

**MINUTES
TOWN BOARD MEETING
AUGUST 15, 2016**

The meeting was called to order at 7:00 p.m.

Present: Supervisors: Kermes, Prudhon, Ruzek; Clerk: Short; Attorney: Lemmons;
Public Works Director: Reed; Engineer: Studenski.

APPROVAL OF AGENDA (Additions/Deletions): Ruzek moved approval of the agenda as submitted. Prudhon seconded. Ayes all.

APPROVAL OF PAYMENT OF BILLS: Prudhon moved approval of the payment of bills. Ruzek seconded. Ayes all.

APPROVAL OF AUGUST 3, 2016 TOWN BOARD MEETING; AUGUST 4, 2016 & AUGUST 11, 2016 ATTORNEY CLIENT MEETING MINUTES: Ruzek moved approval of the August 3, 2016 Town Board Meeting Minutes. Prudhon seconded. Ayes all.

Prudhon moved approval of the August 4, 2016 Attorney Client Meeting Minutes. Ruzek seconded. Ayes all.

Prudhom moved approval of the August 11, 2016 Attorney Client Meeting Minutes. Ruzek seconded. Ayes all.

CONSENT AGENDA: Ruzek moved to approve the Consent Agenda as follows: 5A) Call Informational Public Hearing for Monday, October 3, 2016, at 7:10 p.m. for the Annual Presentation of the Town's Storm Water Pollution Prevention Program; 5B) Receive Monthly Construction Report; 5C) Based on Town Engineer Review & Recommendation & Including His Recommended Conditions, Approve Comcast Permit to Place New Underground Coaxial Cable Line to Service 1008 Meadowlands Drive, Which Work Will Include Directional Boring Under Meadowlands Drive; 5D) Based on Town Engineer Review & Recommendation & Including His Recommended Conditions, Approve CenturyLink Permit to Install Buried Cable to Service 4250 Otter Lake Road Through Boring & Open Trenching; 5E) Based on Town Engineer Review and Recommendation and Including His Recommended Conditions Approve Xcel Energy Emergency Permit to Replace an Electric Service to the Residence at 5074 Lakeview Avenue Which Replaces a Service Coming from Pioneer Lane. Prudhon seconded. Ayes all.

HOBBY KENNEL LICENSE – 5715 FISHER STREET – HOBBY KENNEL LICENSE

REQUIREMENT FOLLOW-UP: The Clerk reported that on June 20, 2016 the Town Board conducted a hearing on a Hobby Kennel License at 5715 Fisher Street. After hearing from neighbors and the applicants the Board took the following action: “Based on staff review and recommendation to approve the request for a Hobby Kennel License at 5715 Fisher Street for a two year period through March 31, 2018 subject to the procedures stated in Ordinance No. 5 (Animal); individual dog licenses obtained by the

end of the week; installation of fence in the rear yard by the end of July; and review of fence plan by the Animal Control Officer and inspection of the property after the fence is installed". The Clerk stated that the Town received a call from Kazoua Xiong during the week of July 25th informing the Town that the fence installation would not be completed by the end of July as the contractors were delayed due to the excessive heat the previous week and then the rain that week. The applicant anticipated that the fence would be completed by August 15th. She also stated that Mario Lee, Animal Control Officer, had spoken with her about the fence and that he was ok with the delay. On August 11, 2016 Staff spoke with Jagger Xiong concerning the status of the fence installation. He stated that the fence posts and boards are all up but that his mother wanted two more gates so they are waiting for installation of those. Both the Town Building Inspector and Mario Lee, Animal Control Officer inspected the fence construction. The Building Inspector's review found that the fence is approximately 75% complete as of today, and the completed portion complies with the Zoning requirements. The Animal Control Officer's review stated that there are gaps on the bottom of the fence on the south side of the property which need to be closed so the little dogs do not escape. There is approximately 20 feet on the northeast side of the property which is lined with pine trees, brush and a wood pile which needs to be fenced, either with chain link or wood fencing. Officer Lee verbally informed the owners of the above requirements which need to be completed and informed them that he will plan another site visit in approximately two weeks to check for compliance. The Clerk reported that the Town received an email today from the property owner at 5707 Fisher Street who asked if the fence at 5715 Fisher Street has been inspected. He stated that

