

# *Eureka Township*

## *Dakota County*

### *State of Minnesota*

Eureka Town Board Meeting  
March 9, 2009

#### **Call to Order**

Chair Jeff Otto called the meeting to order at 7:00 pm. Members present were Supervisors Cory Behrendt, Brian Budenski, Jeff Otto, Carrie Jennings and Dan Rogers. Clerk/Treasurer Nanett Sandstrom was present to record the minutes.

The meeting opened with the Pledge of Allegiance

#### **Approval of Agenda**

A motion by Supervisor Cory Behrendt: To approve the agenda as presented. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

#### **Audience Comment Period**

Carol Cooper, 26437 Galaxie Ave., Farmington addressed the Town Board on the proposed Local Water Management Plan. The Water management Plan is proposing to take mandatory conservation easements. The Local Government will take an easement, require you to plant prescribed vegetation, require you to pay for engineering and other required services to determine how much property they want to confiscate. There is no mention of compensation to the landowner. Carol doesn't feel the property owners interests are served by adopting the plan.

Chair Jeff Otto acknowledged that Lakeville Mayor Holly Dahl visited briefly with the Town Board prior to the Town Board meeting and that she attended tonight's Town Board Meeting

#### **Approval of the Minutes**

The following correction was made to the Town Board Meeting minutes of February 9, 2009: On page 5 -Correct acronym "NPDES"

A motion by Supervisor Cory Behrendt: To approve the Minutes of the Eureka Town Board February 9, 2009 as revised. Motion seconded by Supervisor Carrie Jennings. Motion carried by unanimous vote.

#### **Treasurer Report**

Checking Account Balance \$3,600.86. Savings Account Balance \$159,927.54. CD Account Balances \$164,091.35. Total Account Balance \$327,619.75.

A motion by Supervisor Cory Behrendt: To approve the Treasurer's Report of March 9, 2009 as presented. Motion seconded by Supervisor Dan Rogers. Role call vote was taken on the motion. Supervisor Carrie Jennings- Aye, Supervisor Brian Budenski- Aye, Supervisor Jeff Otto- Aye, Supervisor Cory Behrendt- Aye, and Supervisor Dan Rogers- Aye. Motion carried by unanimous vote of Supervisors.

**Bills and Receipts**

The clerk presented the following bills for payment:

