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Saugatuck Township Regular Planning Commission Meeting April 26, 2017

AMENDED APPROVED MINUTES

The Saugatuck Township Planning Commission met on April 26, 2017 at the Saugatuck Public School cafeteria on 401 Elizabeth St, Saugatuck, Michigan, 49453.

Present: Miller Cook, Rudich, Prietz, Conklin, Welk, Milauckas
Recused: Rowe, due to possible financial conflict with Cottage Homes
Also Present : ZA Kushion. Attorney Scott Smith and Attorney Nick Curcio

At 7:00 pm Chairperson Miller Cook called the meeting to order.

Pledge of Allegiance

Review and Adopt Agenda: Milauckas motioned to move the Public Comment portion of the meeting to item #5A. Miller Cook seconded. Attorney Smith advised that because the public was told that the public comment portion of these hearings was over, allowing public comment before the hearings at this meeting might be deemed inappropriate. Mr. Bosgraaf stated that he had many people who would have spoken on his behalf at this meeting but since he understood that the public comment portion of these hearings was over, he advised them not to come. Milauckas asked Attorney Smith if this action could be a required motion or if the chairperson, with support, could make such a change. Attorney Smith replied that since the agenda needs to be adopted by the whole body, the chairperson may not make changes individually. Milauckas stated that in his experience, someone might have information that is new and relevant to the hearing and should be heard. Roll call vote: Rudich-no, Welk-no, Prietz-no, Miller Cook-no, Milauckas-yes, Conklin-no. Motion failed. Rudich motioned to approve the agenda with an additional agenda item regarding the recusal of Bill Rowe as agenda item #5A, Prietz seconded. Motion approved unanimously.

Review of March 28, 2017 meeting minutes: change 'Coklin stated' to 'Conklin asked' on page 3, fourth paragraph. Change 'R-3' to 'R-3b on page 6. Prietz motioned to approve the minutes as amended, Welk seconded. Motion approved unanimously.

Recusal of Bill Rowe: Milauckas motioned that, in accordance with the rules of procedure 5.2 and after review by the township attorney, the board honor Mr. Rowe's request to be recused on the basis of a conflict of interest on this particular application, Rudich seconded. Motion approved unanimously.

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Request for Preliminary Site Condominium and Preliminary R-2 PUD zoning for 23 residential single family home lots surrounding a boat basin. Parcels 03-20-004-006-00, 03-20-004-002-00. North Shores of Saugatuck LLC

Board discussion:

Attorney Smith explained that the last hearing was postponed so that the board could review information that was submitted shortly before the meeting was held. Since that meeting, additional correspondence has been received from, among others, a letter from Mr. Steve McKown and a letter from attorneys Howard & Miliken on behalf of the Saugatuck Dunes Coastal Alliance. The township attorneys have provided updated recommendations since the last meeting regarding additional conditions for approval and the developer has also provided some updates to the plan to address issues raised by the board, the township attorneys and township staff. Attorney Smith advised that all of these be made part of the public record so that the record is as complete as possible with regard to the information that the Planning Commission has before it. Attorney Smith commented on the procedural issues raised by the attorneys for the Saugatuck Dunes Coastal Alliance. He stated that plans often change after initial submission which is the reason for having a plan review and a public hearing. This gives an opportunity for improvement of the plans as originally submitted, to make sure there is full compliance with the ordinances and to make changes that the Planning Commission deems appropriate. There was an issue raised in the letter regarding the need for an outside consultant and who has the authority to make that request. The letter from the attorneys for the Saugatuck Dunes Coastal Alliance correctly pointed out that township planning ordinances, by-laws and state laws state that a planning commission may have assistance from an outside planner. However, since the Planning Commission is not an entity unto itself, it has to work within the budgeted funds that the township has and only the township board can enter into contracts with an outside consultant which has not been done in this case. He stated that the services of an outside consultant can be requested by the Planning Commission and would then go to the township board for approval. Attorney Smith stated that some of the other issues raised in the letter were added as additional conditions of approval to the application. He also remarked on the concerns raised about communication issues which might be improved by dialogue with the township board and training sessions. Milauckas asked Attorney Smith if his confidential response to the letters could be made available to the public. Attorney Smith stated that if the township board would waive the client/attorney privilege, the correspondence could be released. Attorney Smith indicated that, in his opinion, the memorandums could be released but would have to be approved by the township board. Miller Cook asked Attorney Smith if the PUD and site condominium could be approved separately or if they needed to be approved together. Attorney Smith replied that they can be approved or denied separately or together.

