

## MINUTES

**TOWN OF YORKVILLE  
TOWN BOARD  
TOWN BOARD ROOM  
UNION GROVE MUNICIPAL CENTER  
MONDAY, JUNE 26, 2017**

### Call to Order

Town Board Chair Peter Hansen called the meeting to order at 6:00 p.m.

### Roll Call

The following Town Board members were present: Peter Hansen and Terrence McMahon. Sherry Gruhn was absent. Also present were Ray Stibeck representing Route 20, Jon Klema representing Michael's Signs, Robert Duthie, Racine County Economic Development Corporation Executive Director Jenny Trick, Racine County Economic Development Corporation Business Recruitment Specialist Jordan Brown, Andrew Naber representing ASDA Enterprises, Jim Fox, Barbara Geschke, Bennett Brantmeier representing Brantmeier Law, Yorkville Stormwater Utility District Commission Chair Stephen Nelson, Code Enforcement Officer Terrence O'Brien, Engineer Mark Madsen, Attorney Elaine Ekes, Clerk-Treasurer Michael McKinney and two unidentified attendees.

### Approval of Minutes

***Motion (McMahon, Hansen) to approve the June 12, 2017 joint Town Board/Plan Commission meeting minutes as presented, Motion Carried (MC).***

### Approval of Town Invoices

***Motion (McMahon, Hansen) to approve payment of Town invoices as presented in the amount of \$19,782.70, MC.***

### Approval of Stormwater Invoices

Hansen noted that no Stormwater invoices were presented for payment.

***No formal action was taken by the Town Board on this agenda item.***

### Reports

**Engineer's Report:** Madsen noted that he had no information to report to the Town Board.

**Yorkville Stormwater Utility District Report:** Nelson noted that he had no information to report to the Town Board.

**Clerk's Report:** McKinney reported to the Town Board on the following:

- An upcoming meeting that has been scheduled with the Wisconsin Department of

Transportation regarding the proposed portion of the Interstate 94 North-South project involving the Durand Avenue (STH 11) interchange and the existing bridges over 58<sup>th</sup> Road

- An upcoming meeting that has been scheduled to discuss conditions included with the Town's recent approval of an asphalt and concrete recycling operation for the Colony Avenue (USH 45) reconstruction project on the parcel located at 18917 Spring Street (CTH C)

**Code Enforcement Officer's Report:** O'Brien reported to the Town Board on the following:

- That he followed up on a complaint regarding uncontrolled thistle growth on the property located at 915 51<sup>st</sup> Drive
- That he followed up on a complaint regarding dirt bikes being operated on the property located at 1011 63<sup>rd</sup> Drive

**New and Unfinished Business – Discussion and possible action on all of the following:**

**Application submitted by Jose Luis Solorzano for a Class B beer license for the period of July 1, 2017, through June 30, 2018 for Home Run Heaven, located at 3400 South Sylvania Avenue (Parcel ID # 018-03-21-25-007-010) in the B-5 (Highway Business) Zoning District (Agent: Jose Luis Solorzano) (Premises: All fenced-in areas)**

***Motion (Hansen, McMahan) to grant a Class B beer license to Jose Luis Solorzano for the period of July 1, 2017, through June 30, 2018 for Home Run Heaven, located at 3400 South Sylvania Avenue (Parcel ID # 018-03-21-25-007-010) in the B-5 (Highway Business) Zoning District, with no conditions, MC.***

**Applications for 2017-2018 annual Operator Licenses submitted by the following:**

- Laura Catapano
- Sarah Schuster
- Ciro Vargas
- Israel Vargas
- Kathleen Young

***Motion (McMahan, Hansen) to grant all listed 2017-2018 annual Operator licenses as presented, with no conditions, MC.***

**License and permit applications submitted by the Racine County Agricultural Society on behalf of the Racine County Fair for the Racine County Fair, to be held at the Racine County Fairgrounds, 19805 Durand Avenue (STH 11), from Wednesday, July 26, 2017, through Sunday, July 30, 2017, daily from 6:00 a.m. to 12:00 a.m., including the following applications:**

- Special Event Permit
- Temporary Combination Class B license to sell fermented malt beverages and wine at the Racine County Fairgrounds
- Temporary Operator Licenses
  - Jeffrey Ehrhart

