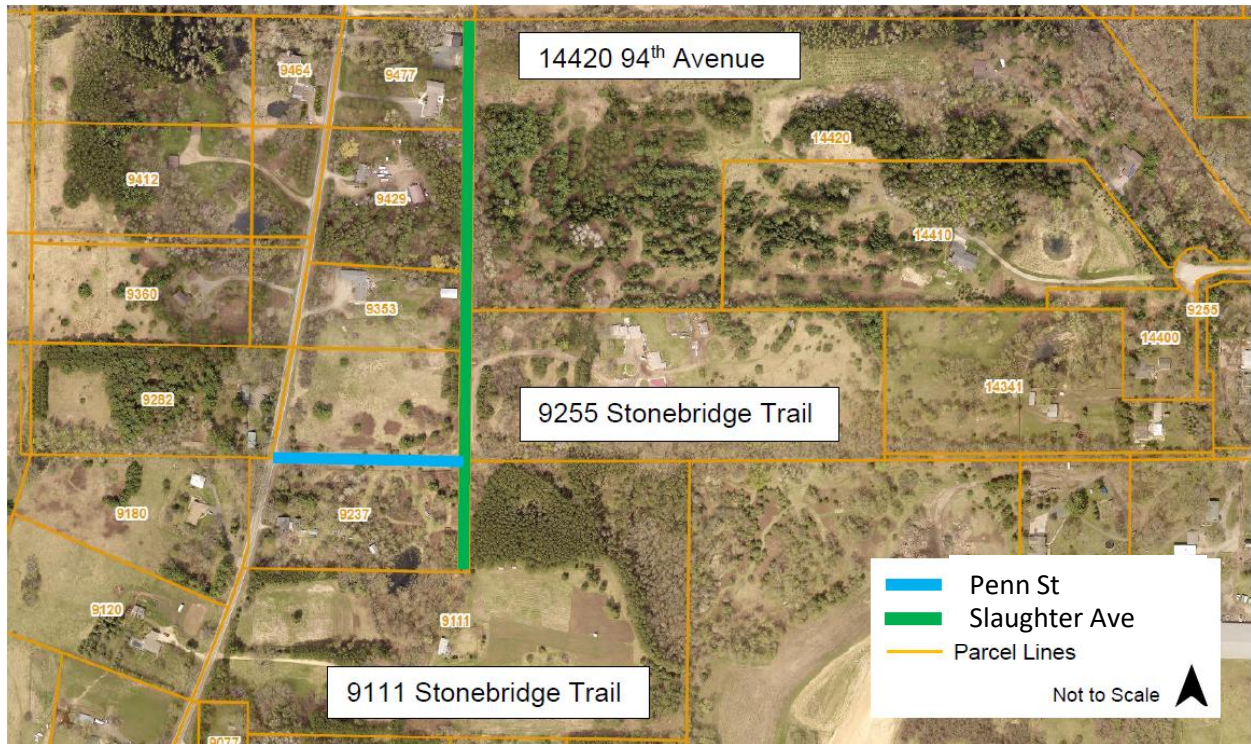


MEMORANDUM

TO: Planning Commission
FROM: Jack Brooksbank
Town Attorney’s Office
DATE: 10/2/25
RE: Slaughter Ave Vacation Discussion



This discussion concerns the area depicted below:



There are two potential public rights of way at issue. Note that the area labeled “vacated Penn Street” has not, according to the records we currently have, been fully vacated by the Town and is still owned by the township for right of way purposes. However, it has not actually been opened as a public right of way.

As it stands now, Penn Street is a public right of way maintained by the owner of 9255 Stonebridge Trail pursuant to a development contract. That development contract was entered into by the owners of 9255 to allow them to develop—absent the Penn right of way the 9255 parcel would not be buildable under township ordinances. And the Town would not otherwise have opened Penn as a public right of way. The owners of 9255 therefore agreed to open and maintain Penn to public standards so that they could build their house.