<b>MNSPECT Inc.</b>	Inspection Services February 2008	<b>\$1,032.78</b>
<b>Dakota Electric Association</b>	Town Hall	<b>\$110.13</b>
<b>Frontier Communications</b>	Phone Service Town Hall	<b>\$124.44</b>
<b>Culligan</b>	Water Softener Town Hall	<b>\$23.43</b>
<b>Dick's Sanitation</b>	Garbage Service	<b>\$37.58</b>
<b>TKDA</b>	Eureka/ Sauber 10-26 thru 11-29-08	<b>\$596.09</b>
<b>TKDA</b>	Eureka/ Sauber 12-28 thru 1-31-09	<b>\$523.42</b>
<b>TKDA</b>	Comp Plan 10-26 thru 11-26-08	<b>\$137.76</b>
<b>TKDA</b>	Comp Plan 12-28 thru 1-31-09	<b>\$32.53</b>
<b>TKDA</b>	Brosseth 10-26 thru 11-26-08	<b>\$1,612.65</b>
<b>TKDA</b>	Brosseth 12-28 thru 1-31-09	<b>\$9,689.12</b>
<b>Kelly &amp; Lemmons</b>	Legal Services thru February 2009	<b>\$3,106.00</b>
<b>Dakota County Treasurer</b>	2009 Annual Maint. Election Equip	<b>\$300.00</b>
<b>Blue Earth Internet</b>	2009 Annual website hosting	<b>\$348.00</b>
<b>North Cannon WMO</b>	2009 Member Dues	<b>\$1,046.07</b>
<b>Graphic Designs</b>	500 Optical scan Ballots	<b>\$161.88</b>
<b>Nanett Sandstrom</b>	Expenses 2/1/09 to 3/6/09	<b>\$157.06</b>
<b>Nancy Sauber</b>	Home Occupation Training	<b>\$55.00</b>
<b>IRS</b>	Deposit 941 April 2009	<b>\$1,031.64</b>
<b>PERA</b>	Payroll Period 3/1/09 to 3/31/09	<b>\$327.21</b>
<b>Central Valley Coop</b>	Propane tank rental	<b>\$5.33</b>
<b>Otte Excavating</b>	Road maintenance thru 2/28/09	<b>\$3,643.00</b>
<b>Teresa Koentopf</b>	Office help payroll 3/1/09 to 3/31/09	<b>\$200.86</b>
<b>Nanett Sandstrom</b>	Clerk/ Treasurer Payroll Period 3/1/09 to 3/31/09	<b>\$1,987.23</b>
<b>Cory Behrendt</b>	Supervisor Payroll 1 <sup>st</sup> Qtr 2009	<b>\$313.99</b>
<b>Dan Rogers</b>	Supervisor Payroll 1 <sup>st</sup> Qtr 2009	<b>\$304.75</b>
<b>Jeff Otto</b>	Supervisor Payroll 1 <sup>st</sup> Qtr 2009	<b>\$406.34</b>
<b>Brian Budenski</b>	Supervisor Payroll 1 <sup>st</sup> Qtr 2009	<b>\$258.58</b>
<b>Carrie Jennings</b>	Supervisor Payroll 1 <sup>st</sup> Qtr 2009	<b>\$157.00</b>
<b>Kenny Miller</b>	Planning Commission Payroll 1 <sup>st</sup> Qtr 2009	<b>\$249.34</b>
<b>Sharon Buckley</b>	Planning Commission Payroll 1 <sup>st</sup> Qtr 2009	<b>\$443.28</b>
<b>Ken Olstad</b>	Planning Commission Payroll 1 <sup>st</sup> Qtr 2009	<b>\$369.40</b>
<b>Vincent Mako</b>	Planning Commission Payroll 1st Qtr 2009	<b>\$249.34</b>
<b>ECM Publishers</b>	Legal Ads	<b>\$371.00</b>
<b>Total Bills Presented</b>		<b>\$29,412.23</b>

The following receipts were deposited in March 2009:

• Local Permits

<b>Eureka Sand &amp; Gravel- Mining Review</b>	<b>\$714.28</b>	<b>Prairie Creek School- Permit 08-54</b>	<b>\$13,063.29</b>
<b>John Storle- Mining Review</b>	<b>\$94.34</b>	<b>Butch Hansen- Airstrip CUP review</b>	<b>\$25.00</b>
<b>Tiller Corp- Mining Review</b>	<b>\$150.00</b>	<b>Andrea Krapu- Sign Permit</b>	<b>\$25.00</b>
<b>Westwind Education- CUP review</b>	<b>\$25.00</b>		

• Other Receipts

<b>Dakota County-Conservation Credit</b>	<b>\$1,195.86</b>	<b>Martha Schultz- RASP Sign</b>	<b>\$15.56</b>
<b>Robert Glass- RASP Sign</b>	<b>\$15.56</b>	<b>Dakota County- Town Road Allot.</b>	<b>\$15,669.76</b>
<b>Mike Greco- RASP Sign</b>	<b>\$15.56</b>		

**TOTAL RECEIPTS DEPOSITED AS OF MARCH 2, 2009**

**\$31,009.21**

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

Supervisor Cory Behrendt did not have a chance to review the attorney bill. If there are any discrepancies they will be addressed at next month's Board Meeting. It was noted that Receipt # 94976 did not show on the Receipt ledger, it was for .44, and was deposited on 2/2/09.

A motion by Supervisor Carrie Jennings: to approve the Bills and Receipts as presented. Motion seconded by Supervisor Dan Rogers. Role call vote was taken on the motion. Supervisor Carrie Jennings- Aye, Supervisor Brian Budenski- Aye, Supervisor Jeff Otto- Aye, Supervisor Cory Behrendt- Aye, and Supervisor Dan Rogers- Aye. Motion carried by unanimous vote of Supervisors.

### **Budget**

The Town Board reviewed the budget.

