

Town Board Meeting

Monday, October 13, 2009

Attendance

Name

James J. [unclear]

John Arma-Jones

John [unclear]

Ken Elstad

[unclear]

Glenn Belzer

Eureka Township

Dakota County

State of Minnesota

Eureka Town Board Meeting
October 13, 2009

Call to Order

Chair Jeff Otto called the meeting to order at 7:05 p.m. Members present were Supervisors Nancy Sauber, Brian Budenski, Jeff Otto and Dan Rogers. Supervisor Carrie Jennings arrived at 7:09 p.m. Clerk/Treasurer Nanett Sandstrom was present to record the minutes. Township Attorney Trevor Oliver was also present. See attached attendance sheet for additional persons in attendance.

The meeting opened with the Pledge of Allegiance.

Approval of Agenda

The following changes were made to the agenda:

- Citizen Business** A. ~~Kenny Miller Ag Preserve land split~~ (Delete)
 - Newsletter was moved to Item A.
 - Planning Commission Update was moved to Item B.
 - Sauber Mine was moved to Item C.

Minutes Approval was moved to after Old Business

A motion by Supervisor Jeff Otto: To approve the agenda as revised. Motion seconded by Supervisor Nancy Sauber. Motion carried by unanimous vote.

Public Comment Period

None

Treasurer's Report

Checking Account Balance: \$1,194.29. Savings Account Balance: \$100,064.60. CD Account Balances: \$138,592.28. Total Account Balance: \$239,851.17.

The Clerk presented current CD rates. The Clerk will continue presenting the current month's rates along with the previous months' rates for comparison.

The Disbursements Register, Receipts Register, Statement of Receipts and Balances, Current Investments, and the Cash Control Statement were reviewed by the Town Board.

It was noted that check number 5746 is a voided check.

A motion by Supervisor Carrie Jennings: To accept the Accounting Reports, not including the Claims List and Net Pay Distribution as presented. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

Bills and Receipts

The clerk presented the following bills for payment:

Otte Excavating	Road maintenance thru 9/30/09	\$9,710.00
MNSPECT Inc.	Inspection Services September 2009	1,460.90
Dakota Electric Association	Town Hall	\$56.73
Frontier Communications	Phone Service Town Hall	\$125.04
Culligan	Water Softener Town Hall	\$23.51
Dick's Sanitation	Garbage Service Town Hall	\$40.49
Kelly & Lemmons	Legal Services thru August 30, 2009	\$6,162.78
IRS	Deposit 941 October 2009	\$662.80
PERA	Payroll Period 9/1/09 to 9/30/09	\$348.01
Nanett Sandstrom	Expenses 9/1/09 to 9/30/09	\$155.96
Earl F. Anderson	Signs	\$674.21
State Building Official	3 rd Qtr State Surcharge	\$28.52
Dakota County Treasurer	3 rd Qtr Septic 2009	\$40.00
State of Minnesota	Withholding 3 rd Qtr 2009	\$222.36
Jeff Martin Company	Straighten Flag Pole	\$200.00
Nanett Sandstrom	Clerk Payroll 9/1/09 to 9/30/09	\$2034.85
Connie Anderson	Deputy Clerk payroll 9/1/09 to 9/30/09	<u>\$161.61</u>
Total Bills Presented		\$22,107.77

The following receipts were received September of 2009:

• Local Permits

Carol Schwieters- Application Fee	\$25.00	Yvette Mealman- Permit 09-38	\$279.71
Streitz Heating & Cooling- Penalty Fee	\$1,487.50	Met Council- Application Fee CUP	\$400.00
Robert Scott Lake- Permit 09-39	\$100.50	Mark Buffington- Application Fee	\$25.00
Donovan Palmquist- Permit 09-40	\$742.86	Andrea Krapu- Application lot split	\$25.00
Todd Kalisch- Permit 09-41	\$100.50	Don Pahl- Reroof Permit 09-42	\$100.50

• Other Receipts

Karen Grossman- Newsletter Ad	\$35.00	Castle Rock Bank- Interest CD	\$371.26
Adelmann Furniture- Newsletter Ad	\$125.00	Castle Rock Bank- Interest CD	\$408.46
Met Council- Escrow CUP Application	\$500.00	Castle Rock Bank- Interest Savings	\$1,141.41

