

## WEST LAKELAND TOWNSHIP

Regular Meeting

January 14, 2008

7:00 p.m.

Oak-Land Jr. High School

Present: Chairman Dan Kylo, Supervisor John McPherson, Supervisor Ron Goette, Susan Agrimson, Clerk; Matt Woodruff, Engineer; Scott McDonald, Attorney; Duane Stensland, Building Inspector; Ray Swanson, Planning Commission Chair; Elizabeth Vance, Deputy Clerk

### **Call to Order**

Chairman Kylo called to order the regular meeting of the West Lakeland Board of Supervisors at 7:14 p.m.

### **Review and Pay Invoices**

Supervisor McPherson moved to pay the invoices as presented. Seconded by Supervisor Goette, the motion carried.

### **Approval of the Minutes**

The minutes of the December 10, 2007 were presented for approval. Supervisor Goette questioned the written intent of his comments under 'Other Business' regarding plowing by resident John Buelow. The Board agreed that the sentence "There is concern for liability for damage that may result" should be deleted. There being no further corrections, Supervisor McPherson made a motion to approve the minutes. Seconded by Supervisor Goette, the motion carried.

### **Treasurer's Report**

Mr. Semrud presented the treasurer's report for the month of December. The report reflected Revenue of \$28,880.74 and Expenditures of \$19,453.02 with a loss of \$90,376.30 which was totally anticipated in the budgeting process for which the levy accommodated. Renewal rates for CDs are down, so Mr. Semrud indicated that he would review moving funds from the next CD to a money market account, to allow for more flexibility in the use of the funds. Supervisor Goette moved to approve the treasurer's report. Seconded by Supervisor McPherson, the motion carried.

### **Road Easement Dedication Agreement between West Lakeland Sod Fields (Mogren) and Holiday Stationstore, LLC (#0310)**

Attorney Scott McDonald presented the Board with this Agreement that proposes to settle the issue of the access road between Holiday Stationstore and West Lakeland Sod Fields, LLC (a Minnesota limited liability company ("Mogren")). In part this Agreement states that at such time as the Township notifies Holiday and Mogren in writing that it desires for the entire Driveway Easement Area to become dedicated and used as a public right of way, Holiday and Mogren hereby agree that each shall convey its respective interest in the driveway improvements located on the Driveway Easement Area to the Township without charge or expense to the Township. Further, in the likely event that the Holiday plats the Holiday Property, at the time of such platting, Holiday will dedicate its interest in the Driveway Easement Area to the Township upon the terms provided in this Agreement.

## WEST LAKELAND TOWNSHIP

Regular Meeting

January 14, 2008

7:00 p.m.

Oak-Land Jr. High School

This document also states that if Holiday's interest in the Driveway Easement Area is dedicated to the Township when Holiday plats the Holiday Property and such platting occurs prior to such time as the Township notifies Holiday and Mogren that it desires for the Driveway Easement Area to become a full public right of way, until such time as the Township so notifies Holiday and Mogren, Holiday will indemnify the Township and hold the Township harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property or any of the above, occasioned wholly or in part by an act or omission of Holiday, its tenants, subtenants, agents, employees, licensees or invitees on the portions of the Driveway Easement Area that Holiday shall have dedicated to the Township. Further, Holiday will indemnify, defend and hold the Township harmless against all claims, demands, loss, damage, liabilities and expenses and all suits, actions and judgments (including without limitation costs and reasonable attorney's fees) arising out of, or in any way related to Holiday's failure to comply with the terms and conditions of this Agreement.

Supervisor McPherson made a motion approving this Agreement and authorizing Mr. McDonald to contact the Washington County Attorney's office to consummate this document between the Holiday Stationstores and West Lakeland Sod Fields, LLC. Seconded by Supervisor Goette, the motion carried.