Miller Cook asked the commissioners if, after looking at the site condominium plan, they had any issues or questions. Milauckas asked if the plan that was under review by the Planning Commission was dated April 26, 2017. Miller Cook replied that it was. Miller Cook asked Brian Bosgraaf of Cottage Homes to address the parking space issue that was raised.

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Mr. Bosgraaf stated that there are 26 slips that are available to property owners located in the development outside of the site condominium development for which the plan has designated 40 parking spaces. Discussion regarding the boat slips for property owners. Welk asked if this development will be a gated community, access available only to property owners and guests of property owners. Mr. Bosgraaf replied that it would be a gated community. Mr. Bosgraaf spoke regarding the density calculations of the site condominium plan. He stated that the total area of the site condominium development is 2,221,428 square feet of which 1,154,072 is open space which calculates to 52% open space. Milauckas asked why the western boundary of the site plan had changed from the last site plan submission. Mr. Bosgraaf explained that it was moved because more open space wasn't needed in the site plan. Milauckas asked if any of the land designated as open space contains wetlands. Mr. Bosgraaf stated that there were no wetlands in the open space. Milauckas asked if the land previously identified as lots 39 & 40 would be available for additional development in the future. Attorney Smith replied that it would be available for development but would be subject to approval from the Planning Commission. Milauckas asked if the land could be developed as a land division or had the property been included in the land division calculations for the property identified as lake cluster and river cluster. ZA Kushion stated that he thought there were no more land divisions available and that the land was included in the calculations for the land divisions that were previously approved. Miller Cook stated that she has concerns regarding section 7.12 of the preliminary construction requirements which deal with permitted variances. The section states that the review committee may, on a showing of practical difficulty or other good cause, grant variances from the requirements of this section but only to an extent and in a manner that does not violate the spirit and intent of the requirement. She also referenced section 7.13 which deals with setback lines and this section also states that the review committee may grant variances for setbacks. She was concerned because variances should only be granted by the township Zoning Board of Appeals. Mr. Bosgraaf stated that township ordinances would be followed and that some of the language in the preliminary construction requirements was probably carried over from other developments they had done in the past. He stated that the language would be revised to say that the standards of the township would not be exceeded. Milauckas referenced section 7.14 in the preliminary construction requirements that deals with building heights and stated that the township ordinances have a different way of defining building heights, etc. than the preliminary construction requirements do. Mr. Bosgraaf stated that the township ordinances supersede any boilerplate language found in their preliminary construction requirements and that the language would be changed before final approval would be requested. Miller Cook asked if any of the Planning Commission board members felt the need to require a performance bond for the PUD. None of the board members felt a performance bond should be required at the preliminary approval stage. Milauckas asked about storm water drainage. Mr. Bosgraaf stated that the county road commission would be addressing storm water runoff calculations during final approval of the road design. For the home sites, each one will have its own storm water management system which is designed so that water run off stays on each individual site. Milauckas asked if township ordinance #40-910, paragraph h which prohibits construction of a canal or channel is applicable in this case. Greg Weykamp from Edgewater Resources spoke to this issue.

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He stated that the concept of key holing applies more to inland lakes when there is a large ratio between water frontage area and land acreage area. The frontage area of this development is 3000 linear feet with hundreds of acres of land. Milauckas stated that there is also a portion of the ordinance that deals with the number of docks allowed on the water frontage. Attorney Smith stated that this would not apply to the docks in the PUD development but might apply to the other docks. Attorney Smith explained that the beginning of township ordinance #40-910 states that 'in any zoning district where there is an intent to create or use a lot or parcel or condominium unit treated as a lot or parcel' (which is how these condominium units in the PUD development are treated), 'for the purpose of providing shared waterfront access by deed or otherwise, the following standards shall apply. Attorney Smith stated that since none of the condominiums in this PUD development have shared water access, each having their own waterfront access, the condition in paragraph h no longer applies. Milauckas asked what the definition of 'live-aboard' is. Mr. Weykamp stated that the definition of a 'live-aboard' is a permanent residence. Prietz read the list of conditions suggested by the township attorney and added at this meeting.