TOTAL RECEIPTS AS OF SEPTEMBER 30, 2009 **\$5,867.70**

A motion by Supervisor Brian Budenski: To approve the Claims List and the Net Pay Account Distribution for 10/13/09. Motion seconded by Supervisor Carrie Jennings. Roll call vote was taken on the motion. Supervisor Carrie Jennings- aye, Supervisor Brian Budenski-aye, Supervisor Jeff Otto-aye, Supervisor Nancy Sauber- aye and Supervisor Dan Rogers-aye. The Bills were approved by unanimous vote of Town Board Supervisors.

Budget

The Town Board reviewed and discussed the budget. The Fire contracts were presented to the Town Board prior to the meeting for reference to the expenditures in the fire budget.

Dale Kuchinka mowed the road ditches in September.

Contractor Time

Road Signs

Children at Play signs and Speed Limit signs have been installed.

Ditch restoration on 240th St.

Hentges still has not restored the ditch. (Part of the Elko/ New Market Sewer line project) It will be done this fall. Supervisor Brian Budenski and Supervisor Dan Rogers have been keeping in contact with Hentges on this project.

Ditch Restoration at 225th and Highview Ave.

Northern Natural Gas has not restored the ditch. If they do not act on this soon, the Township will hire the Road Contractor and use the bond to complete the project. The restoration needs to be done before the ground freezes.

Ditch Restoration on 225th St.

Minnesota Energy has not restored the ditch. If they do not act on this soon, the Township will hire the Road Contractor and use the bond to complete the project. The restoration needs to be done before the ground freezes.

Replace damaged sidewalk at Town Hall

The Town Board discussed the cost of repairing the sidewalk that was damaged by the car driving on it. They are looking at an alternate way to fix it so as not to pay for the delivery of a short load. They will look further into other options for getting this done.

Planning Commission, Land Use Permits and Related Items

A. Permit Requests

1. Mark Buffington- 6725 245th St. W., Farmington

Mark Buffington was present to represent his application for the garage that he had built on his property without a permit. The building is a 30' x 30' unattached garage. (Property ID# 13-01500-010-05). Attorney Trevor Oliver was consulted on the application. Mr. Buffington is contesting the application of the Building Code to his property. This process does not involve the Township. The Township has a standard for setbacks and zoning issues and the Building Inspector for permit review. If Mr. Buffington wants to pursue his appeal, he needs to file some paperwork with the State. Mr. Buffington presented the Town Board with a copy of his letter to the Commissioner and a copy of the Commissioner's response.

A motion by Supervisor Dan Rogers: To approve the Building Permit Application for Mark Buffington for the structure at Property ID #13-01500-010-05. The motion was seconded by Supervisor Carrie Jennings. Supervisor Brian Budenski offered a friendly amendment that the permit is an after the fact permit. The friendly amendment was accepted by all Town Board members. Vote was taken on the motion. The motion carried by unanimous vote.

B. Land Use & Zoning Issues

1. Met Council- Question to waive Application Fee & Escrow for variance on the driveway.

Legal Counsel was consulted on this issue. He advised that the Town Board should not set the precedence of waiving fees when two applications are received at the same time. They should stand by the fees set in the Ordinance.

The Town Board discussed the need for an annual review of the CUP. Trevor did not feel that this CUP would require a yearly review.

A motion by Supervisor Carrie Jennings: To advise the Planning Commission to advise the applicant that there will not be a waiver of any portion of the fees or escrow for the variance or the CUP. The motion was seconded by Supervisor Jeff Otto. The motion carried by unanimous vote.

Citizen Business

A. Newsletter

Newsletter Editor Jody Arman-Jones addressed the Town Board on the newsletter. She presented the Town Board with a draft of the newsletter. The Town Board discussed newsletter content and how and when it should be presented for review.

B. Planning Commission Update

Planning Commission Chair Vince Mako updated the Town Board on Planning Commission happenings. The Planning Commission has set the date for the public hearing for the Elko/ New Market Lift Station. They have set the date for the road review trip. They are checking on the status of the Comp Plan revisions. The new recorder will start taking minutes at the November Planning Commission Meeting. A Town Board representative at Planning Commission meetings was discussed.