### **Road Contractor**

Jason & Bryce Otte were present to address the Town Board. 2 Freezers were removed from the ditch on Highview Ave.

2 bridge deflectors are missing at the end of 225<sup>th</sup> St. A culvert on Highview Ave. should have markers added also. These will be installed once the frost comes out.

Chair Jeff Otto expressed concerns over the Road Grader giving the right of way to citizens on the Chub Lake causeway. It is dangerous for a piece of heavy equipment to drive on the shoulder of the causeway. Right of way must be given to the road grader, except emergency vehicles.

### **Lawn Mowing Quotes**

Three business submitted quotes for mowing of the Town Hall property.

1. Longridge Lawn Services
2. Dubbels Lawn Service,
3. North Country Landscapes

Representatives were present from Longridge and Dubbels Lawn Services.

Lisa Dubbels from Dubbels Lawn Services told the Town Board that Fall and Spring cleanup is included in the bid. A quote for fertilizer application would be based on a soil sample and what type of fertilizer is applied. They will power broom along the roadway and add wood chips as needed. The \$100 charge per mowing includes tax.

No representative was present to represent North Country Landscapes. The Clerk was asked to send them a letter, asking for fertilizer quotes.

Trevor Garske from Longridge Lawn Services explained his fertilizer application bid. In the spring a herbicide is spread. Chem Lawn would apply liquid fertilizer services. The lawn service bid is an as needed basis. Spring clean up and fall Clean up is \$125.00 each. Tax needs to be added to the lawn service and fertilizer bids for Longridge.

The Town Board deferred the decision on the Lawn Service until the April Town Board Meeting.

**Street Sweeping-** One quote was received. Quotes will be obtained from street sweeping services.

**Dakota County Deputy Sheriff** – Jim Gabriel stopped in and introduced himself. Town Board and citizen concerns were addressed.

### **Planning Commission, land use permits and related items**

**A. Permit Requests-** none

**B. Land Use & Zoning Issues**

#### **1. Kelly Aggregate IUP Application**

The public hearing was held on February 10, 2009. On February 17, 2009 the Planning Commission held a Special Meeting to review the input of the hearing. The Finds of Fact and Recommendation was developed as an outcome to this special meeting. A copy of the permit from Dakota County for the application for access onto Dodd Blvd was provided. On March 2, 2009 the Town Board received correspondence for their attorney: Review of Proposed Findings of Fact and Draft Permit Conditions Kelly Aggregate/ Ames Construction Level III Mining Interim Use Permit. *See attached documents.*

A motion by Supervisor Carrie Jennings: To accept and approve the revised groundwater monitoring plan. Motion seconded by Supervisor Jeff Otto. Motion carried by unanimous vote.

The Common Reclamation Plan Agreement signed on March 9, 2009 by John Storlie and Kelly Brosseth was presented along with 2 maps showing Exhibit A and Exhibit B

A motion by Supervisor Brian Budenski: To approve Resolution # 2009-2 A RESOLUTION GRANTING AN INTERIM USE PERMIT FOR AN AGGREGATE EXTRACTION AND PROCESSING OPERATION IN THE TOWN OF EUREKA. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

The Development Agreement drafted by Township Trevor Oliver was reviewed. Ames construction commented that they would prefer a Reclamation Bond over a Letter of Credit. Page 7, Item 21. Finance- “Bond” was added.

A motion by Supervisor Cory Behrendt: To approve the Development Agreement with all parties involved dated 3-9-09 with the modification to the Section under Financing adding “bond”. Motion seconded by Supervisor Brian Budenski. Motion carried by unanimous vote.

### **Other Business**

#### **A. Building Inspector**

Scott Qualle was present to represent MNSPECT. The Agreement and Contract for Inspection Services was reviewed. The proposed contract is for 2 years of service. It was agreed that 6. The Cost to Municipality for Services. Item A. The Building Official shall be paid 65% of the residential building permit, and 65% of residential plan review fee for services. Item B. The Building Official shall be paid 75% of the commercial building permit and 85% of the commercial plan review fee. Item E. The Building Official shall receive 65% of all penalty fees and 100% of all re-inspection fees.