1. The applicant shall obtain all required state and federal permits and approvals to construct the boat basin, including, without limitation, any that are needed from the United States Army Corps of Engineers (USACE), the United States Environmental Protection Agency (USEPA), and the Michigan Department of Environmental Quality (MDEQ) before any construction permits are issued. These permits may be obtained following final PUD and site condominium plan approval, but the applicant shall fully inform the Planning Commission about the status of those permits and applications, including without limitation any decisions communications, etc. that indicate any alterations are needed from what is approved in the preliminary and final PUD and site condominium plans.
2. Compliance with all conditions and requirements related to the permits and other approvals obtained pursuant to condition 1.
3. Obtain and comply with any terms and conditions of all needed state and county permits for private wells and septic systems.
4. Before any occupancy permit is issued for any dwelling unit, the private road leading to the site from the public road and through the site (currently shown as Saugatuck Beach Road) shall be constructed in compliance with the private road standards in Sec. 40-658 of the zoning ordinance and paved.
5. The plans shall be submitted to and, to the extent needed and not already provided in these conditions, approved by the County Health Department, County Road Commission, County Drain Commissioner, and any appropriate state agency before any construction permits are issued. These approvals may be obtained following final PUD and site condominium plan approval.
6. Fully dimensioned plans shall be submitted and staff shall confirm the developer's open space and other area and dimensional calculations before final PUD and site condominium plan approval.

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7. Anything shown on drawings outside the area of the PUD and site condominium project other than the private road leading to it is not part of this approval.
8. The project, including the marina, shall be constructed in a single phase beginning no later than March 15, 2018.
9. The developer shall provide the following items needed for the benefit of the condominium owners: (i) an emergency landing area for helicopters, (ii) a mooring space along the Kalamazoo River dedicated for fire, law enforcement or other federal, state or local public safety agency boat access, and (iii) standpipes in locations and meeting specifications approved by the Township Zoning Administrator after consultation with the Fire Chief. These items must be designated on the final plan. If any of these locations are outside the PUD, the developer shall grant and record an easement for the use of the item to the condominium owners in a form reasonably acceptable to the Township Attorney prior to approval of the final plan.
10. Open space shall not be reduced from the areas shown on the plans and shall be maintained as provided in the condominium documents provided during final site plan consideration.
11. No changes shall be made in the Preliminary Construction Requirements, the Preliminary Common Area Maintenance Provisions, or the Preliminary Use and Occupancy Restrictions presented, as part of the applications without the prior written consent of the Township Zoning Administrator, Township Building Official and Township Attorney. Any major change (i.e. a change that the Township Zoning Administrator, Township Building Official and Township Attorney believe is substantive enough to merit review by the Planning Commission) may not be made unless and until accepted by the Planning Commission. They shall be incorporated in the site condominium documents as required by the zoning ordinance. No waivers or variances may be granted in violation of any zoning ordinance provision.
12. No changes may be made to any front yard setbacks, side yard setbacks, rear yard setbacks, accessory building setbacks or other aspects of building envelopes as presented in the application materials unless and until accepted by the Planning Commission. The developer shall promptly inform the Township Zoning Administrator of any such proposed changes, and shall explain the reason for the proposal (e.g. reconfiguration in connection with state or federal permit applications).
13. The community building shall have the size and dimensions depicted on the plan.
14. The dock density regulations in sections 40-908 and 40-909 of the zoning ordinance apply to any docks constructed along portions of the seawall that adjoin condominium units 17-21 and 27-37.
15. Residences within the PUD shall be constructed in accordance with the standards and procedures provided in the 'Preliminary Construction Requirements' document submitted as part of the developer's application. No waivers or variances may be granted in violation of any zoning ordinance provision.
16. Compliance with all conditions for the special approval use of the marina.

