

DENMARK TOWN BOARD MEETING MINUTES
July 7, 2014

SUPERVISORS PRESENT: Kathy Higgins, John Kummer, Joe Moore, Karen Herman, Jim Keller

ABSENT: None

STAFF PRESENT: Attorney Troy Gilchrist (Kennedy-Graven)

CALL TO ORDER: Meeting called to order @ 7:00 PM by Chair Higgins

AGENDA APPROVAL: K Higgins added County Land Use. J Kummer added 110th St dumping.

Motion J Kummer/2nd J Keller approval of agenda as amended. All In Favor. Motion Carried 5-0-0.

CONSENT AGENDA APPROVAL: Motion J Keller/2nd J Moore approval of consent agenda items which include 06/02/14 Board Meeting Minutes, Claims #10305-00323, EFT payments- PERA 293978, MN Rev. Tax 0116411008, Federal Tax 52532097, payroll ending 07/01/2014 and financial reports. All In Favor. Motion Carried 5-0-0.

HEARING DECISIONS/ZONING ACTIONS: None

PUBLIC COMMENT: None

BUSINESS ITEMS:

2014 Street Improvements Bid Award:

Bids for the 2014 Street Improvements Project were received on 07/07/14 @ 10 AM with the following results: Combined Projects for Shape/Pave Neal Ave (80-90th) and Reclaim/Overlay 80th St (Neal to Oakgreen).

Engineer's estimate \$462,000.00 (does not include 10% contingency).

\$402,318.00 Hardrives, Inc

\$404,016.04 Park Construction Co.

\$432,348.80 Valley Paving, Inc.

\$444,373.11 Northwest Asphalt

\$497,204.60 Bituminous Roadways, Inc.

\$525,001.01 McNamara Contracting

Engineer has worked with Hardrives, Inc. a number of times. After bid tabulations opened, spoke with Hardrives went through the project details with them. Spoke with Township roads contractor and both Engineer and contractor are comfortable with Hardrives on both projects.

Engineer recommends awarding contract to the lowest responsible bidder, Hardrives, Inc. for their total bid of \$402,318.00.

Board reviewed itemized tabulation of bids.

Comments:

Kummer- Any expected overages on the projects?

Engineer- Major quantities, reclaiming and bituminous quantity and shouldering are pretty well set-they are mathematical formulas that are pretty hard to miss. Some items that were bid low are the driveways (quantity is in the items list for matching the driveways to the roadway), but spoke with contractor and he understands the requirements of the contract. This project will have a preconstruction meeting, manage expectations and check in with contractor to make sure they are following the expectations.

K Herman- re: Tabulation item import/place topsoil. Hardrives very low compared to the other bidders.

Engineer- Import/place topsoil quantity item is in there to try to capture any disturbance that could happen behind where the bituminous curb is going. Everywhere else where there is a rural section along Neal and the majority of 80th, basically we are

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working within the road bed. The contractor shouldn't have a need to disturb any of the slopes, he's compacting the shoulder and his equipment should not run into the side slopes. Some contractors may assume some restoration, but the way they control their means and methods, with the low unit price they gave, they are saying that they don't believe they will disturb anything not contained in the roadway.

J Kummer- Who specified the 1000 ft of silt fence?

Engineer- This is the Town's specification. Silt fence was assumed along the steep portion of 80th where the curbs are going in. Only goes in where the soil will be disturbed. They bid low for this so they may have a technique where they can minimize how much they have to put down, but if they are disturbing soil, they will have to put it down in a way that in a rain event, the topsoil will not be washed away. They are locked into the unit price of what is on their tabulation sheet, regardless of what it takes to meet our specifications.

K Herman- Does not want to see additional costs added in as the work progresses, just because the contractor put in low amounts on the itemized tabulation sheet.

K Higgins- Is there a chance that because of a low bid on an item, that the contingency will increase substantially because of that?

Engineer- Each bid item has a detailed process and technique. So, for silt fence, they have to bring in a certain type of silt fencing and install it in a certain way, and the contractor has to do it for the price quoted on the bid tab. This will be on a contract that they will be signing. Their profits may not be on the small silt fence item, they are looking to make their money on the reclaiming and bituminous paving part of the project. So they obviously will try to minimize their disturbance. If they do disturb, these are the items they will have to put in. If they sign a contract with us, they are locked into these unit prices.