- Michael Newholm
- Kenneth Uhlenhake
- Mark Wilson

***Motion (McMahon, Hansen) to grant all licenses and permits applied for by the Racine County Agricultural Society on behalf of the Racine County Fair for the Racine County Fair, to be held at the Racine County Fairgrounds, 19805 Durand Avenue (STH 11), from Wednesday, July 26, 2017, through Sunday, July 30, 2017, daily from 6:00 a.m. to 12:00 a.m., with no conditions, MC.***

**Variance request submitted by MAP 14100, LLC/Ray Stibeck/Route 20 (with Jon Klema/Michael's Signs, Inc. as applicant/agent) for the property located at 14001 Washington Avenue (STH 20) (Parcel ID # 018-03-21-13-010-020) in the B-3 (Commercial Service) Zoning District to permit construction of a 30-foot high pole sign with a 7-foot by 16-foot (112-square foot) reader board at this address (maximum pole sign height is 20 feet)**

Ray Stibeck and Jon Klema appeared before the Town Board to discuss this request. The following information was provided on this request:

- Proposed activity is construction of a 30-foot high pole sign with a 7-foot by 16-foot (112-square foot) reader board (maximum allowable pole sign height is 20 feet)

Stibeck noted that the existing sign has been in place since 2004 and is too costly to repair. He stated that this proposed sign would be more visible and would better represent the property. Klema noted that this sign will be lit with a full digital board.

***Motion (McMahon, Hansen) to accept and approve the conceptual plan submitted by MAP 14100, LLC/Ray Stibeck/Route 20 (with Jon Klema/Michael's Signs, Inc. as applicant/agent) for the property located at 14001 Washington Avenue (STH 20) (Parcel ID # 018-03-21-13-010-020) in the B-3 (Commercial Service) Zoning District to permit construction of a 30-foot high pole sign with a 7-foot by 16-foot (112-square foot) reader board at this address (maximum allowable pole sign height is 20 feet) as presented, with no conditions, MC.***

**Variance request submitted by Robert and Nancy Duthie for the property located at 18506 52<sup>nd</sup> Road (Parcel ID # 018-03-21-17-033-020) in the A-2 (General Farming and Residential II) Zoning District to permit construction of a 50-foot by 90-foot (4,500-square foot) agricultural accessory structure at this address with a side yard setback of two feet (minimum side yard setback is 10 feet)**

Robert Duthie appeared before the Town Board to discuss this request. The following information was provided on this request:

- Proposed activity is construction of a 50-foot by 90-foot (4,500-square foot) agricultural accessory structure with a side yard setback of two feet (minimum allowable side yard setback is 10 feet)

Duthie noted that this accessory structure would be oriented north to south and would be on the east side of the existing residence on this property. He stated that it would not be possible to build this accessory structure anywhere else near the house due to the location of the septic system, twelve foot wide field access driveway and other buildings. He added that it would not look attractive to build this accessory structure in front of the house and noted that it would be too far away from the house if built to the west. He stated that he has attempted unsuccessfully to purchase land to the east to accommodate this building. He added that the building could not accommodate all of his agricultural equipment if it was built any smaller. The Town Board expressed concern over the proposed two-foot setback given the fact it would be difficult to do any work on the east side of the building without crossing onto the neighbor's property. Duthie stated that his neighbor to the east did not have any objections to this proposal.

***Motion (Hansen, McMahon) to not oppose the request submitted by Robert and Nancy Duthie for the property located at 18506 52<sup>nd</sup> Road (Parcel ID # 018-03-21-17-033-020) in the A-2 (General Farming and Residential II) Zoning District to permit construction of a 50-foot by 90-foot (4,500-square foot) agricultural accessory structure at this address with a side yard setback of two feet (minimum allowable side yard setback is 10 feet) and to express reservations regarding the proposed setback and potential impact that this setback could have on both current and future owners of both this property and the immediately adjacent property, MC.***

**Resolution No. 2017-07 Final resolution authorizing storm water improvements on Parcel No. 018032120020001, with address of 19031 Spring Street, for the benefit of various properties in the immediate vicinity, and levying special assessments against benefited properties located in the Town of Yorkville, Racine County, Wisconsin, pursuant to Section 66.0703 of the Wisconsin Statutes**

McKinney read an email from a representative of the business located at 19031 Spring Street (CTH C) requesting that language in the proposed resolution regarding termination of the special assessments and the right of recovery of the special assessments after a period after twenty years be removed. Ekes noted that her office did not object to the removal of this language, adding that it is a policy decision on the part of the Town Board to include or exclude this language. She recommended that the Town Board require that this resolution be recorded with the Racine County Register of Deeds against all benefiting property owners to ensure that this assessment be paid as properties are further developed. She added that the stormwater easement for the property located at 19031 Spring Street (CTH C) still needs to be recorded with the Racine County Register of Deeds.