A motion by Supervisor Brian Budenski: To approve the Agreement and Contract for Inspection Services with MNSPECT made today the 9<sup>th</sup> of March 2009 for 2 years- 2009 through December 31, 2010. Motion seconded by Supervisor Dan Rogers. Supervisor Jeff Otto offered a friendly amendment: With the one adjustment in Section 6. E. To change 75% to 65%. Supervisor Brian Budenski and Supervisor Dan Rogers accepted the amendment. Motion carried by unanimous vote.

The contract change was initialized by Building Official Scott Qualle, Chair Jeff Otto and Clerk Nanett Sandstrom

Scott Qualle spoke with the Department of Labor and Industry Plumbing and Engineering Unit. They are not comfortable in granting MNSPECT permission to do Township or County work, because they can't isolate addresses. (Part B of the contract. This will not be activated until they have permission from the State.)

## **B. Planning Commission Update**

Planning Commission Sharon Buckley reported that the Planning Commission is continuing to work on Ordinance updates. They are working on updating their policy and procedure manual.

**Road Ordinance-** The Road Ordinance being developed jointly with Castle Rock Township is ready for Planning Commission review, then public hearing. The Township Attorney will be asked to review the draft ordinance once completed.

At 8:40 pm a break was taken. The meeting resumed at 8:51 pm

## **Old Business**

### **A. Misc. Updates**

#### **1. Friedges/ Country Stone**

Since the last board meeting Supervisor Jeff Otto and Supervisor Brian Budenski met with Jim Sauber and Georgie Molitor and identified some additional items over and above the list created by the attorney related to conditions identifying the status of the operation in 2005. The next step is to coordinate a meeting with Mr. Bjustrom of Country Stone.

#### **2. Comp Plan- Water Plan**

The Comprehensive Plan Committee will be called back together to look at draft of a Water Plan for the Comp Plan. The Rural Collaborative Plan will be condensed into a much smaller document. A tentative date of Tuesday, March 24, 2009 was set as a meeting date. A public hearing will be held on the draft Water Plan once completed.

#### **3. Rural Collaborative Plan**

Supervisor Carrie Jennings and Supervisor Cory Behrendt worked on creating a version of the Rural Collaborative Plan that the Town Board is comfortable with adopting. The Township's draft version of the plan will be sent to VRWJPO for their review. The Township feels the document created meets the VRWJPO requirements, but is specific to Eureka Township.

### **Collaborative Water Resources Management Ordinance**

The Water Management Ordinance must be adopted by April 25, 2009. Dean Johnson, Resource Strategies Corporation scheduled a joint public hearing on March 19, 2009 on the plan for all communities involved. Planning Commission members will attend this joint public hearing. Eureka Township will hold a separate public hearing for the Water Resources Management Ordinance at a later scheduled date. Supervisor Carrie Jennings will contact Mark Zabel, Administrator for the Vermillion River Watershed to inform him of the Town Boards intentions.

### **North Cannon River WMO**

The NCRWMO is holding an Informational Meeting to look at buffer strips in the Vermillion Water Plan. The NCRWMO is considering adopting the buffer language from the VRWJPO plan. The meeting is scheduled for March 18, 2009 at 7:00 pm at Sciota Town Hall.

#### **4. Commercial/ Industrial Study**

The Request for Qualifications has been sent out. We have received some questions back. We are providing feedback to the questions. We are looking for formal responses by the end of the month.

#### **5. CapX2020**

The Review Judge recommended to the PUC to approving all three segments. The route is a separate permitting process. The citizen's routing committee has not met. Supervisor Carrie Jennings is the official Township person on the Lake Marion to Hampton line portion of the route.

#### **6. Butch Hansen 2<sup>nd</sup> Dwelling update**

The agreement that will be signed is the agreement discussed in the closed session. The current Township attorney condensed the agreement with reasonable language that meets what was discussed. The document/ restrictive covenant will replace the conditional use permit. The document will be recorded against the land. Two copies of the document were signed by all parties. The Township attorney will prepare documents for filing.

#### **7. Dakota County Uniform Street Naming and Addressing System (USNAS)**

The Planning Commission held a public hearing on the proposed USNAS Ordinance. The Planning Commission presented a modified draft Ordinance to include address changes.