At 8:14 p.m. the Town Board took a short recess. The meeting resumed at 8:23 p.m.

C. Sauber Mine

Jeff Otto stated that shortly before the start of this meeting, the Town Board received a packet from Kenny Miller, owner/operator of Eureka Sand & Gravel. Jeff said that the Township Attorney had had a chance to review this information before this point of the meeting.

The application of the fertilizer, tilling and seeding of the property was discussed.

Township Attorney Trevor Oliver had received a letter from the Saubers' Attorney. As far as the work to be done, they have a consensus. The Draft Resolution distributed to the Board documents the changes to the reclamation plans. The Town Board reviewed the Draft Resolution.

Reimbursement of Township expenses was discussed.

Kenny Miller commented that he is not responsible for the costs. He did not pay for the initial permit. He has never paid the renewal charges. He did not initiate the action in front of the Board; he responded to it. He paid the fees for the Saubers (permit holder) under their direction as part of his contract as the operator. The Saubers are the permit holders.

Trevor commented that the current Ordinance states: The Operator shall reimburse the Township for expenses. It doesn't matter to the Township who pays the reimbursement costs as long as they are paid. In response to questions, Mr. Oliver affirmed that the operator's Letter of Credit is the only financial guarantee that the Township has regarding this permit.

Current Township expenses relating to this item are \$9,848.81. Permit fees collected from the Sauber Mine over the lifetime of the permit (since 2002) are \$4,255.32.

Kenny Miller commented he does not feel he is responsible for expenses. He felt that the Town Board wrongfully thought that the Letter of Credit would be used to pay costs. He offered to pay 50% of the cost that the Township has incurred dealing with this issue, because the Township has been acting as moderators. The Saubers would be billed for the other 50% of the costs.

Supervisor Jeff Otto suggested the following language be included in the Resolution: Due to unusual final expenses, the Town will accept 50% of the remaining permit-related expenses as fulfillment of financial closure from the Operator. The Township Attorney suggested including wording about the release of the financial guarantee. The Township Attorney drafted language for the Resolution based on Supervisor Jeff Otto's suggestion. The following sentence was added: Due to the unusual expenses incurred in the closing of this permit, and the Operator's sole responsibility for the Letter of Credit, the Town Board authorizes the Town Clerk to release the Letter of Credit upon payment of one-half of the reimbursable expenses by the Operator.

When a Supervisor is designated to attend a meeting, he/she is compensated for attendance and reimbursed for any expenses. Supervisors Dan Rogers and Carrie Jennings were instructed to attend mediation sessions.

A motion by Supervisor Brian Budenski: To approve Resolution No. 2009-08 "A Resolution Approving Amendment of Reclamation Plan for Pre-Existing Mineral Extraction Facility No. 2". The motion was seconded by Supervisor Jeff Otto. Supervisor Nancy Sauber stated the following for the record: 1) She does not have any personal interest in the property; 2) She does not have any financial interest in the property; 3) She has had no outside conversations about substantive matters with any of the parties; and 4) Her role has been to observe the public process or to take part in the *public* process. Vote was taken on the motion; four Supervisors voted in favor of the motion. Supervisor Nancy Sauber opposed, on the basis that the Letter of Credit is all the Town has as a financial guarantee. She stated she understands the argument of the fairness issue and that the Letter of Credit is the operator's sole responsibility. But, looking at it from the Township's side, the Letter of Credit is the only financial guarantee the Township has. The Resolution was approved by a vote of 4 to 1. Kenny Miller was given a copy of the Resolution.

The Township Attorney was directed to draft a letter to be sent to the Saubers concerning the payment of the remaining expenses. Supervisors Jeff Otto and Carrie Jennings will review the letter prior to its being sent.

At 10:00 p.m., a short recess was called. At 10:07 p.m., Supervisor Jeff Otto called the meeting back to order.

Old Business

A. Building Permit, Mechanical & Plumbing Permit Application Forms

The updated forms were presented for approval. Two changes were made to the Building Permit application. Page 2- "Other" was removed under Town Board Approval /Denial, and the Planning Commission approval lines were rearranged: First line- check box Incomplete, second line- Recommendation to Town Board, third line- check box for Approval.