For Slaughter, the Town owns the underlying land as right of way but has not opened it. This means that it is not accessible to the public, and use by the public would constitute trespassing on the Town’s property. The Town does have the

ability to grant permission to use the land, provided such use does not impede the right of way purposes. To the best of our knowledge there are no current agreements to use the right of way.

The Town has essentially 3 options with this land: fully open the public right of way, change nothing, or vacate the right of way. One important note about the Town's authority is that Stillwater Township is an urban township, granting it additional powers to manage its roads.

I. Open the Roads

The Town Board may open right of ways by improving property held for right of way purposes. This would require construction of road on the property to current Town road standards. This would involve a wider cross-section than the current Penn Ave., and paving road surfaces. Opening Slaughter to the current town road standards would likely require acquisition of additional land to support the wider cross-section. There would also need to be consideration of route and turnaround. The road would either need to have a turnaround constructed at the end or be connected through to other roads. Either would require additional property acquisition. The acquisition could be by voluntary agreement or eminent domain. Any property acquired would need to either be voluntarily dedicated by property owners or purchased at fair market value. Property owners may also submit claims for damages caused by road improvement. This includes property acquisition cost and could include other damages if established, but such damages are generally not present. An example of these damages would be if the right of way split a preexisting parcel into multiple non-contiguous pieces, reducing its usefulness. The Town would also be required to pay to construct and maintain the streets.

The original Penn Development Contract envisioned that there would be further subdivision and development, and showed a planned extension of Penn to Otchipwe. This has not occurred, and development in the area does not appear likely under current ordinances. Opening Penn and Slaughter could allow for further subdivision, though based on other town ordinances it appears that it currently would only allow for one or two further minor subdivisions. If the Town wishes to open the right of way, we recommend also investigating what ordinance changes could allow for further development to justify the expense of opening and maintaining the roads.

II. No Action

The Town has no duty to open unimproved right of way. Property owners have requested either increase or removal of these rights of way. But there is no obligation to take any action. The current status of the area has worked so far, and the land use conflicts that have arisen have so far related to a desire for expanded uses, rather than from the current uses of property.

That said, the current status has also created uncertainty about the status of the land. Final action could settle this uncertainty.

III. Vacate Right of Way

The Town could consider action to vacate one or both right of way. As an urban township, the Town may vacate right of way by passing a resolution by a four-fifths vote of the town board. The town must first hold a public hearing on the proposed vacation, including publishing notice of the hearing and mailing notice to all affected property owners.

Here the analysis is slightly different for the two rights of way. Slaughter is entirely unopened, unused, and unimproved. There would be minimal impact to vacation of the right of way. The reason to keep the Slaughter right of way if it remains unopened would be to hold it for potential public use if there are future developments in the area. However, under current Town ordinances there is minimal further development possible. For significant development to occur a property owner would need to assemble several parcels. If that were to occur, the developer would be required to provide new right of way to serve the development.

Penn, on the other hand, is currently used as right of way to provide access to 9255 Stonebridge Trail. This creates additional issues. First, Towns are statutorily forbidden from vacating streets if it removes all public access to a parcel of 5 acres or more without consent of the owner. So, if the owner of 9255 Stonebridge does not consent to the vacation, then the Town cannot vacate Penn.

One possible alternative would be to keep Penn but to relieve the property owner of maintenance obligations under the Development Contract. This also creates issues, however. If the property owner does not maintain the street, the Town will have to. This will incur additional public expense to maintain a right of way effectively serving only a single property. Penn is also constructed on right of way easement. This is a property right acquired by the Town for public access purposes. The easement does not create a private right of access for the property owner. If the Town ceases to maintain Penn as a right of way, the land potentially reverts to the underlying owner, who could potentially block access to the 9255 property. So, any reduction in the Penn right of way should be conditioned on both consent of the owner of the 9255 property and the 9255 property owner obtaining a private access easement from the underlying landowners.

There does not appear to be significant potential liability from vacating the right of way provided the access to 9255 is maintained. Since Slaughter is unopened and Penn does not access many parcels, vacating the right of way would not cause significant damage to any parcel, all of which (other than 9255) have access to other public streets.