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17. The following items were not addressed through the preliminary plan approval process, and must be addressed in the final plan: (a) landscaping, (b) signage, (c) construction staging, (d) lighting, (e) details regarding items required for condition 9, and (f) elevations of common-element buildings showing finish materials.
18. All heavy construction equipment accessing the site must use 135th Avenue and avoid 66th St.
19. A detailed storm water plan and description will be provided at the time of final site plan consideration.

Miller Cook read the general standards to approve a PUD. The Planning Commission shall review the particular circumstances of the planned unit development application under consideration in terms of the following standards and shall approve the PUD only upon a finding of substantial compliance with each of the following standards as well as substantial compliance with applicable standards elsewhere in this chapter. (1) The Planned Unit Development shall be designed, constructed, operated and maintained in a way that is harmonious with the character and use of adjacent property and surrounding areas. (2) The Planned Unit Development shall not change the essential character of adjacent property and surrounding area. (3) The Planned Unit Development shall not create hazards to adjacent property or the surrounding area and shall not involve such uses, activities, materials or equipment which shall be detrimental to the health, safety or welfare of persons or property due to creation or maintenance of such nuisances as traffic, noise, smoke, fumes or glare. (4) The Planned Unit Development shall not place demands on public services and/or facilities in excess of current and anticipated capacity. Milauckas asked if there is language in the application guaranteeing the open space preservation. Mr. Bosgraaf stated that this language would be contained in the condominium association's documents and would be presented at the final hearing. Attorney Smith suggested adding language regarding the open space as an additional condition of approval.

Prietz motioned that the Preliminary Site Condominium and Preliminary R-2 PUD zoning plans as submitted by North Shores of Saugatuck satisfies the applicable criteria in Article 8 and Article 13 of the zoning ordinance for reasons discussed and to approve the plan dated April 26, 2017 including the narrative statements provided and submitted to the township with the plan dated April 23, 2017 and subject to conditions 1 through 19 as stated in the Dickinson Wright memo dated April 24, 2017 as amended this evening. Rudich seconded. Roll call vote: Rudich-yes, Welk-yes, Prietz-yes, Miller Cook-yes, Milauckas-yes, Conklin-yes. Motion approved unanimously.

Request for a Special Approval Use for a Private Marina, Parcels 03-20-004-006-00, 03-20-004-002-00 North Shores of Saugatuck LLC

Board Discussion:

Conklin asked the reason behind the need for condition #5 regarding the requirement for construction of all other elements designated on the final plan before construction of the boardwalk and dock extensions.

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Attorney Smith replied that the condition was to prevent the building of the marina with no homes or amenities around it. Milauckas asked about the portion of the narrative regarding boat slip ownership, specifically regarding property owners within the PUD or the North Shore property as a whole who may purchase and own boat slip condominium units. He wondered if a business that rents commercial property in the development might be able to purchase a boat slip condominium unit even though they were not property owners. Mr. Bosgraaf stated that the intent was for residential property owners in the development only to purchase and own boat slip condominium units and could be changed to be residential property owners instead of just property owners in the narrative. Prietz asked if the docks that are in front of the houses on the basin are strictly a side tie or broadside dock. Mr. Weykamp stated that the docks would not be perpendicular or protruding out into the basin.

Prietz read the list of conditions suggested by the township attorney and added at this meeting:

1. The applicant shall obtain all required state and federal permits and approvals to construct the boat basin and marina, including, without limitation, any that are needed from the United States Corps of Engineers (USACE), the United States Environmental Protection Agency (USEPA) and the Michigan Department of Environmental Quality (MDEQ).
2. There shall be no fuel sales, no pump-out services or facilities, no boat storage facilities, no boat launch facilities and no in and out boat service provided at the marina.
3. No itinerant use shall be allowed of any of the slips. The slips may be used only by the owners of the respective dockominium units and by the owners' guests.
4. "Live-aboard" use is not permitted on any boats stored in the slips. This condition will be further addressed in the condominium documents filed prior to final approval.
5. The boardwalk and dock extensions that are part of or adjacent to the dockominium units may not be constructed until all other common elements designated on the final plan (including the community building, community restrooms, streets, etc.) are fully constructed.
6. No more than 15 slips in the marina may be used or occupied until at least 5 residences are fully constructed.
7. The marina shall have only those buildings, parking areas, and other improvements and amenities shown on the approved PUD and site condominium plans.
8. All heavy construction equipment accessing the site must use 135th Avenue and avoid 66th St.
9. The docks may be sold only to residential property owners in the river cluster, channel cluster, lake cluster or PUD. Docks may not be owned or used by a commercial enterprise.

