

April 13, 2009 Town Board Meeting

Continued on Monday, April 16th, 2009 At 7:00pm

Attendance

Name

Wison Emerson

Gray Stephen

BRENDA RUBEN
FOR
charlie Lixne

Betty Hausen

Sharon Buckley

Victoria Belzer

Carol Cooper

Martin Cook

Terri Petter

Dan Sterlie

Terry Zimmer

Ronald Pflaum

Randy Allen

Bill O'Rourke

Eureka Township

Dakota County

State of Minnesota

Continuation of the April 13, 2009, Eureka Town Board Meeting on April 16, 2009

Call to Order

Chair Jeff Otto called the meeting to order at 7:07 pm. Members present were Supervisors Nancy Sauber, Brian Budenski, Jeff Otto, Carrie Jennings and Dan Rogers. Clerk/Treasurer Nanett Sandstrom was present to record the minutes. Township Attorney Trevor Oliver was also present. See attached attendance sheet for others present.

The meeting opened with the Pledge of Allegiance.

Agenda

Other Business, Items C. & D. from the April 13, 2009, Town Board Meeting

C. Rural Collaborative Plan and Ordinance

D. Comp Plan- Water Plan

The following motion was tabled from Monday night: A motion by Supervisor Brian Budenski: To adopt the Resolution Declining to Adopt the Dakota County Rural Collaborative Water Resources Management Ordinance. Motion seconded by Supervisor Jeff Otto.

Supervisor Brian Budenski withdrew his motion. Supervisor Jeff Otto accepted the withdrawal of the motion.

A second draft of a suggested alternative ordinance, drafted by Trevor Oliver, was provided to the Town Board. Chair Jeff Otto asked Trevor to make a brief statement of the changes. Changes were made in the definitions, those that were direct restatements or direct quotes from other sources. Changes were made to Section 6. It has to do with the redrafted resolution. On Monday Trevor was under the impression that Soil and Water was basically accepting all wetland conservation authority. Soil and Water is not totally comfortable taking over everything. Section 6 addresses what the Township is still responsible for carrying out. The ordinance anticipates delegating some of the authority to Soil and Water.

The Township adopted the Wetland Conservation Act (WCA) 15 years ago. The Ordinance refers to the rules that Township must enforce.

Supervisor Jeff Otto asked what administrative responsibility the Township will have under this ordinance.

Trevor commented that the most common items are transferred over to Soil and Water. The biggest thing left to the Township is the approval of wetland replacement plans. The County will take the application and review it. The Town Board approves or denies the plan.

Supervisor Nancy Sauber asked for clarification on the granting of variances under this ordinance.

Trevor commented that the way it is written, the process would work like any other variance. The Findings of Fact must be created. It would be sent to the Vermillion River Watershed Joint Powers Organization (VRWJPO) for review and comments that would help the Town Board understand if there is a need to grant a variance. The Town Board is not the only regulatory authority in most instances. A variance from our Ordinance would not make a difference. In most cases, other agencies have authority over the Township. The Township adopts regulations that follow their rules. The variance procedure refers to Ordinance 3.

Supervisor Dan Rogers asked what qualifies as a subdivision.

Trevor referred to the top of page 6 which contains a definition of a subdivision. Section 7 says a creation of a new lot. The Township does not have a subdivision ordinance. Any property along a river would be governed by the Dakota County Floodplain Ordinance. Local approval is required for a lot split.

Supervisor Nancy Sauber commented that the Township currently does not have a subdivision ordinance. Does this increase an urgency to adopt one?

Trevor commented that in having a subdivision ordinance it is clear who has the authority. The main benefit is to define administrative procedure for the approval of splits before they are recorded. The proposed ordinance doesn't put pressure on the Township to adopt a subdivision ordinance.

When dividing a large parcel, the larger tract of land would likely fall under exemptions (qualify for Green Acres or Ag. Preserve) and the buffer requirement would not apply. The smaller tract would probably fall under the rules. The proposed ordinance Section 7.02 C. states: *qualifies* for Green Acres. Section 7-02 D states it must be *enrolled* in Ag Preserves. It would be more lenient to state qualifies for Green Acres *or* Ag Preserve.

The definition of subdivision was discussed.

The most controversial part of the ordinance deals with the easement requirements. Easements can be a good thing for property owners because of their strength and ability to block public access to private land.

There are different requirements: Stormwater Easement- Section 5.13 on page 17. This is a typical permanent drainage and utility easement. The purpose is to prevent the property owner from blocking the flow of water. Buffer Easement- bottom of page 22. A conservation easement can be very restrictive. The only right given to a third party is the ability to insist that the land remains open. Nothing is done to the land to affect water quality (such as constructing a building). A conservation easement does not give a public entity the right to use the land. It does not make it public land.

Supervisor Nancy Sauber asked if it would be any benefit to add the language that the purpose for all buffers would be for water quality and open space or would that be too restrictive.

Trevor commented that the Township should not be too restrictive. He is concerned with unintended consequences. It is better to make it site specific.