J Kummer- looking at the cubic yards of topsoil. Hardrives is quoting way under what the others are. This would lead one to believe that they are just going to try to get by without it. Does that leave us to enforce it?

Engineer- They have to put the road in at the width that we specify, they have to put in the bituminous curb in to the dimensions that we specify. If they disturb beyond the edge of the road, they will need to bring in the topsoil and they will need to do the seeding. There are construction techniques and ways where they may not need to do any of this. This is what they are communicating.

J Kummer- just suspect that with the other contractors, most items are quite close, low bidder quite low on disturbance items.

Engineer- Almost did not include the disturbance quantities in specs. Have seen ways and techniques in this type of construction without doing any disturbance, but wanted to make sure that in case it was needed that we would have a unit price to use and lock a contractor in. The other contractor's unit prices are typical for the disturbance materials but Hardrives bid indicated that they intend on coming in with the approach that they will try to keep their equipment on the road side and try to avoid disturbing any green space. Last year the reclaim had no disturbance on the rural sections.

Attorney- Comes down to watching the contractor to make sure the project expectations are met. Unit price is unit price. You maintain oversight on what's being done.

Engineer has worked with Hardrives on a number of large street projects. Engineer stated that Hardrives knows what they are doing, this is their business, they honor their bids, never had a contractual issue with them. Second low bidder Park Construction is more of a utility installer that recently got into the bituminous market. Engineer has seen a Park Construction utility project where change orders did occur.

Resident inquired on previous paving history on 80th St. and what currently is going on with 80th. Engineer indicated that there is a lot of alligator cracking which turns into pot holing, a lot of movement going on under the base. Trying to do a technique that is less expensive to gain more life out of the road. Because of the expense of re doing 80th, efforts are being made to manage it.

Motion J Kummer/2nd J Keller to award 2014 Street Improvement Contract with Engineer's recommendation to the lowest responsible bidder, Hardrives, Inc. for their total bid of \$402,318.00, based on the noted discussion, that the Town's expectations are met throughout the course of the projects and into the final product.

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Discussion- K Herman uncomfortable with the estimate from the lowest bidder. Understandable if only one item estimate was so low compared to the other bidders, but there a four.

K Higgins-understand and agree, but believe that the safety mechanisms are in place to assure that the Town will get what we are paying and contracting for and the Town has the legal mechanism to follow through with enforcing what the bid is and the product we are receiving.

Engineer- Contracts would be sent out with a 1 to 2 week turnaround for execution/bonds/insurance. Pre construction meeting will be held to go through/re enforce items.

Voting Yes-J Kummer, J Keller, J Moore, K Higgins. Voting No-K Herman. Motion Carried 4-1-0.

Warrior Dash 2014: Afton Alps representative Nathan Hakseth and Warrior Dash representatives Anne Volkerding and Mark Hayes were in attendance. Event date July 12, 2014.

License application deadline date of 05/12/14 was extended to 06/06/14 for receipt of the completed application form/application fee and escrow deposit and a 07/02/14 deadline for receipt of the required additional submittals. In reviewing the material submitted, the Attorney's recommendation is to consider submissions as being sufficient to constitute having met the deadline.

Attorney submitted 07/02/14 draft license for Board review.

Still need food permit from Washington County and the signed agreement with GLG for parking. Re: traffic management plan. 2013 maps were submitted. Anne indicated that last year's narrative would be the same for 2014.

Board expressed concerns regarding difficulties in obtaining the required submissions from Warrior Dash, making it clear to the applicant that no deadlines would be extended for future event applications/submissions.

2014 license includes a provision that if requested by the Town Board, a representative of the Applicant and of Afton Alps shall attend a Town Board Meeting after the Event to discuss events leading up to and during the event, any complaints received, and the Town's expectations if the Applicant proposes to conduct the Event in the Town in the future.