***Motion (Hansen, McMahon) to approve Resolution No. 2017-07 with the following conditions:***

- ***That the following excerpts be stricken from said resolution:***
  - ***“The deferred assessment shall terminate if not triggered within twenty (20) years of the date of this Final Resolution.”***
  - ***“The Town’s obligation to make right of recovery payments to the owner of Parcel No. 018032120020001 shall also terminate after twenty (20) years from the date of this Final Resolution.”***

- ***That said resolution be recorded with the Racine County Register of Deeds against all benefited parcels described within it, MC.***

**Pay request No. 1 submitted by Payne & Dolan, Inc. in the amount of \$311,408.59 for the Braun Road, 53<sup>rd</sup> Drive and Maurice Drive paving and drainage project**

Madsen noted that he received this pay request several weeks ago, adding that a second pay request was received last week. He stated that there were several outstanding issues on 53<sup>rd</sup> Drive that must still be addressed and added that ditch restoration work on Maurice Drive has yet to be completed. He noted that the retainage for this project can be released once each road has a good stand of grass where the ditches were disturbed.

***Motion (McMahon, Hansen) to approve payment of Pay Request No. 1 to Payne & Dolan, Inc. in the amount of \$311,408.59 for the Braun Road, 53<sup>rd</sup> Drive and Maurice Drive paving and drainage project, MC.***

**2016 Racine County Economic Development Corporation annual report**

Jenny Trick appeared before the Town Board to present the Racine County Economic Development Corporation's 2017 first quarter report. She noted that 2017 has been very active in terms of business growth in Racine County. She and the Town Board discussed the need for improved collaboration between employers and educational institutions to better prepare current and future workers for the workforce, as well as for more employer-sponsored on-the-job training.

***No formal action was taken by the Town Board on this agenda item.***

**Resolution No. 2017-06 Prohibiting the disposal of certain tires at the Town of Yorkville's waste and recycling collection site, 19040 Spring Street (CTH C)**

McKinney provided information to the Town Board on the current practices of local municipalities in regards to tire disposal, adding that tire disposal is either allowed through the municipality for a fee or is not allowed at all through the municipality. Andrew Naber appeared before the Town Board to discuss the disposal of tires at the Town's waste and recycling collection site. He noted that many of the large tires disposed of at the Town's collection site are used for commercial purposes, such as transportation or agriculture. He stated that any business that currently provides tire-related services can dispose of such tires for a fee. He noted that as more municipalities restrict the disposal of tires, more tires will be disposed of at the Town's collection site. Hansen stated that the Town should consider continuing to allow the disposal of tires but should charge residents a fee for disposing of them, adding that he is not in favor of banning the disposal of tires at the Town's collection site entirely. Naber noted that it costs approximately \$2,200 to dispose of a load of tires, with larger tires adding to this cost due to their bulky nature.

***Motion (Hansen, McMahon) to table Resolution No. 2017-06 until the July 10, 2017 joint Town Board/Plan Commission meeting, MC.***

Gruhn joined the meeting at 7:15 p.m. by telephone (was not counted towards the meeting's quorum).

**Public Hearing** – The Town Board held a public hearing to hear public comment on Ordinance No. 2017-01 Amending Article III of Chapter 30 of the Code of Ordinances for the Town of Yorkville relating to sex offender restrictions

Hansen opened the public hearing at 7:15 p.m.

Brantmeier provided information to the Town Board on a proposal at the state level requiring the placement of sex offenders back in the county they resided in at the time of their offense, adding that any state legislation regarding sex offender placement would override existing municipal sex offender ordinances. He noted that he is not aware of any literature that exists supporting the placement of a sex offender within their county of residence at the time of their offense, adding that another attorney he works with is currently researching the impetus for this proposal.