the fence has big gaps on the bottom. His email stated that the neighbors did not want the applicant to get the kennel license. He feels that any smart dog will climb under this fence. There are a lot of kids and other dogs in this neighborhood and they don't want the pitbull running loose. He stated that the applicant has been cutting down 10 years of trees and brush which will all grow back soon. Kraig Kelsey, 5707 Fisher Street stated that they have lived in their house for 30 years and want to keep it a nice neighborhood. It was the consensus that the applicant is keeping in touch with Town Staff; they have hired contractors to install the fence; and the sense is that they are trying to do it right.

Ruzek moved, based on Staff and Animal Control Officer's review to continue the Hobby Kennel License requirement follow-up until the Town Board meeting on Wednesday, September 7, 2016 to allow the homeowner time to implement Officer Lee's requirements noted in his review and also noting that Officer Lee will plan his next site visit before the meeting. Prudhon seconded. Ayes all.

IMPROVEMENT 2016-1 PINE HILL: 1) APPROVE CHANGE ORDER; 2) APPROVE

PAY ESTIMATE #2; 3) APPROVE REDUCTION IN ESCROW DEPOSIT: Approve

Change Order No. 2: The Pine Hill construction project was awarded to C.W. Houle in the amount of \$792,751.00. Change Order No. 1 was approved for the addition of a new bid item Select Granular Subbase – 10" for an increase of \$37,392.00. This increased the project total to \$830,143.00. Change Order #2 is for additional work to install private utility conduits, additional pavement required by Ramsey County, relay

existing 21” sanitary sewer pipe that had sagged and relocation of the sanitary sewer connection point were also necessary for performing the work on the project. This additional work totals \$26,335.39.

Prudhon moved, based on Engineer review and recommendation to approve Change Order #2 in the project increase amount of \$26,335.39, bringing the total construction contract to \$856,478.39. Ruzek seconded. Ayes all.

Approve Pay Estimate #2: Pay Estimate #2 covers work performed through last month. This includes both Change Orders for a total project running cost of \$618,529.89. Payment #2 is in the amount of \$185,660.00. The Engineer reported that the project is currently ahead of the construction contract schedule.

Prudhon moved, based on Engineer review and recommendation to approve Pay Estimate #2 in the amount of \$185,660.00. Ruzek seconded. Ayes all.

Approve Reduction in Escrow Deposit: As part of the process, the North Oaks Company has requested a reduction in the escrow balance they have submitted. The original amount deposited of \$1,671,125.00 can be reduced by \$300,000 based on the lower bid costs received and the significant portion of the project already completed. The remaining escrow will cover the Township for the rest of the project. The escrow balance is proposed to be 1,371,125.00 minus the approved construction costs. The

Developer's existing fund balance, which is paying for this project, has the available funds to cover the change order and remaining costs of the project.

Prudhon moved, based on Engineer review and recommendation to approve reduction of the Escrow Deposit by \$300,000. Ruzek seconded. Ayes all.

The Engineer reported that the project has an interim completion date of September 2, 2016 to finish the utilities, subbase, curb, and first lift of bituminous within the subdivision right-of-way which is substantially completed. The final completion date of the project is October 28, 2016 with the bituminous wear course to be placed in 2017.