A motion by Supervisor Nancy Sauber: To approve the Building Permit, Plumbing and Mechanical Permit Application forms as presented with the two further modifications on the Building Permit Application form. The motion was seconded by Supervisor Carrie Jennings. The motion carried by unanimous vote.

B. Misc. Updates

1. Cluster Forms

Supervisor Jeff Otto has not sent the question on the Clustering form to the Attorney. This item will be moved to next month's agenda.

2. Phillippe Bros.

The Township Attorney had drafted a letter from the Town Board. The Town Board reviewed and discussed the content of the letter. There was Town Board consensus to send the letter to the Phillippes as drafted.

3. Vermillion River Watershed Joint Powers Organization (VRWJPO)

A meeting with VRWJPO representative, Supervisor Jeff Otto, and the Township and County Attorneys has been scheduled to start working on the legal mechanics of the Joint Powers Agreement.

4. Vermillion River

Supervisor Carrie Jennings reviewed the document received titled "Vermillion River Watershed Existing Condition Hydrological Study (2007-2009)". It is a technical document. It uses land use data, gauging data and precipitation data to model the flows in the streams. It creates baseline data for the stream. When a Storm Water permit is issued, discharge amounts can be allocated based on what the River's response will be. The conclusions of the report did include the possibility of going to FEMA and asking that the flood plain widths be narrowed in some places.

5. Zimmer

Brian Watson, of the Dakota County Soil and Water Conservation District, emailed Supervisor Carrie Jennings to let her know the Zimmer permit is progressing. To preserve the wetland, it would be appropriate if the driveway for the new home were on the lot of the old home. (use of a shared driveway)

6. Noise and Nuisance Enforcement Report

Supervisor Nancy Sauber had had two conversations with Commissioner Joe Harris on enforcement of this Ordinance. Commissioner Harris had spoken to the Sheriff and is working with the County Attorney to draft a model for a Joint Powers Agreement (JPA) so that the Sheriff's Department would have the authority to enforce such local Ordinances. This could take two to three months, Mr. Harris had indicated. Commissioner Harris had also raised this matter at the September meeting of the Association of Dakota County Township Officers. Each township would have its own JPA with the County for such enforcement.

7. Other Updates

- a. Hawkins-** Building Inspector Scott Qualle filed paperwork in the District Court. Township Attorney Trevor Oliver will check on the status of the filing.
- b. Hansen-** Payment of permit fee and inspections. Butch Hansen has not turned in any inspection reports, although he turned in a Certificate of Occupancy. The permit fee has not been paid, and the Township has no record of any inspections. The Attorney was directed to send Mr. Hansen a letter.
- c. Plan review fees/As-Builts-** After discussion of this issue, the Attorney advised that the best tactic for the Township to use to reclaim unpaid review fees would be to require the property owner to pay the outstanding fees before a new permit request is approved.

The list of missing As-Builts was given to the Attorney. He will check on these.

- d. Letter to Dakota Electric** – The letter requested by Dakota Electric advising them whether the Krapu's light as modified now complies with Township Ordinances has not been sent. Andi Krapu had indicated that she would like her husband to view the light upon his return from out-of-town

before the letter would be sent. Supervisor Jeff Otto will check with Jeff Krapu to make sure he is ok with the streetlight as modified by Dakota Electric. Supervisor Nancy Sauber was asked to draft the letter.

- e. **Intended Use of a Building** -The Attorney was asked to comment on the importance of stating for the record what the intended use of a building is when an application for a building permit is approved. Does this become significant if there is a land use question raised later on? The Attorney commented it really doesn't matter what is on the record as to what the applicant stated at the time. What is important is what the use is. The Attorney advised that the Clerk should ask the applicant for this information at the beginning of the process to make sure all necessary permits are being applied for. For example, a CUP may be required in addition to a building permit, depending on the proposed use of the building.
- f. **Reminders from the Reorganizational Meeting**- When the Attorney and/or Engineer is/are requested to be present at a meeting, all Town Board members should be notified in advance of the meeting.