Brantmeier discussed three reports related to sex offender placement, including the following:

- “Recidivism of Adult Sexual Offenders.” U.S. Department of Justice, July 2015, SOMAPI (Sex Offender Management Assessment and Planning Initiative), which discusses the likelihood that sex offenders will reoffend as well as the difficulties that exist in determining whether sex offenders have reoffended given that many incidents are not reported to authorities
- “An Overview of Sex Offender Management.” July 2002, U.S. Department of Justice, CSOM (Center for Sex Offender Management), which discusses the variation that exists between communities regarding the resources made available to sex offenders and whether it is more advantageous to the sex offender to be placed back in the community they resided in at the time of their offense
- “There goes the Neighborhood? Estimates of the Impact of Crime Risk on Property Values from Megan’s Laws.” May 2006, National Bureau of Economic Research, which addresses the issue of whether property values are impacted based upon the proximity of sex offenders to those properties

Brantmeier provided background information regarding the recent federal court ruling related to the Village of Pleasant Prairie’s sex offender ordinances (Order of the Honorable J.P. Stadtmueller of the United States District Court, Eastern District of Wisconsin, Hoffman et al. v. Village of Pleasant Prairie, Case No. 16-CF-697-JPS). He stated that the ruling in this case was that no justification was provided by Pleasant Prairie for regulating sex offenders who were not living in Pleasant Prairie at the time of their offense any stricter than sex offenders who were living in Pleasant Prairie at the time of their offense. He noted that this ruling also addressed the 3,000-foot child safety zones in Pleasant Prairie, which made it very difficult for a sex offender to find a suitable place to reside even if they did live in Pleasant Prairie at the time of their offense.

Brantmeier discussed the lawsuit that was recently filed against the Town regarding the Town’s sex offender domicile restriction ordinance, which prohibited sex offenders who did not live in Yorkville at the time of their offense from relocating here upon their release. He noted that the judge that issued the injunction in this case stated that no proof was provided that a sex offender that was not living in the Town at the time of their offense was any more dangerous to the community than a sex offender that was living in the Town at the time of

their offense. He added that this injunction was issued even though the Wisconsin Department of Corrections denied placement of the plaintiff at his originally proposed residence in the Town due to the presence of a care facility at the same location. He stated that any changes to the Town's existing sex offender domicile restriction should be made with future legal challenges in mind.

Ekes provided a summary of the proposed sex offender ordinance updates to the Town Board. She stated that the initial sex offender ordinance was adopted in 2011, adding that a significant revision to this ordinance was adopted in 2015. She noted that no revisions were proposed to the definitions or protected locations contained within the existing sex offender ordinance or to the Town's existing 1,000-foot child safety zones. She added that the existing child safety zones are still small enough to provide a very large area in the Town in which sex offenders could reside. She stated that the proposed sex offender ordinance update eliminates the sex offender domicile restriction ordinance, noting that the Town's initial concern upon adopting this restriction in 2015 was that sex offenders moving into the area for the first time may not have the same support system that a sex offender who previously lived here may have. She noted that the proposed sex offender ordinance update also includes a proposed sex offender appeals process for sex offenders that may otherwise be in violation of the Town's sex offender ordinances for any other reason. She added that the Town could create a sex offender appeals process and eliminate the sex offender domicile restriction in the sex offender ordinances.

Jim Fox questioned how the Town would handle a sex offender that lives in Raymond but walks into Yorkville. He also questioned how the Town would handle the placement of an offender that was involved in an underage consensual relationship.

Ekes discussed several groups that would be exempted from sex offender residency restrictions in the proposed sex offender ordinances, such as those currently residing in the Town, those under the age of 17 at the time they offended, juvenile delinquents or wards of the state placed with a legal guardian, those who had not attained the age of 19 at the time of their offense and whose offense did not include the threat of force or violence and who were not required to register for the sex offender database. She noted that another exemption was included for sex offenders that could live in the home of a parent or spouse and added that language could be incorporated as well allowing for a sex offender to live with a child or sibling.

Brantmeier noted that the proposed sex offender appeals board could enter into closed session to discuss sensitive information related to each sex offender's appeal request. He noted that the Town's attorney would draft an order that would be sent to the applicant outlining the decision of the sex offender appeals board. He stated that this proposed sex offender appeals board language is being proposed for the sex offender ordinance because due process must be afforded to sex offenders.