IMPROVEMENT 2016-2 – SOUTHEAST AREA SEWER RELINING: 1) RESOLUTION RECEIVING REPORT ON A SANITARY SEWER LINING IMPROVEMENT; 2)

RESOLUTION CALLING HEARING ON IMPROVEMENT 2016-2: Resolution

Receiving Report on a Sanitary Sewer Lining Improvement: The Engineer reported that part of the Township's process for a project that will be assessing the benefitting properties is to hold informal meetings for the affected residents. The Southeast Area Sanitary Sewer Pipe Lining project had two of these meetings on April 26th and May 3rd. A power point presentation was presented at the meetings. The residents' comments were favorable for the project. A hearing date of September 19, 2016 at a regular Town Board meeting is proposed for a project improvement hearing. TKDA will update the power point presentation, work with staff to prepare the assessment documents and present the information at the public hearing. The fee for this update is included in the

overall budget of \$1,713,000.00. The Engineer reported that there are 452 residential units to be assessed \$2,500 and 35 non-residential units to be assessed. The non-residential units include: Bellaire Auto – 1 unit; Bellaire School – 26 units; Dental Clinic – 4 units; South Shore Trinity Church – 3 units; Storage building – 1 unit.

Prudhon moved, based on Town Engineer review and recommendation to adopt the Resolution Receiving Report on a Sanitary Sewer Lining Improvement. Ruzek seconded. Ayes all.

Prudhon moved, based on Town Engineer review and recommendation to adopt a Resolution Calling Hearing on Improvement 2016-2, noting that the hearing will be held on September 19, 2016, at 7:10 p.m. at Heritage Hall. Ruzek seconded. Ayes all.

2016 I & I PROGRAM – APPROVE HYDRO KLEAN QUOTE: The Public Works Director reported that as part of the Township’s infrastructure management program the Town televises approximately 30,000 lineal feet of sanitary sewer mainlines to determine the pipe’s structural condition; evaluate for infiltration leaks (water flowing into the pipe from joints, cracks and service line connections); provide information on the cleanliness of the pipe to assist in determining adjustments to the cleaning frequency of the system; and assist in addressing the infiltration/inflow exceedance identified by the Metropolitan Council Environmental Services. He reported that the Town has approximately 58 miles of sanitary sewer mainline of which 11 miles is vitreous clay pipe (VCP) that was installed in the 1960’s and early 1970’s. The majority of the pipe

that will be televised is the area from West Street, north of Stillwater Street, around Bald Eagle Lake up to the Overlake area, excluding the portion of pipe that has been televised this past year from Hugo Road into Auburn. The televising will be extended to the remainder of the area in the Overlake development. The remaining sanitary sewer mainline pipe is reinforced concrete pipe (RCP), high density poly ethylene (HDPE), plastic vinyl coated (PVC), and some ductile iron used in sanitary sewer forcemain applications. The Town has received two quotes for televising the sanitary main line pipe. Quotes were received from Visu-Sewer for \$23,895.00, and Hydro Klean for \$22,490.00. Both have pricing for the main line and easement lines, particularly along Centerville Road. There are different methods of accessibility used. Public Works and Town Engineer are recommending that the work be awarded to Hyrdo-Klean for \$22,490.00. The Public Works Director reported that the cost of this work will be credited toward the surcharge of \$70,000 per year for three years that the Met Council has proposed to address inflow and infiltration.

Prudhon moved, based on Public Works Director and Town Engineer review and recommendation to approve the quote from Hyrdo-Klean for televising and reporting in the amount of \$22,490.00 with funding from the Sewer Operating Fund. Ruzek seconded. Ayes all.

STODDARD PROPERTY: The Town Attorney reported that the Stoddard property is 22.31 acres. In response to the action that the Stoddard's have taken against the Township a Resolution ordering eminent domain of property located at 5685 Portland