### **Proposed Xcel Energy Fly Ash Landfill Draft EIS**

Chairman Kylo summarized the environmental impact statement. Concern was raised over the mercury emissions sampling. Stuart Grubb, Environment Consultant of Emmons and Oliver resources, replied it's not the township's responsibility to do the research and validation, but to raise questions and concerns. The plant used to model the emissions is similar, but the unknown how similar the plants are. Supervisor Goette asked about how to repair a breach in the containment system, it appears that repair of the containment barrier is not addressed. Concern was raised over the viability of the statement in the EIS that there would be minimal impact on land use and land value because of the current land use, and letters written to Xcel indicate that the development pace and the value of the land on this corridor. Tom E. Casey, attorney with Water and Land Use Specialist, replied that the scoping document was vague, and this issue was not directly addressed. It will be included in the response memo to MPCA. Supervisor McPherson noted that there are a number of local issues inferred as resolved in the document that have not been discussed with the town board, such as tipping fees and truck routes. He also raised concern over the impact of the estimated 25000 gallons a day of leechite, and how it was to be removed and treated. Dave Schultz commented that this was done before the approval of the school in Baytown at 47<sup>th</sup> and Stagecoach. This will also impact the statement.

The board expressed concern that there is a perception of bias, in the similarity of the evaluation of the PCA to that done by Xcel, and the previous EIW document. The board perception is the PCA review is incomplete and overly reliant on data provided by Xcel. Independent realtors have indicated that all property values in the township will suffer, however the EIS indicates no impact on property values. Memo indicates that the study does not meet the standard of sufficient independent review.

## WEST LAKELAND TOWNSHIP

Regular Meeting

January 14, 2008

7:00 p.m.

Oak-Land Jr. High School

Mr. Casey and Mr. Grubb noted that if one would accept the EIS statement that there is need more study for the beneficial use of flyash, it should have been listed a priority for the PCA. This topic did not make PCA's biannual list of priorities. There is also an opportunity for an open door meeting with the commissioner of the PCA to address the need to make fly ash management a priority.

Supervisor Goette raised the issue of consideration of alternative sites, such as the existing facility in Rosemont. The original document excluded that site based on wet hauling, which would restrict the distance to be traveled. The study now indicates that the trucks will be sealed, which should increase the distance the trucks can safely transport the fly ash.

The board discussed the next steps in the review process. Presenting contradictory statements on property value or other concerns could require independent appraisal by expert witnesses. It was determined that the alternatives would be considered at an emergency meeting to review the proposal and provide further direction on January 16, 2008. The clerk was directed to post the meeting.

### **Rustling Wilds – continuation of public hearing of the Nov 16, 2007 public hearing**

Chairman Kylo resumed the public hearing in consideration of a request by Dennis and Karen Geffre for preliminary plat approval for a plat to be known as Rustling Wilds. The hearing was continued from the November regular meeting to allow for additional comment and potential clarification of issues. Ms. Patty Keith, a resident on 14<sup>th</sup> street and one of the members of the covenant, was sympathetic to the desire to subdivide, but would stand with the majority of the neighbors. Mr. Tom Groppoli, of Overlook trail, asked about the results of the WMO review in regards to the performance standards on steep slopes. Chairman Kylo noted that the WMO performance standards do indicate restrictions on slopes greater than 12%, but the WMO review at their December meeting did recommend approval with variance. The variance did not, according to the review, negatively impact the surface water management. Mr. Jim Dunn, the attorney for the neighboring covenant members commented on the impact of the covenant on the ability to effectively use the lots created by the act of subdivision. His belief is that it would be prudent of the board, if approved, to be conditional on a declaratory judgement.

Chairman Kylo asked about attempts over the past month to independently resolve the issue. To date, that discussion has not been done.

Chairman Kylo closed the public hearing at 8:36 PM

### **Rustling Wilds**

Mr. McDonald noted that, although the township does not enforce covenant restrictions, it is possible, but uncertain, that the landowners could stop the development if approved. If the board was to approve the subdivision, and then the subdivision was to become enjoined, the board would have allowed parcels that cannot be used. However, there is nothing in the ordinance that says it cannot be approved. The covenants cannot be used for a basis for denial. The request needs to be considered in light of the township ordinances and regulations. This is the preliminary plat approval, and prior to execution of the subdivision, final plat approval would need to be granted. If there were litigation

## WEST LAKELAND TOWNSHIP

Regular Meeting

January 14, 2008

7:00 p.m.