Stephen Nelson questioned why the sex offender domicile restriction needs to be eliminated. Brantmeier stated that while support services for sex offenders tend to be sparser in smaller municipalities, some argue that sex offender domicile restrictions are a punishment with no legitimate public purpose.

Hansen stated that he supports the sex offender appeals process, which would give everyone a chance to speak and be heard at hearings.

Barbara Geschke asked whether the sex offender appeals process would be required of all sex offenders looking to relocate into the Town. Brantmeier stated that only the sex offenders looking to move into the Town in violation of its sex offender ordinances would need to go through the sex offender appeals process.

Brantmeier noted that any changes to the Town's sex offender ordinance would not impact the lawsuit in which the Town is currently involved.

Barbara Geschke stated that the Town's sex offender domicile restriction cannot be challenged in the future if it is removed from the Town's sex offender ordinances.

Jim Fox asked whether citizens can provide suggestions for incorporation into the proposed sex offender appeals process.

Brantmeier stated that the proposed sex offender appeals board would rule on each appeal based on the facts presented to them. He added that the sex offender appeals process should be consistent for all sex offenders who appeal.

Ekes noted that sex offender appeal notices are typically only posted on municipal websites and in newspapers, but are not mailed out to residents.

Stephen Nelson questioned why notices would not be sent to neighboring property owners to make them aware of an sex offender's upcoming appeal. Brantmeier stated that the release and classification of each sex offender is public knowledge, adding that the Wisconsin Department of Corrections must notify local authorities of the sex offender's release.

Hansen asked how the Town would be informed early enough to ensure that each sex offender's appeal request is properly reviewed before the sex offender's appeal is heard. Brantmeier stated that if an application is not received by the Town's application deadline, it cannot get on the agenda for that meeting and must be delayed for another month. He noted that the Town will need to ensure that appeal applicants do not move into the Town before their appeal is heard, adding that doing so can be cause for denial of an sex offender appeal request.

Jim Fox asked whether copies of the information distributed at this evening's meeting will be available to residents in the future.

With no other comments forthcoming, Hansen closed the public hearing at 8:37 p.m.

### **Ordinance No. 2017-01 Amending Article III of Chapter 30 of the Code of Ordinances for the Town of Yorkville relating to sex offender restrictions**

The Town Board discussed potential changes to the Town's existing sex offender ordinance, agreeing to keep the draft language regarding the proposed sex offender appeals board, to not create an exemption allowing sex offenders to live with siblings or children, and to eliminate the language in the existing sex offender ordinance regarding sex offender domicile restrictions.

***Motion (Hansen, McMahon) to table Ordinance No. 2017-01 until the July 10, 2017 joint Town Board/Plan Commission meeting, MC.***

Gruhn spoke in favor of tabling Ordinance No. 2017-01.

**Closed Session: Landeau and Sparks v. Town of Yorkville, United States District Court, Eastern District of Wisconsin, Case No. 2:17-CV-00646**

***Motion (Hansen, McMahon) to enter into closed session at 8:44 p.m., pursuant to Wisconsin Statutes Section 19.85(1)(g), to confer with legal counsel for the Town who is rendering oral or written advice concerning strategy to be adopted by the body with respect to the following litigation in which it is involved: Landeau and Sparks v. Town of Yorkville, United States District Court, Eastern District of Wisconsin, Case No. 2:17-CV-00646. Roll Call – McMahon, Yes; Hansen, Yes. Motion Carried (MC).***

The Town Board met in closed session to discuss the following litigation in which it is involved: Landeau and Sparks v. Town of Yorkville, United States District Court, Eastern District of Wisconsin, Case No. 2:17-CV-00646.

***Motion (Hansen, McMahon) to return to open session at 9:17 p.m., MC.***

**Landeau and Sparks v. Town of Yorkville, United States District Court, Eastern District of Wisconsin, Case No. 2:17-CV-00646**

***No formal action was taken by the Town Board on this agenda item.***

**Other – Comments, questions and suggestions**

No comments, questions or suggestions were provided.

Gruhn exited the meeting at 9:17 p.m.

**Adjournment**

***Motion (McMahon, Hansen) to adjourn, MC.*** The meeting was adjourned at 9:17 p.m. The next scheduled Town Board meeting is Monday, July 10, 2017, at 6:00 p.m.

Michael McKinney  
Clerk-Treasurer