Avenue has been prepared. In the Stoddard complaint they requested that the court through inverse condemnation direct the Town to commence with condemnation proceedings of their property. The Town is complying with the terms of their prayer for relief. The Resolution identifies the property and the property owner. The basis for the taking of the property is that the Township has adopted a safety zone overlay ordinance which they claim adversely affects their property. For the purpose of maintaining that easement and dealing with the adverse effects on their property, the Town will be acquiring fee title to the property. The purpose of the condemnation is to preserve the land use safety zone overlay which is in place. This will also avoid any future litigation involving the Town. The Attorney reported that this is an allowed purpose. The public purpose is to protect the safety overlay which is an Airspace and Land Use Safety Regulations Overlay which extends outward from each end of the runway. The A-S Overlay consists of a primary zone and land use safety zones A, B and C. Its intent is to focus on the health, safety and welfare of Town residents and the users of Benson Airport. He reported that the Resolution will authorize the Town Attorneys to commence an action on behalf of the Town to take eminent domain and acquire fee title for the property located at 5685 Portland Avenue consisting of 22.31 acres. The purpose is to maintain the aircraft safety overlay district in place and to deal with the lawsuit brought by the Stoddards. The Resolution also authorizes a quick take of the property. Upon granting petition by the court, the Town will deposit with the District Court of the County of Ramsey, State of Minnesota, the sum of \$528,200.00, an appraised value as determined by the Town appraiser. Once that amount has been deposited with the court the fee title will be transferred to the Township.

Prudhon asked if this is the norm for a property owner to ask the court to direct the Town to begin the proceedings for inverse condemnation. The Town Attorney stated that the property owner feels that through the action of the Township that their property has been taken for public use to allow for a safety zone, they have the right to petition for an order for the Town to commence condemnation proceedings. This would be normal if the property owner feels that the governmental entity has taken the property for public purpose. He reported this is a regulatory taking as it applies to the safety zone.

Prudhon moved, based on Town Attorney and Staff review and recommendation to adopt the Resolution Ordering Eminent Domain, a taking of Fee Title of the Property Located at 5685 Portland Avenue, White Bear Township, Ramsey County, State of Minnesota, (hereinafter referred to as "Stoddard Property"). Ruzek seconded. Ayes all.

OPEN TIME: Kate Sargeant, 5344 Eagle Street, stated that she still has issues with the cottonwood tree on her neighbor's property. The tree is located on the property at 2302 Fifth Court, owned by Robert and Jane Leeper. She provided pictures of the tree and its location in relation to her garage. The pictures showed the tree in 2010 and in 2016 which portrayed that the tree leans more today than it did then. In 2010, neighbor Corey Hovland, came to the Sargeant's and asked for advice about the tree. In 2010 arborists determined that the tree was stable, in large part due to surrounding trees which protected it from wind and whose roots helped stabilize it. She reported that the

tree leans heavily toward their property and that the root plate is lifting. She stated that when she had a clump of silver maple removed from her property by a tree service they wanted to focus on the neighbor's cottonwood tree because they felt it was a hazard. Ms Sargeant reported that she hired a certified arborist, someone who was trained as a tree-risk assessor. It was deemed that the crown of the leaning tree was offset, the roots are not healthy and it was deemed a high-hazard, verging on an extreme-hazard tree. She reported that Mike Johnson, Code Enforcement Officer, and Tom Riedesel, Town Tree inspector (?) visited the site and viewed the cottonwood tree. Mr. Leeper, on whose property the cottonwood tree is located, received an enforcement action letter dated July 8, 2016, to Robert and Jane Leeper stating that the tree needed to be removed in 20 days. It has now been 37 days. That date has come and gone and nothing has been done. She stated that she is concerned about the safety of their property and family. She stated that their home, garage, and living room are in the fall area of the tree. Kermes thanked Ms Sargeant for coming back to the Town Board with her concerns. He referred to the Town Attorney for proper procedure. The Town Attorney stated that, just as Ms Sargeant has come before the Town Board, Mr. Leeper also has that right to be heard. He will be invited to come before the Town Board to address the issue. After all input has been received the Town Board will take appropriate action.

RECEIPT OF AGENDA MATERIALS & SUPPLEMENTS: Prudhon moved to receive all of the agenda materials and supplements for tonight's meeting. Ruzek seconded. Ayes all.

The meeting adjourned at 8:35 p.m.

Respectfully Submitted,

William F. Short

Clerk-Treasurer

Approved as Official Meeting Minutes

Town Board Supervisor

Date