Miller Cook read the general standards for special approval use. (1) The duration of the special approval use is permanent. (2) Will the special approval use be designed, constructed, operated and maintained in a manner harmonious with the character of the surrounding area. (3) Will the special approval use change the character of the surrounding area. (4) Will the special approval use be hazardous or involve uses, activities, materials or equipment which might prove detrimental to the health, safety, welfare of persons or property by reason of traffic, noise, vibration, smoke, fumes or glare. (5) Will the special approval use place additional demands on public services and facilities.

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Discussion regarding the general standards and the procedures for approving or denying the special approval use based on these standards. Miller Cook expressed concerns regarding condition (3) and condition (5). She feels that this special approval use might not be harmonious with the character of the surrounding area and that there might be an issue with fire department access to the marina. Mr. Bosgraaf stated he felt that since the property has a large hill located on it, the development would not be visible from the state park. Milauckas stated that since the development is located in the lower elevation of the property, it might only be seen from the river. Captain Mantels from the Saugatuck Fire Department commented that he didn't anticipate the marina adding an additional load to the fire department services, especially since the fire boat would be docked close by.

Welk motioned that the special approval use for a marina as requested by North Shores of Saugatuck LLC satisfies the applicable criteria in article 6 of the zoning ordinance for the reasons discussed and to approve the request for the site plan dated April 26, 2017 subject to the conditions 1 through 9 as stated in the Dickinson Wright memo dated April 24, 2017 as amended this evening, Conklin seconded. Roll call vote: Rudich-yes, Welk-yes, Prietz-yes, Miller Cook-yes, Milauckas-yes, Conklin-yes. Motion approved unanimously.

Public Comment:

Steve McKown, 2845 Lake Breeze Dr, Mr. McKown feels that the interpretation of the waterfront access is incorrect and that if it is not changed, it could lead to serious problems. He stated that since the site condominium will be its own separate parcel of land, the argument by the developer of using the large acreage of the whole piece of property in the waterfront calculation is not valid. He thinks that other parts of the waterfront ordinance would also be violated by this site condominium plan.

Cynthia McKean, 3498 Riverside Dr, Ms. McKean stated that the most important part of the project is the marina and feels that the marina does not meet the intent of the ordinance. She does not think it should be approved because it is key holding. She is upset that the Planning Commission did not stand up and protect the dunes that the community has had for so long.

Patty Birkholz, 3413 64th St, Ms. Birkholz is disappointed in the people of the township board who would not allow the Planning Commission to ask for professional help. She clarified that sometimes when the water is high, it looks like there is an entrance into the Oxbow harbor from the river. She stated that it is not navigable and anyone who tries to go through should be stopped.

Lori Goshorn, 3512 64th St, Ms. Goshorn stated that she was disappointed in Cottage Home's snarky statement to the Commercial Record and subsequent lawyering up. She feels that requesting the necessary help in coming to a decision on such a project is good governance.

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Dayle Harrison, 3108 62nd St, Mr. Harrison feels that the ordinance is very clear and its requirements are not being met with this project. He says that irreplaceable resources will be lost with this project. He wonders why the language isn't already in place that specifies how the open space will be set aside.

Laura Judge, 6510 Oakwood Lane, Ms. Judge feels that this project will forever alter the area.

Jon Helmrich, 3522 64th St, Mr. Helmrich is dismayed by the Planning Commission's approval of this plan. He stated that he feels there was a rush to a vote, especially since the plan had only been submitted in February. He feels some members of the board have blocked requests for a planner.

Dave Burdick, 385 Fremont, Mr. Burdick encourages the board to reconsider requiring a performance bond to avoid being stuck with a hole in the ground.

Keith Charak, 560 Main St, Saugatuck, Mr. Charak is upset that a member of the Planning Commission and the Zoning Administrator blocked the request for a planner and feels that they should resign.

