maintenance with Baytown with the valuation of prescriptive easement and the range of costs associated if MAC proceeds with the eminent domain action. To distill this down, would the Township have money in hand and limited or no say in the road being constructed, or would the Township prefer to have some say in the road being constructed and the repair of the haul route.

Supervisor Appelt asked if we did not accept the agreement, and moved forward with condemnation, could the County require that the Township assume the road. Mr. Gregerson indicated if the Township does not accept a new easement, he has not had any discussion with Washington County. This is a town line road, and, when there is a discrepancy on cost and maintenance of the road, the state statute gives the authority to the County board to allocate those costs and responsibilities. At the end of the day, if the township says no and this remains a town line road, it is feasible that the County will direct an agreement. There are concerns about not accepting a town line road back. MAC has not committed one way or another with reconstructing the road if they move forward with condemnation. The issue should be reviewed with Washington County.

Supervisor Schultz noted the last jurisdictional review, Washington County was not considering assuming 30th Street as a County Road. Should it become a County Road, it would need to be brought up to County standards.

Mr. Gregerson noted that Baytown is involved because they also hold a prescriptive agreement. The cost sharing agreement between Baytown and West Lakeland as part of the proposed agreement has been presented to Baytown, but no response has been received to date.

Supervisor Schultz asked if the runway is not constructed, can we require MAC return to the original easement for 30th Street? If MAC goes through condemnation, and the court upholds the action we would have no more easement interest. Without an easement interest, we cannot require the original road be reconstructed. If there is an agreement and we agree to the construction of the road, Mr. Gregerson would have a cause of action under the written agreement to require them to complete the road as designed. If not in the agreement, we cannot require MAC to reconstruct to the original roadway. If that is a concern, it should be addressed in the agreement.

Other issues:

Is the Airport too close to the Fairgrounds? This is not an issue the Township can address.

Why is the railroad allowed to run through the airport? This is not an issue the Township can address.

Will there be compensation for those properties coming further into the RPZ? Supervisor Appelt noted the properties will be coned into legacy safety zones and with the custom zoning, there does not appear to be justification for compensation, in her opinion. Any property owner has the right to sue.

Supervisor Schultz noted that concerns over pilot action and plane activity. Concerns can be addressed to MAC or the FAA.

Mr. Stempski noted that construction waste will be addressed with the contractor and will be monitored by the onsite inspector.

Adjourn:

The board discussed options for the May meeting. Ms. Seifert noted that Oakland Middle School is not available for a May meeting. Baytown Town Hall may be an option. If meeting in person, a safety protocol may be required. The Chairman and clerk will review possible protocols.

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Chairman Kylo moved to adjourn the meeting. Seconded by Supervisor Appelt, the motion carried with a unanimous roll call vote. Chairman Kylo moved to adjourn the meeting at 11:43 AM.

Respectfully Submitted,



Elizabeth A. Vance
Secretary