The ordinance will be incorporated in the Township Ordinances under Ordinance 4, Chapter 2, Section 22. Street Naming and Addressing System.

A motion by Supervisor Cory Behrendt: To adopt Ordinance 2009-3 An Ordinance Establishing a Street Naming and Addressing System as presented with the additional notation as follows: Ordinance 4, Chapter 2, Section 22. Street Naming and Addressing System. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

#### **Annual Meeting**

The format of the annual meeting presentation was reviewed and discussed.

#### **Clerk/ Treasurer Presentation**

The Town Board was not interested in participating in the Group Life Plan

The Planning Commission Openings will be published in the Newspaper March 20, 2009.

A motion by Supervisor Cory Behrendt: To appoint Supervisor Jeff Otto and Supervisor Brian Budenski to review the situation prior to the 10:00 am opening of the polls to review any weather situation that might cause rescheduling of the election and annual meeting. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

The reference to the letter that the Clerk is sending to North Country Landscapes- Their bid is only for weekly seasonal basis. The clerk will ask will ask if they also do as needed basis.

Road Gravel and Road Maintenance bid opening will be moved up to the May Town Board Meeting. Publishing notice will go out per State Statute.

A motion by Supervisor Cory Behrendt: To adjourn. Motion seconded by Supervisor Carrie Jennings.

Meeting adjourned at 10:40 pm.

**Kelly & Lemmons, P.A.**  
ATTORNEYS AT LAW

Attachment 3-9-09  
Town Board Meeting

□ Trevor S. Oliver  
toliver@kellyandlemmons.com

March 2, 2009

Eureka Town Board  
PO Box 576  
Lakeville, MN 55044

**Re: Review of Proposed Findings of Fact and Draft Permit Conditions  
Kelly Aggregate/Ames Construction Level III Mining Interim Use Permit**

We have reviewed the Proposed Findings of Fact developed by the Planning Commission following its February 17, 2009 hearings, and the Draft Conditions submitted by the Township Engineer. We have the following comment:

Planning Commission Findings

There are no changes needed to the Planning Commission's findings which would require them to re-consider the issue. There are some additional findings which the Town Board should make prior to approval of the permit, based on the record generated by the Planning Commission. The items are all included within the record and should not require additional testimony or documents.

1. Format: A couple of dates are wrong in #4 and #5, and should be corrected. In finding #9, the individual plans submitted by the applicant should be listed by name and by date to firmly establish what is in the record that is underlying the Planning Commission's recommendation.
2. In one of the plans, Mr. Brosseth's house is within the normal setback from mining activity and equipment. The setbacks from other owners' dwellings presumably meet or exceed standard. The Board can approve this reduced setback from Mr. Brosseth's own house without a separate hearing on the matter, but must still make the findings required by the Ordinance:
  - a. Practical difficulties exist in complying with the regular setback requirements because of the location of Mr. Brosseth's existing home in relation to the known aggregate resources on the property (how much land is within the 1000' circle surrounding the home?); and
  - b. The reduction in setback from the Brosseth home will not reduce the protection afforded to neighboring properties, as those setbacks are not affected by this reduction.
3. The required findings in #8 cover the mandatory subjects under the Mining Ordinance, but also must cover the required considerations under Chapter 4, Section 14 of the Zoning

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Ordinance. The considerations largely overlap, but not completely. The Town Board should also consider the following factors:

- a. The use will not impose additional costs on the public if it is necessary to take the property for public use. (Add to 8.A)
- b. The use will meet all applicable performance requirements of the Mining Ordinance. (Add to 8.E)
- c. The applicant is willing to accept conditions on the use deemed appropriate by the Town. (Add to 8.J).

4. Within the Mining Ordinance required findings, the Town Board should adjust the following findings:

Finding B: The Board should find that the use will not depreciate housing values or deter development; “no evidence was presented” is not a finding and creates a potential problem with the record.

