

# West Lakeland Township

## Special Meeting

May 15, 2020

9:00 AM.

Web Conference

Special Meeting 5/15 9 AM

Present: Chairman Dan Kylo, Supervisor Marian Appelt, Supervisor Dave Schultz, VietHanh Winchell, township attorney; Ryan Stempki, township engineer, Ms. Carrie Seifert, clerk; and Mr. Dan Gregerson of Rosow, Johnson and Nilan Ltd, consulting attorney

### Call to Order:

Chairman Kylo called the special meeting of the West Lakeland Town Board to order at 9:02 AM, May 15, 2020. Ms. Seifert called roll call, indicating as present were Chairman Kylo, Supervisor Appelt, and Supervisor Schultz. Ms. Winchell explained the authorization for the remote meeting held via Zoom. Chairman Kylo presented as the purpose of the meeting the review and discussion of the 30<sup>th</sup> Street realignment, the proposed draft road agreement and the potential for a closed session to discuss the review of the appraisal of the 30<sup>th</sup> Street easement.

The initial offer from MAC if they were to proceed with the condemnation of the easement for 30<sup>th</sup> Street between Neal and Manning to allow for the proposed runway expansion, is to realign and rebuild the section being condemned, to mill and overlay the section of 30<sup>th</sup> Street used as the haul route and compensation of \$1 for the valuation of the easement. Mr. Dan Gregerson has advised the board that MAC does have the statutory right to condemn the easement and remove the road and a challenge would most likely be unsuccessful.

Chairman Kylo, Mr. Stempki, and Mr. Gregerson have been meeting with MAC to prepare a draft agreement to vacate the easement in lieu of condemnation. The current proposal will realign and rebuild the removed road section, MAC will assume maintenance of the filtration basins and MAC will pay an estimated \$485,000 (approximately 70%) of the total estimated project cost of \$685,000 to fully reconstruct the ½ mile between Manning and the realigned segment of 30<sup>th</sup> Street known as the haul route. The remaining cost will be split between West Lakeland Township and Baytown Township. In addition, MAC has also offered \$25,000 to each of the two townships as compensation for the loss of the easement. MAC intends to proceed with condemnation action if a signed agreement and vacated easement are not completed by June 15, 2020 by both townships.

Supervisor Schultz asked if there was a conflict of interest in that MAC has the role of the condemning authority and the RGU that approves the EAW. Mr. Gregerson indicated that this is not a specifically legal conflict. Both roles are supported by state statute and case law. Supervisor Appelt agreed and did not see sufficient authority to protest the EAW.

### Contamination of Infiltration Basins

Supervisor Schultz asked about the clause regarding the authority to pursue third parties for contamination of the filtration basins. He expressed concern that the township or its road contractors could be considered as contaminating the basins due to the increased use of salt and sand necessary to keep the realigned sections with the super elevations and curves safe for traffic. Mr. Stempki indicated that the township does follow current best practices and, in partnership with the East Metro Water Management Resource Education Program, meets the objectives of the Minnesota Pollution Control Agency. Mr. Stempki indicated that the intent of the clause was to address spills or hazardous chemicals that would cause a costly clean up. Chairman Kylo noted that to hold the township liable for contamination, MAC would have to show negligence in the use of chemicals, and salt is approved for use on roads. Supervisor Appelt suggested language be added to exclude reasonable salt contamination to allow for safe road maintenance and other normal operations.

### Plantings for Screening

Supervisor Schultz would like to have the exhibits including the location of the plantings as part of the agreement, and the agreement should clarify who is maintaining these plantings. Mr. Gregerson noted that the landscape exhibit will be included in the final draft. Mr. Stempski noted that the agreement will include the requirement to submit a final landscape plan with rights of way, line of sight and other details for Township approval before it is released to a contractor for installation. He sees no concern in adding language clarifying the party responsible for maintenance. Since the plantings are on MAC property, it is his understanding that MAC will be maintaining the plantings.

### Haul Route

Supervisor Schultz asked about the cost estimates for the rebuild of the haul route. Mr. Stempski indicated there is another exhibit that spells out the cost estimates, including construction cost estimates, and contingency costs. This include a 20% addition for engineering and administrative fees. The estimated cost for engineering fees is \$96,700. The townships would assume a total estimated \$8,705 of the engineering and administrative costs (which is 5% of the townships construction costs). Supervisor Schultz would like to see a three to five year warranty for the haul route and the rerouted segment. Chairman Kylo noted the request for an additional warranty period has been presented multiple times, and MAC has not agreed to go beyond the standard one year warranty. The rebuild of the haul route will be part of the final phase, so the one year warranty should accommodate any issues for that section. Mr. Stempski noted that each portion of the road will have a one year warranty. Issues encountered during the subsequent phases of construction will be addressed as one off issues, and MAC will correct those issues.