Draft Revision:

Add the address/owner of the offsite parking property for the event-7077 Manning Ave S owned by GLG Properties.

Motion J Kummer/2nd J Moore approval of Resolution 2014-04 A Resolution Approving A Large Special Event License For The 2014 Warrior Dash Event, with the addition of 7077 Manning Ave S-GLG Properties as address/owner of the offsite parking. All In Favor. Motion Carried 5-0-0.

For Warrior Dash Events-Large Special Events Ordinance states that the Town may require applicant to notify residents of the parking route for the event. Board consensus that residents along traffic route should receive notification.

Election Judge List For Approval: Election Judges for the 08/12/14 Primary and 11/04/14 General Elections: Marilyn Suchy, Jeannine Wagner, Jean Boyd, Alberta Brown, Linda Stancer, Susan Kubiak, Tammy Johnson, Robert Woodford, Nancy Keene and Wanda Klem.

Motion J Moore/2nd J Keller appointment of Election Judges as submitted. All In Favor. Motion Carried 5-0-0.

2013 Financial Audit-Oberloh & Associates: Clerk submitted 2013 Financial Audit performed by Oberloh & Associates for Board review. Auditor has also submitted the audit to the State Auditor's Office. **Motion J Moore/2nd J Keller acknowledgement of receipt/completion of 2013 Financial Audit. All In Favor. Motion Carried 5-0-0.**

Town Hall: Tree trimming/brush removal at the Town Hall has been held off due to wet conditions. Discussion regarding shallow placement of the septic and concerns of large equipment passing over that could cause damage to the system. Moore aware and will devise plan to avoid damage.

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Draft Tree Policy: Attorney submitted 10-28-13 draft of policy regarding tree removal and vegetation control with Town road Right-of-Ways. Policy covers ownership and acquisition, tree removal by the Town and tree removal by adjacent owners and mowing/brushing of the Town's right-of-ways.

J Keller- Article IV 4.5: disposal of wood immediately (cannot always be done immediately). Point is to avoid the situation where the wood sits in the right-of-way and could create an issue for public safety.

K Higgins-would like to make sure that any removal of trees in the ROW by the Town, would be determined by the Town and not the homeowner. Questions regarding cost to Town as vs. charges to residents for tree/brush removal in right-of-ways. There are programs that address diseased trees which may obligate owner's to cut their own trees. The Town can determine to mow/brush/trim in the ROW as a part of the duties of road maintenance obligations.

K Herman- questioned if the Town monitors plantings where new houses/developments are, that may be an intrusion in the ROW. *Attorney indicated that this would most likely be complaint based information. Regarding the adjacent landowner's rights, they are the underlying fee owner and the Township has an easement over it (the ROW). There is a statute that prohibits digging in the ROW. Generally planting of minor shrubs/flowers in the ROW could be an argument for a fair use of a homeowner's property as long as it doesn't interfere with site distances/hazards.*

Draft Revisions:

1) J Kummer- Article 1 1.6(c): Hazardous Tree. "Hazardous Tree" means a tree that ~~is damaged or dead to such an extent that~~ the Town determines it poses a threat to public safety because of an eminent threat that a large limb will fall from the tree or that the tree itself will fall over. Strike [is damaged or dead to such an extent that].

2) Change Resolution No. date to 2014-05.

Motion J Keller/2nd J Moore to approve Resolution 2014-05 A Resolution Establishing A Policy Regarding Tree Removal And Vegetation Control With Town Road Right-Of-Ways, with revisions as noted. All In Favor. Motion Carried 5-0-0.

County Land Use: Board met with Washington County 01/06/14 to discuss the County's future role in land use planning. The County Board discussed this item at their 06/06/14 meeting. The consensus from the meeting was to continue to explore that a majority of land use management responsibilities be solely carried out by Townships. The county will review Town ordinances with County ordinances and compare to determine gaps or differences. They will also prepare answers to the questions received from the meetings with the Townships. The County will then schedule time to review the information with the Township Boards.

110th St/St Croix Tr Dumping: Complaint received regarding organic matter being pushed into the steep ravine on the south side of 110th St east of St Croix Tr. It appears that the amount pushed across the road into the ravine is substantial enough to have created a wider shoulder. Signs of dead vegetation appear. There are concerns regarding the discarded material into the ravine being carried into the river. Higgins will contact Washington County to see if they would be involved.