Oak-Land Jr. High School

started prior to final plat approval, the final approval could be held until the litigation was resolved.

Mr. Woodruff commented that any potential preliminary approval should address conditions for engineering review. There is an infiltration basin on the project, and the obligation for long term maintenance needs to be established. A condition of approval should ensure maintenance by a homeowner association or by the owner of lot one, block one, where the infiltration lies. Supervisor Kylo expressed concern over the effectiveness of providing such a responsibility to a homeowner's association with no shared assets. Supervisor Goette asked if the concern over the infiltration basin maintenance was sufficient to warrant disapproval. Enforcement if assigned to the landowner could be addressed in the developer's agreement.

Mr. Woodruff raised a second concern, which he believed could be worked out with the developing engineer, concerning the natural drainage way and the new roadway. The project will need to address clearing and maintaining the culvert. When asked if reducing the number of homes would impact the concerns over the maintenance issues, the response was it would minimize the impact, but not negate the concern.

Supervisor McPherson moved approval of the preliminary plat with the following conditions: the infiltration basin is to be maintained by the homeowner of lot one, block one; If legal action was initiated to enjoin the land that the final approval would be held until the litigation was resolved; completion of the developer's agreement, letter of credit in an amount determined by the Township engineer; approval of the WMO subject to the engineer's recommendation; engineering approval of the culvert maintenance, surface water management plan, road construction standards, and other engineering standards as necessary; and compliance with WMO review recommendations. Supervisor Goette seconded the motion. The motion carried.

### **Conditional Use Permit, Century College Truck Driving School**

Mr. Lonnie Provencher of United Properties appeared before the board to request a conditional use permit for an educational facility for Century College located along Hudson Road in a lot shared with the City of Afton. Skennel Properties is interested in purchasing the property, and leasing the land to Century College for this use. The program, currently located in Maplewood, is outgrowing its current facility. The program is a non credit program, providing instruction to 16 students each month. The course is four weeks, and starts monthly. The first week is classroom training, followed by driving on the range located on site, with over the road driving in the second, third and fourth week. At the current volume, the highest truck load was 16 trucks on the road for all or part of a day. The focus of the fourth week is certification testing with the State DMV. Training is six days a week.

The proposed building is 10,000 square feet on a 37 acre site, with an impervious surface of 16%. The requestor would like a joint powers agreement between West Lakeland and Afton to address the regulatory issues and other execution concerns. The building could be made available evenings for community use, as any other state operated building.

**WEST LAKELAND TOWNSHIP**

Regular Meeting

January 14, 2008

7:00 p.m.

Oak-Land Jr. High School

The board referred the action to the planning commission for review. Mr. McDonald was directed to begin conditions to work out the joint powers agreement for a conditional use.

An escrow was set for \$10,000, and the request was scheduled for a public hearing at the next regular meeting.

**Artisan Development, Letter of Credit**

Mr. Thill appeared before the board to request a reduction in the letter of credit pertaining to the retaining wall. The remaining outstanding issue was the formal delegation of liability for maintenance to the affected homeowners. It was recommended that a two lot covenant be added to the lots on which the retaining wall is located to ensure maintenance responsibility was identified and recorded with the deed. Recording on the purchase agreement enabled risk that the agreement would not survive after the first resale of the lot. Mr. Thill agreed to create a two lot covenant, leaving the initial covenants unaffected.

After discussion, Supervisor Goette moved, seconded by Supervisor McPherson to reduce the letter of credit to \$132,250.00. The motion passed. The clerk was requested to notify the affected parties.

**Adjourn**

Having no further business, Supervisor McPherson moved to adjourn the meeting. Seconded by Supervisor Goette, the motion carried. Chairman Kylo adjourned the meeting at 10:25 PM.

Respectfully Submitted



Elizabeth A. Vance  
Deputy Clerk