Finding D: The finding should note that the present use of the property is for agriculture and less-intrusive aggregate mining, in addition to the zoning. The second sentence of this is circular; the allowance for an interim use permit is not a finding that supports the issuance of the permit. I recommend replacing that sentence with “Aggregate mining with a proper reclamation plan is reasonably related to the agricultural use of land in the Township.”

Finding I: The first sentence states the criteria, not a finding. The second sentence is an adequate finding on this topic by itself.

Finding J: The ordinance text is repeated. While this item probably should not be in this list at all (it’s really a performance standard), the finding should be made. I recommend: “The applicant has agreed that no dewatering will be used to obtain material.”

5. There is no need to change the PC recommendation, but the Town Board should avoid setting a calendar date for the reclamation of the property. This issue is discussed in more detail in connection with the proposed conditions.

#### Draft Conditions

1. The draft conditions address every item in the Mining Ordinance’s Performance Standards. Items that are required to be modified or stated within the permit are modified or stated. For brevity, those conditions that do not state a site-specific value or modify Ordinance standards can be replaced with a condition that the site comply at all times with the Performance Standards (Ord 6. Ch. 7). If a general instruction is included, draft conditions 1, 3, 5, 8 and 19 can be

Attachment  
3-9-09 Town  
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eliminated, and parts of conditions 7, 9, 18, 21, 23 and 24 that restate ordinance conditions can be shortened. Ultimately, the conditions will be incorporated into the permit document, which will cover items such as the scope of permitted activity, the plans incorporated by reference, the description of the property, and conditions which cause termination of the permit.

2. The draft conditions must include a requirement that the party responsible for the permit execute a Development Agreement with the Town (Ord. 6, Ch. 6, Sec. 1.M), and comply with the terms of the Agreement. The requirement of the development agreement can displace the currently proposed condition regarding financial guaranty and escrow, as these matters will be established in the Agreement (along with insurance requirements).

3. Groundwater Monitoring Plan. Portions of draft conditions 13-17 require more definition to prevent lengthy and costly disputes in the future. Condition #15 states that "the Town may require revisions" to the Plan "to address observed conditions." The permit should state whether mining operations must stop until changes are made and approved, or what other consequence exists if the revisions are not made. If the consequence is a cease of operations, the permit should indicate what recourse the operator has to challenge the revisions before stopping work.

In a similar vein, condition #17 requires action – a mitigation plan – upon a finding of "impact." With this level of consequence – requiring development and implementation of a cleanup – the permit should not use the "including but not limited to" construction for defining the key term. "Impact" should be objectively defined using the variables proposed to be monitored in this Plan, and either proposing a "normal" range for each variable or requiring no variance from a baseline. If these issues are addressed within the Groundwater Monitoring Plan (I did not have a copy for this review), at least a summary of the definitions and procedures should be re-stated within the permit conditions.

4. As currently written, condition #4 and condition #18 conflict. The recyclable stockpiles allowed in #4 are themselves an "accessory use" to the mining. I recommend removing condition #18 (except for the prohibition on painting), which would eliminate the problem.

5. The term of the permit (condition 30) should also expire if the aggregate resource is depleted on the property, even if this does not appear likely based on current planning. The reclamation deadline should not be a specific date, but nine months from the termination of the permit, as several events may cause termination prior to 2030 (revocation, abandonment, depletion of resource, etc.). Finally, I recommend moving the term of the permit up to the front of the list of conditions.

6. The Planning Commission recommends an additional condition of a written agreement for reclamation of the boundary area with a neighboring permitted aggregate operation. The permit conditions should include this, and specify whether it must be done prior to commencing operations (as with the Development Agreement), or whether a different deadline applies (such as prior to approval of a phasing plan involving the boundary area).

March 2, 2009

Review of Kelly Aggregate Mining IUP Findings and Conditions

Page 4 of 4

I have prepared proposed findings for the Town Board, a proposed Development Agreement, and a permit document for consideration at the Town Board meeting on March 9. Those documents accompany this opinion letter. Please do not hesitate to contact me if you have any questions or concerns.

Respectfully yours,

**KELLY & LEMMONS, P.A.**

Trevor S. Oliver

TSO/tso

Cc: Nanett Sandstrom, Town Clerk  
Ron Quanbeck, TKDA

Encl