Legal Updates:

Working on driveway ordinance, dog ordinance, and authorization resolution. Driveway ordinance and amended fee schedule would be part of the Ordinance Amendments.

Keller recommends that the Board members attend the St Croix Workshop on the Water.

8:20 PM **Motion J Moore/2nd J Kummer to adjourn. All In Favor. Motion Carried 5-0-0.**

Becky Herman
Denmark Township Clerk/Treasurer

Denmark Township Chair

Addendums Resolution 2014-04 and Resolution 2014-05

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DENMARK TOWNSHIP
WASHINGTON COUNTY, MINNESOTA
Resolution No. 2014-04
A RESOLUTION APPROVING A LARGE SPECIAL
EVENT LICENSE FOR THE 2014 WARRIOR DASH EVENT

WHEREAS, the Town Board of Denmark Township (the "Town Board") adopted Ordinance Number 2012-01 regulating large special events on March 5, 2012 (the "Ordinance");

WHEREAS, the Ordinance requires a person proposing to sponsor or conduct a large special event to submit an application for a large special event license to the Town ("License Application") that describes the event's features and the applicant's plans for parking, pedestrian safety, traffic, trash, emergencies, public health and related matters;

WHEREAS, the Town Board received a License Application from Red Frog Events, LLC (the "Applicant") to conduct Warrior Dash Minnesota, a five kilometer adventure race event, on July 12, 2014 and July 13, 2014 (the "Warrior Dash Event" or "Event") at Afton Alps, 6600 Peller Avenue South, Hastings, Minnesota 55033 with parking for the Event to be located on property at 7077 Manning Avenue South, Hastings, Minnesota 55033 owned by GLG Properties (collectively the "Event Property");

WHEREAS, the Warrior Dash Event is proposed to include various vendors to be located on the Event Property selling merchandise, food, beverages, and beer. Temporary structures to be constructed or placed on the Event Property include: those associated with the on-site vendors; accommodations for those participating in the event such as changing rooms, gear check, and communications; safety facilities such as a fire tent and medical tent; course obstacles; a performance stage; and others; and

WHEREAS, the Town Board hereby finds and determines the following with respect to the proposed Warrior Dash Event:

- a. The Applicant previously conducted three warrior dash events at Afton Alps, which attracted approximately 50,000 participants and spectators to the area over each weekend. As a result, the Town has some experience with the event and the impacts it can have on the community. The occurrence of the event is what led to the discussion that eventually resulted in the adoption of the Ordinance to help ensure the neighboring owners, public infrastructure, and the general public are adequately protected from the potential impacts of such events;
- b. The Applicant has demonstrated its ability to conduct the Warrior Dash Event in such a way as to adequately address the health, safety, and welfare concerns and related issues associated with an event of this size;
- c. The Applicant submitted the required application fee, escrow, and signed a escrow agreement with the Town agreeing to pay the Town's actual costs associated with the Warrior Dash Event;
- d. The Applicant submitted a certificate of insurance showing at least \$1,000,000 of general liability coverage, liquor liability coverage, and showing that the Town as an additional insured on the policies;
- e. The Applicant has submitted building and electrical permit applications to the Town's building inspector for the structures to be constructed or placed on the Event Property for the Event;
- f. The Applicant did not submit any requests for waiver from the requirements of Ordinance associated with its Event;
- g. The Event is compatible with the character of the proposed area as Afton Alps is a recreational area designed to handle large numbers of people and the property is sufficiently remote and screened to reduce the potential impacts on neighboring owners;
- h. Concerns expressed in the past regarding interfering with those attempting to access other area businesses and with vehicle turn around areas has been addressed by the Applicant by establishing a different access route to the Event;
- i. The Applicant proposes to use 70th Street, a County Road, and Manning Avenue, a MnDOT Highway, as the designated access routes to the Event Property;
- j. The Event Property can reasonably accommodate the Event;
- k. The Applicant has, to date, submitted the application, escrow amount, escrow agreement, site plan, parking plan, and other related documents;
- l. The Applicant is required to submit to the Town before the Event a copy of all permits issued by the County and any other permitting authority;
- m. The Applicant is required to submit to the Town before the Event a copy of the agreements it is to enter into with Hastings Fire Department, Cottage Grove Fire Department, Regions/Dr. Frascione, and related agreements (collectively the "Agreements");
- n. The Town has not received an application for an offsite vendor license;
- o. Based on the plans and the Town's experience with this Applicant and this event, the Town Board determines the Applicant can adequately address the potential impacts on public health, safety, and welfare of those living and owning property in the proposed area, as well as the impacts on public infrastructure and public services; and