Supervisor Appelt asked about the adequacy of the five soil borings in providing sufficient information about the roadbed to ensure adequate reconstruction. Mr. Stempski noted the road borings have been done, and after reading and reviewing the soil boring report, he is comfortable with the geotechnical recommendations for the roadway.

### Indemnity Clause

Mr. Gregerson noted that in the defense indemnity provision, MAC will agree to defend and indemnify West Lakeland for claims of loss from vacating the easement. The Township will not need to extend their own resources to defend against those claims.

### Township Line and Town Line Road

Supervisor Appelt asked about with the change in the road location, if there would be a change in the township line and how each township would share the easements for the road. Mr. Gregerson noted that that he would expect that the easement for both sides of the realigned road that are completely within West Lakeland will be given as a dedicated easement to West Lakeland. The easement for Baytown will stop where the road leaves the township line, and resume where the road returns to the township line. It is expected that the easement from the realigned section to Manning will remain a prescriptive easement since additional landowners are involved. The draft agreement includes shared construction costs for the entire haul route road (from Manning to the realigned segment). If an agreement is reached, the easements will no longer be prescriptive easements, but be permanent easements for road right of way, maintenance and utilities recorded against the property. The final agreement is intended include legal descriptions of the proposed easements. More clarity of the location of the easements should be added to the agreement.

**Additional Comments**

Supervisor Appelt asked if it were possible to include a clause to return the road to a straight line road if the runway is not built. Chairman Kylo indicated that the request was put forward, and stricken from the draft. It is his understanding that because federal funds were involved in the construction of the road, there are limitations that would prevent reconstructing another road.

Supervisor Appelt asked about the adequacy of the shoulders on the realigned portion of the road. Mr. Stempski noted that the realigned roadway is planned as a 24 foot wide roadway, with an 8 foot shoulder, two feet of pavement and six feet of aggregate, on each side. This is an adequate shouldering system through the curvatures. The design of the portions that connect back to 30<sup>th</sup> Street to the west is not complete. The intent is to have a tapered transition back to the current shoulder. He noted that the road needs to match to the current ditch system and fit within the current prescribed easement. Adding to the ditch and the shoulder would dramatically change the scope of the project.

**Next Steps**

Mr. Gregerson summarized the discussion and the requested areas of modification of the agreement. An updated draft, with exhibits, should be available for circulation in the next week. Mr. Gregerson confirmed that the board at this time has not made any decision to accept or reject the agreement.

Chairman Kylo noted that the timeline for MAC to proceed with the condemnation process is June 15. Should the board choose to accept an agreement, the prescriptive right of way would need to be vacated. This requires a public hearing with a two week notice. Supervisor Appelt asked what documents needed to be available at the time the hearing is scheduled. Ms. Winchell confirmed that the draft resolution for vacation is all that must accompany the notice to the affected residents. A notice of hearing would need to be published at least two weeks in advance of the scheduled public hearing one time per week. The draft road agreement need not be in final form to schedule the vacation hearing. It was noted that the resolution can be drafted such that the vacation is contingent upon a signed agreement between MAC, West Lakeland and Baytown.

Supervisor Schultz asked if the June 15 deadline could be delayed. Mr. Gregerson agreed to discuss the option with the MAC staff.

Chairman Kylo moved to hold a special meeting and public hearing on June 4, 2020 at 7 PM to consider a resolution to vacate the easement for a portion of 30<sup>th</sup> Street between Manning and Neal as legally described and instruct the township attorney to draft a resolution and publication notice, and to defer the matter to the planning commission for comment. Seconded by Supervisor Appelt, the motion carried by unanimous roll call vote.

**Closed Meeting**

Chairman Kylo moved to closed session to discuss offers and counteroffers related to the vacation of 30<sup>th</sup> street under Minnesota Statute 13D.05, subdivision 3. Seconded by Supervisor Schultz, the motion carried by unanimous roll call vote. Chairman Kylo moved to the closed session at 11 AM. Remaining in the meeting for the closed session: Chairman Dan Kylo, Supervisor Marian Appelt, Supervisor Dave Schultz, Clerk Carrie Seifert, Attorney Viet-Hanh Winchell, Attorney Daniel R. Gregerson (Gregerson, Rosow, Johnson & Nilan, LTD)

**Resumption of the Open Meeting:**

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Supervisor Kylo moved to resume the meeting in an open forum. Seconded by Supervisor Appelt, the motion carried by unanimous roll call vote. The meeting was resumed at 12:00 PM.

Chairman Kylo moved to direct staff to propose modification of the draft road agreement with MAC and Baytown as raised during this meeting. Mr. Gregerson confirmed the issues to be reviewed. Seconded by Supervisor Schultz, the motion carried by unanimous roll call vote.

#### **Adjourn:**

Chairman Kylo moved to adjourn the meeting. Seconded by Supervisor Appelt, the motion carried by unanimous roll call vote. The meeting was adjourned at 12:02 PM.

Respectfully Submitted,



Elizabeth A. Vance  
Secretary