Marcia Perry, 6248 Blue Star Highway, Ms. Perry feels that she was blatantly lied to and was not given the latest plan that was submitted even though she had been at the township office today. She is very upset that this development will change the essential character of the area, digging a marina where there once was a town or where there are possible Native American artifacts. She encourages the Planning Commission to read the ordinances and the Master Plan.

Tracey Shafroth, 271 Water St, Ms. Shafroth would like the Planning Commission to slow down and read the information in front of them. She thinks that the process should have been delayed because of the timing of the information submitted.

Dayle Harrison, 3108 62nd St, Mr. Harrison would like a planner to be hired to assist in the process.

Miller Cook closed the Public Comment.

Milauckas responded to several of the comments. He stated that the change on the plan that was submitted the day of this meeting was very minor. He doesn't personally agree with the township attorney's interpretation of the waterfront access ordinance. Milauckas motioned to request from the township board the services of a planner to review the detailed site plan of this particular project, Miller Cook seconded. Roll call vote: Rudich-yes, Welk-no, Prietz-yes, Miller Cook-yes, Milauckas-yes, Conklin-yes. Motion passes five to one.

Board Discussion: Rudich stated that the reason he had objected to a planner was because the request was never made at an opening meeting of the Planning Commission. Attorney Smith stated that an individual planning commissioner cannot act individually and outside of a public meeting.

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Miller Cook stated that she had been in agreement with several of the Planning Commission members and the Zoning Administrator to contact Mark Sisson. When she learned that he was unavailable, she didn't realize that wasn't the route that they were going to go.

Township Board Updates and Planning Commission Comments: Rudich stated that township board clarified the land division act and took out the Planning Commission and the township supervisor. Milauckas asked why the Planning Commission was removed. Rudich stated that the land division act stipulates that there is a certain amount of time to act and, depending on the date of the next Planning Commission meeting, there might not be enough time for action.

Rudich motioned to adjourn, Welk seconded. Meeting adjourned.

Next Planning Commission Meeting: The next Planning Commission meeting will be on May 22, 2017.

Janna Rudich, Recording Secretary

1. Motion to approve the agenda of the April 26, 2017 Planning Commission meeting. Rudich motioned, Prietz seconded. Motion approved unanimously.
2. Motion to approve the amended minutes of the March 28, 2017 Planning Commission meeting. Prietz motioned, Welk seconded. Motion approved unanimously.
3. Motion that, in accordance with the rules of procedure 5.2 and after review by the township attorney, the board honor Mr. Rowe's request to be recused on the basis of a conflict of interest on this particular application. Milauckas motioned, Rudich seconded. Motion approved unanimously.
4. Motion that the Preliminary Site Condominium and Preliminary R-2 PUD zoning plans as submitted by North Shores of Saugatuck satisfy the applicable criteria in Article 8 and Article 13 of the zoning ordinance for reasons discussed and to approve the plan dated April 26, 2017 including the narrative statements provided and submitted to the township with the plan dated April 23, 2017 and subject to conditions 1 through 19 as stated in the Dickinson Wright memo dated April 24, 2017 as amended this evening. Prietz motioned, Rudich seconded. Roll call vote: Rudich-yes, Welk-yes, Prietz-yes, Miller Cook-yes, Milauckas-yes, Conklin-yes. Motion approved unanimously.
5. Motion that the special approval use for a marina as requested by North Shores of Saugatuck LLC satisfies the applicable criteria in article 6 of the zoning ordinance for the reasons discussed and to approve the request for the site plan dated April 26, 2017 subject to the conditions 1 through 9 as stated in the Dickinson Wright memo dated April 24, 2017 as amended this evening. Welk motioned, Conklin seconded. Roll call vote: Rudich-yes, Welk-yes, Prietz-yes, Miller Cook-yes, Milauckas-yes, Conklin-yes. Motion approved unanimously.
6. Motion to request from the township board the services of a planner to review the detailed site plan of this particular project. Milauckas motioned, Miller Cook seconded. Roll call vote: Rudich-yes, Welk-no, Prietz-yes, Miller Cook-yes, Milauckas-yes, Conklin-yes. Motion passes five to one.