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- p. The Town Board determines the Warrior Dash Event as proposed satisfies the review factors established in Section 5, Subdivision 2 of the Ordinance and that the Applicant is eligible for a large special events license, provided the Applicant complies with all applicable laws and the terms and conditions of this license.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board that a large special events license is hereby issued, pursuant to the Ordinance, to the Applicant to conduct the Warrior Dash Event on the event site identified within the Event Property on July 12, 2014 and July 13, 2014, provided all of the following conditions and requirements are complied with:

1.0 PRIOR TO THE EVENT

- 1.1 The Applicant shall ensure all plans for the Event are in a form acceptable to the Town.
- 1.2 The Applicant shall obtain all required permits from Washington County ("County") related to any part of the Warrior Dash Event that requires closing or restricting traffic on any County roadways and any additional or altered driveways or field accesses on County roadways;
- 1.3 The Applicant shall obtain all required permits from the County related to the food and beverages to be served, as well as a liquor license.
- 1.4 The Applicant shall provide the Town a copy of all executed Agreements and the permits obtained for the Event.
- 1.5 The Applicant shall post information on the Warrior Dash Event website that indicates the access routes, parking, and bus routes that will be used for the Event.

2.0 DURING THE EVENT

- 2.1 The Applicant shall conduct the event in accordance with the approved plans including, but not limited to, those related to the presence of law enforcement and security, medical, and emergency medical personnel and equipment, as well as traffic and pedestrian management plans. Travel to and from the Event Property shall be limited to the designated routes.
- 2.2 All activities associated with the Event including, but not limited to, all outdoor stage performances, amplified sounds, food and beverage service, shall end each day by 9:00 p.m.
- 2.3 The Applicant shall ensure adequate water stations are established on the Event Property for both participants and spectators.
- 2.4 The Applicant shall utilize a sufficient number of buses to ensure those waiting to get to or from the Event Site are not subject to extended delays.
- 2.5 Garbage receptacles shall be regularly emptied and the Event Property kept clear of debris.

3.0 AFTER THE EVENT

- 3.1 All garbage shall be removed from the Event Property and properly disposed of by no later than July 21, 2014.
- 3.2 All temporary structures placed on the Event Property specifically for the Warrior Dash Event shall be taken down by no later than July 21, 2014.
- 3.3 The Applicant is required to indemnify the Town as provided in Section 6, Subdivision 3 of the Ordinance.
- 3.4 If requested by the Town Board, a representative of the Applicant and of Afton Alps shall attend a Town Board after the Event to discuss events leading up to and during the Event, any complaints received, and the Town's expectations if the Applicant proposes to conduct the Event in the Town in the future.

4.0 GENERAL REQUIREMENTS AND PROHIBITIONS

- 4.1 No camping or other overnight accommodations are allowed on the Event Property.
- 4.2 The Applicant indicated fireworks will not be part of the Warrior Dash Event and so the use of fireworks or the conducting of a fireworks display is prohibited.
- 4.3 The Applicant shall fully reimburse the Town for all of the professional, inspection, and enforcement costs the Town incurs related to the Warrior Dash Event including, but not limited to, processing and issuing this license as well as enforcing its provisions. The Town will deduct its costs from the escrow submitted by the Applicant, but if the escrow is not sufficient the Applicant shall be required to provide additional funds as required by the Ordinance.
- 4.4 The Applicant and all onsite vendors shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances related to the Warrior Dash Event.
- 4.5 If the Town issues any offsite vendor licenses related to the Event the Applicant shall work in good faith with the offsite vendor to incorporate its operations into the Applicant's traffic, pedestrian, and other plans affected by the offsite vendor's activities if the Town issues the requested license.