It had also been requested that, except in matters when timing or confidentiality are issues, all Town Board members be copied *via* the Clerk on the question(s) sent to the Attorney and on the Attorney's response(s). This distribution of questions and responses would be for information and preparation for meetings purposes only. The Clerk's email should remind Supervisors that such information is not for discussion outside Town Board Meetings. Supervisor Nancy Sauber will draft an Information Sharing Policy for review at the next Town Board Meeting.

g. Street Naming Joint Powers Agreement

The Planning Commission did not look at the agreement at their October Meeting. It will be added to the November Meeting's agenda. The Clerk did speak with Randy Knippel, GIS Manager at Dakota County. The Township Ordinance on street naming was sent to Randy, per his request.

h. Town Hall Repairs

The bid for the sidewalk repair came in at \$1,200. The Town Board is looking at a different avenue for this repair. The repairs to the Town Hall are complete, except for the mortar joint that needs to be caulked. The Building Inspector has signed off. The electrical work and the flag pole straightening are complete. The trees will be planted this fall.

A motion by Supervisor Brian Budenski: To pay Jeff Martin the \$200.00 for the straightening of the flag pole. The motion was seconded by Supervisor Nancy Sauber. The motion carried by unanimous vote.

i. Friedges Trial

The continuation of the trial is scheduled for Tuesday, November 17, 2009. The trial date will be posted as a Special Meeting in case a quorum of Town Board members is present.

New Business

A. Complaint- possible auto repair business

The clerk received a call and a follow-up written complaint on a possible auto repair business at 6608 245th St. W. Farmington. The Clerk was asked to send a letter to Dan Fritz on the use of the building.

B. Brosseth Mining Complaint

Supervisor Nancy Sauber and Supervisor Jeff Otto both received calls for a verbal complaint that the Brosseth mine is operating outside allowed operating hours. Supervisor Jeff Otto had spoken with Tom Mason, Ames Construction. Tom commented that he has work reports that show the two people working the site signing out by 5:30 p.m. Ryan Construction is doing some work in the Storlie pit, so they may have been creating the noise. There is also the work being done on the pipeline and tractors working in the fields. Supervisor Jeff Otto had been in contact with the complainant to discuss activities. The complainant is not making a formal complaint at this time. He stated that this is not the first time that activity has taken place outside allowed operating hours; he is concerned that it could continue to happen more often and wants the Township to be proactive in monitoring the site. Supervisor Dan Rogers will periodically check on the operations.

Minutes

The following corrections were made to the Special Town Board Meeting Minutes of September 3, 2009: The meeting date is the “3rd” not the “2nd” and 5th paragraph, last sentence “close” was changed to “closed”.

Town Board Meeting Minutes of September 14, 2009: Page 4- The second on the motion for the Henry Wall cluster: take out “A motion” add: “The motion was seconded by”. Bottom of page 5, last sentence add: “are”. Bottom of page 6- take out the comment in brackets. Top of Page 7, first sentence take out: “performed soil tests” and add: “sampled the soil” and take out the question that is in the brackets. Middle of page- add a period after the word “results” and take out the comment in the brackets.

The following addition and correction was made to minutes of the Roundtable Meeting of September 16, 2009: Page 1- After the paragraph that starts with “Jeff Otto commented” add the following: “Chair Jeff Otto then offered the role as discussion moderator to Planning Commission Chair Vince Mako and he accepted.” In the second to the last paragraph- take out: “to act as moderator for discussion”.

Minor spelling errors were corrected on the Special Town Board Meeting minutes of September 23, 2009.

A motion by Supervisor Carrie Jennings: To approve the four sets of minutes with the corrections as enumerated. The motion was seconded by Supervisor Brian Budenski. The motion carried by unanimous vote of those in attendance at each meeting.

The Clerk presented the additional requested information for the August 10, 2009, Town Board Minutes. A motion by Supervisor Jeff Otto: To amend these minutes for further clarification, as had been indicated at the prior Town Board Meeting as the Board’s intention, and to incorporate these changes to the official Town Board Minutes of the August 10, 2009, Town Board Meeting. The motion was seconded by Supervisor Nancy Sauber. The motion carried by unanimous vote.

A motion by Supervisor Carrie Jennings: To adjourn. Motion seconded by Supervisor Brian Budenski.

Meeting was adjourned at 12:14 a.m.