BE IT FINALLY RESOLVED, Town staff and consultants are hereby authorized and directed to take any and all additional steps and actions necessary or convenient in order to accomplish the intent of this license including working with law enforcement to correct any violations.

Adopted this 7th day of July, 2014.

BY THE TOWN BOARD

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DENMARK TOWNSHIP
WASHINGTON COUNTY, MINNESOTA
RESOLUTION No. 2014-05

RESOLUTION ESTABLISHING A POLICY REGARDING
TREE REMOVAL AND VEGETATION CONTROL
WITH TOWN ROAD RIGHT-OF-WAYS

WHEREAS, the Town Board of Denmark Township ("Town") is the road authority over town roads, including those dedicated to the public by plat, in the Town; and

WHEREAS, the Town Board has both the authority and discretion to keep its roads reasonably maintained based upon the circumstances existing on the roads and the resources the Town has available to it to maintain its roads.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby adopts the following policy for the Town:

DENMARK TOWNSHIP TREE REMOVAL
AND VEGETATION CONTROL POLICY

ARTICLE I
GENERAL PROVISIONS

- 1.1 **Title.** This policy shall be known as the "Denmark Township Right-of-Way Tree Removal and Vegetation Control Policy" and shall be referred to herein as this "Policy."
- 1.2 **Scope.** This Policy shall only apply to trees and vegetation located within the Town's road right-of-ways. This Policy does not apply to state, county, or private roads, or to the trimming or cutting trees by power companies within a right-of-way. The cutting, trimming, and other vegetation control activities discussed in this Policy shall be limited to the right-of-ways unless the adjacent owners give permission to enter their property.
- 1.3 **Authority.** This Policy is adopted pursuant to, and in furtherance of, the Town Boards authority under Minnesota Statutes, sections 18G.13, 88.14, 160.22, 164.02, 164.36, 561.04, as well as the Town's common law authority to maintain its right-of-ways. Nothing in this Policy shall be construed as limiting the Town Board's authority under law to trim, cut, control, or otherwise manage trees, hedges or other vegetation located within its right-of-ways. The Town Board may delegate the authority to carry out one or more functions under this Policy to individual Town officers or to other persons as it determines is appropriate.
- 1.4 **Effective Date.** This Policy shall be in effect upon adoption by the Town Board.
- 1.5 **Amendments.** The Town Board may amend this Policy at any time by resolution.
- 1.6 **Definitions.** For the purposes of this Policy the following terms shall have the meaning given them in this section.
 - (a) **Adjacent Owner.** "Adjacent owner" means the owner of the property immediately adjacent to the right-of-way and on the same side of the road as the particular tree or other vegetation being cut, trimmed, or controlled. For the purposes of this Policy, the person identified in the County Auditor's records for receiving property tax statements will be the person to receive any notices from the Town provided in accordance with this Policy.
 - (b) **Brush.** "Brush" means all woody-stemmed vegetation that does not constitute a hedge or a tree.

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- (c) Hazardous Tree. "Hazardous tree" means a tree that the Town determines poses a threat to public safety because of an eminent threat that a large limb will fall from the tree or that the tree itself will fall over. The term also includes a tree that has grown to the extent that it obstructs sight distances at the intersection of public roads such that trimming alone will not be sufficient to avoid the obstruction.
- (d) Hedge. "Hedge" has the meaning given it in Minnesota Statutes, section 160.22, subdivision 7a, which is "any planted and maintained hedge within the right-of-way."
- (e) Noxious Weed. "Noxious weed" shall have the meaning given it in Minnesota Statutes, section 18.77, subdivision 8.
- (f) Right-of-way. "Right-of-Way" means the entire easement area established or dedicated for public travel and held by the Town as a road, street, cartway, or other public roadway. For the purposes of this Policy, the term does not include streets dedicated to the public by plat, or any other street or road, that the Town Board has not acted to open and maintain as part of its system of publicly-maintained Town roads.
- (g) Town. "Town" means Denmark Township, Washington County, Minnesota.
- (h) Town Board. "Town Board" means the Board of Supervisors of Denmark Township, Washington County, Minnesota.
- (i) Tree. "Tree" shall have the same meaning given the term in Minnesota Statutes, section 160.22, subdivision 7a, which is "a tree or woody perennial shrub or vine which is at least six inches in diameter, as measured at a point two feet from the ground . . ." Unless the context clearly indicates otherwise, references to trees in this Policy shall include hedges.

ARTICLE II

OWNERSHIP AND ACQUISITION

- 2.1 Adjacent Property Owner. The Minnesota Supreme Court in Town of Rost v. O'Connor, 176 N.W. 166 (Minn. 1920) held that trees growing within a right-of-way are the property of the adjacent owner, but that such ownership is "subject to the general public right to take and use any thereof as may be necessary in the improvement of the highway for public use." Id. at 167.
- 2.2 Town. The Town is authorized by Minnesota Statutes, section 160.22, subdivision 3 to acquire trees and hedges within a right-of-way by purchase, gift, or condemnation. The Town will typically not acquire trees or hedges by purchase or condemnation unless it determines such acquisition is needed to facilitate a public project or the maintenance or safety of its road. Instead, it will seek written permission from the adjacent property owner to remove the trees. If the Town is not able to obtain written permission, and it determines to move forward with removing the trees, it will proceed in accordance with Article III of this Policy.

ARTICLE III

TREE REMOVAL BY TOWN

- 3.1 Maintenance or Safety. The Town Board may direct the cutting and removal of such trees, hedges, and other vegetation with its right-of-ways as it determines is needed in order to provide for the proper maintenance or reconstruction of its roads, or the safety and convenience of the public. The Town will not provide for the removal of trees or other vegetation from its right-of-way by request of an owner unless the Town determines the removal is needed in order to promote the maintenance or safe use of the road, or the Town finds the tree constitutes a hazardous tree.
- 3.2 Removal Procedure.
 - (a) With Owner Permission. The Town will usually seek written permission from the adjacent owner to remove a tree from the right-of-way.

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- (b) Without Owner Permission. If the Town determines to proceed with the removal of one or more trees without the written consent of the adjacent owner, the Town will proceed in accordance with the following:
- (1) Unplatted Roads. For trees located within the right-of-way of a road that was not established by dedication within a plat, the Town Board will proceed in accordance with Minnesota Statutes, section 160.22, subdivision 10 by providing the adjacent owner at least 14 days' written notice of the Town's intent to cut. The notice will plainly advise the adjacent owner of the right to request a hearing on the planned tree removal. If no hearing is requested within the time indicated in the notice, the Town will proceed with the cutting. If, however, a hearing is requested, the Town will schedule a hearing and provide the adjacent owner(s) that requested a hearing at least 10 days' notice of the hearing. At the hearing the Town Board will explain the reasons for the proposed cutting and give the adjacent owner(s) that requested the hearing an opportunity to be heard. After the hearing the Town Board will make a decision as to how to proceed with respect to the trees along the adjacent owner's property.
 - (2) Platted Roads. If the trees to be removed are located within a road that has been dedicated to the public within a plat, the Town is authorized by Minnesota Statutes, section 160.22, subdivision 11 to proceed with cutting and removing the trees without having to follow the procedures set out in Minnesota Statutes, section 160.22, subdivision 10.
 - (3) Immediate Safety Hazard. If the Town identifies a hazardous tree within a right-of-way, it will make a good faith effort to notify the adjacent owner, but will proceed with removing the tree in order to protect public safety.
- (c) Disposal of Wood. When the Town cuts a tree within a right-of-way it will stack the wood on the adjacent owner's property, as provided in Minnesota Statutes, section 160.22, subdivision 8, unless the Town determines the wood is diseased or the adjacent owner indicates the Town may dispose of the wood as it determines appropriate. The Town will provide for the disposal of the branches and cutting debris.
- 3.3 Diseased Trees. The Town may, but is not obligated to, provide for the summary removal and disposal of diseased trees from its right-of-ways. The Town will only proceed with such cutting if the Town Board determines removal of the trees is needed and that the Town has sufficient funds available to provide for their removal. Owners are responsible for removing and properly disposing of diseased trees located on their property outside of the right-of-way.
- 3.4 Trimming. The Town may provide for the trimming of such tree limbs located within its right-of-ways, including limbs extending into its right-of-ways from private property, that the Town determines interfere with sight distances, maintenance, or the safe use of the right-of-way without the adjacent owner's permission and without following the tree removal procedure in this Policy.

ARTICLE IV

TREE REMOVAL BY ADJACENT OWNERS

- 4.1 Safety. Adjacent owners desiring to cut one or more trees within a Town road right-of-way are responsible for ensuring the removal is done in a manner that protects public safety and does not damage, block, or otherwise interfere with the road or its use. Adjacent owners are strongly encouraged to hire a tree removal service to perform the cutting and to contact the power company if there are power lines anywhere in the vicinity of the proposed cutting. Adjacent owners are not authorized to trim or cut trees within a Town road right-of-way that are not immediately adjacent to their property.
- 4.2 Permission. Adjacent owners proposing to cut a tree within a Town road right-of-way are required to contact the Town prior to the cutting. Under Minnesota Statutes, section 561.04, those who cut trees within a street or highway without obtaining permission are liable for three times the amount of damages caused. Upon a request for permission to cut a tree, the Town may, but is not required to, review the site of the proposed cutting to identify if it has any particular concerns. The Town is not responsible for providing, and will not provide, advice or direction to an adjacent owner regarding the proper method for cutting trees; however, the Town may place conditions on its permission as needed to protect the right-of-way or public safety.
- 4.3 No Damage. Adjacent owners cutting trees within, or adjacent to, a right-of-way must ensure the cutting will not damage the right-of-way or other trees that are not being removed. Failure to avoid damaging other trees can result in exposing them to

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diseases or could otherwise result in their eventual death. Adjacent owners failing to avoid such damage may be exposed to liability and are responsible for the costs of removing any such damaged trees that become hazardous trees.

- 4.4 Indemnification. A condition of every permission the Town grants to an adjacent owner to cut a tree within a right-of-way, is the adjacent owner's agreement to defend and indemnify the Town, its officers, employees, and agents from all claims and damages arising from or related to the adjacent owner's acts or omissions related to the cutting and disposal of the tree(s).
- 4.5 Disposal of Wood. Adjacent owners cutting trees within a right-of-way are responsible for immediately removing and properly disposing of all wood, branches, and debris resulting from the cutting. Any adjacent owner who fails to properly clean and restore a right-of-way after cutting shall be responsible for reimbursing the Town for all costs it incurs to clean and restore the right-of-way. If an adjacent owner fails to fully reimburse the Town for its costs, the Town may certify the unreimbursed amount, together with any collection costs, to the County Auditor under Minnesota Statutes, section 366.012 for collection of the amount on the adjacent owner's property taxes as a service charge.

ARTICLE V OTHER VEGETATION

- 5.1 Mowing. The Town will provide for mowing of its right-of-ways in accordance with its mowing policy and the restrictions in Minnesota Statutes, section 160.232.
- 5.2 Noxious Weeds. The Town will control noxious weeds within its right-of-ways as required in Minnesota Statutes, section 160.23. The primary method of control noxious weeds is cutting pursuant to the Town's mowing policy.
- 5.3 Brushing. The Town may provide for the cutting and removal of brush within its right-of-ways as it determines is appropriate. Such cutting may occur without seeking permission from of the adjacent owner and without otherwise having to follow the procedures set out in this Policy for cutting trees.

ARTICLE VI PROHIBITIONS

- 6.1. Prohibit. The following are prohibited within a Town right-of-way:
- (a) Planting trees, hedges, bushes, or shrubs.
 - (b) Fail to remove all wood and debris from within a right-of-way resulting from an owner's cutting or trimming of one or more trees.

Adopted on this 7th of July, 2014.

BY THE TOWN BOARD