Supervisor Jeff Otto noted the omission of the reference to water quality. There was discussion on the mowing of buffers. The VRWJPO Water Plan states the buffers should be mowed on a

“periodical” basis. The Collaborative Ordinance says “twice a year”. Trevor’s draft states periodically. The purpose and the goal of restricting the mowing of buffers were discussed.

Supervisor Jeff Otto asked why, with the buffer regulations that are already in place, would an easement be necessary?

Trevor commented that having the easement is the most effective way to protect the buffers. The easement is a contract. Both sides are aware of it; it is documented. It is easier to enforce the rights to an easement rather than enforce a criminal penalty or civil process for violating an ordinance.

Trevor used “Conservation Easement” in the draft ordinance to be specific that it is not a common easement, which allows access. A conservation easement does not allow public right of access. Within the bounds of the easement, the landowner retains use and the right to exclude others.

Trevor commented that if the Township adopts the VRWJPO Water Plan, it is the Township’s task to amend the Township Ordinances that implement the Water Plan. The permitting authority stays with the Township. All the Watershed rules say that the buffers should be protected by conservation easements.

A layout of Water Resources Management Options was presented. *See attachment dated 4/16/09* Discussion on the options followed.

A local ordinance does not need to be approved by the VRWJPO. It does need to be consistent with the JPO plan. The JPO needs to agree that it is consistent with their plan, but they do not “approve” the Township’s Ordinance. Mark Zabel of the VRWJPO has seen the draft Township Ordinance. He has not made any comment on its content.

The draft Township Ordinance implements all of the JPO rules that the Township has the authority to do. It complies with all water laws.

Carol Cooper commented that she thinks the language is unclear on the exemption of Green Acres. It is unclear if all resulting lots have to remain eligible for Green Acres. If the Township gives the permitting authority to the JPO, the JPO’s authority is limited to the Watershed District under Chapter 102 D; it is more limited than the authority of the Township.

Don Pflaum commented that the Township is doing what it can. The bottom line is the JPO had their rules and regulations. There are problems with all the choices. He doesn’t think that the zoning authority can be taken away.

Trevor commented that there are issues with the JPO. Land use authority in a watershed district is limited. Adopting this is not the end. It is a living document. Change can take place at any time.

It was proposed that the language in Trevor’s draft Ordinance on page 21, Section 7 D, be changed to be consistent with the Water Plan Language. “The buffer provisions shall not apply to any lot of record as of the date of published VRWJPO Rules until such lot is subdivided, and as long as the lots created are eligible for Green Acres or Agricultural Preserve.”

At 9:30 p.m. the Town Board took a short recess.

The Town Board Meeting reconvened at 9:51 p.m.

Discussion on easements continued.

A motion by Supervisor Brian Budenski: to Adopt a Resolution Declining to adopt the Dakota County Rural Collaborative Water Resources Management Ordinance. Motion seconded by Supervisor Dan Rogers.

Discussion on the adoption of the Ordinance continued.

Supervisor Jeff Otto moved to amend the main motion to delete from Resolution No. 2009-04 the last sentence from Item 11: "The Township will transfer local water management permitting authority to the VRWJPO until further notice." Motion seconded by Supervisor Nancy Sauber. Vote was taken on the amendment. Motion carried by unanimous vote. Vote was taken on the motion. Supervisors Brian Budenski, Dan Rogers, Jeff Otto and Brian Budenski voted aye. Supervisor Carrie Jennings vote nay. The motion carried. Supervisor Carrie Jennings explained why she voted nay. She doesn't think that giving the authority to the JPO satisfies those requests of the citizens. It will make it harder for them.

A motion by Supervisor Jeff Otto: To adopt Resolution No. 2009-05. A Resolution Regarding the Administration of the Wetland Act of 1991. Motion seconded by Supervisor Nancy Sauber. Vote was taken on the motion. Roll call vote was taken on the motion. All Supervisors voted in favor of the motion.

Trevor felt, given the decision that was made, perhaps the Town Board could decline to accept the Plan, if there are issues. The Town Board could report to the VRWJPO that upon adopting the Plan, given that Ordinance 9 is already done, the Township would apply the North Cannon Standards. The text applies to the entire Township. It has been limited to the North Cannon Watershed. The Township could report to the JPO that there are no amendments required for the Township to implement the Vermillion's plan.

Supervisor Carrie Jennings commented that preliminary discussion from the North Cannon is they are going to be stricter on buffers. The North Cannon preliminary discussion is to implement buffers in the entire watershed immediately. They want something simple to enforce and fair to all landowners. Buffer standards have not been set.

A motion by Supervisor Jeff Otto: That Eureka Township adopt the Dakota County Rural Collaborative Local Water Management Plan. The motion was seconded by Supervisor Brian Budenski. The motion carried by unanimous vote.

A motion by Supervisor Nancy Sauber: to adjourn. Motion seconded by Supervisor Brian Budenski.

Meeting adjourned at 11:12 p.m.

Water Resources Management Options - 4/16/09

Transfer WCA rule responsibility to SWCD

Collaborative Water Resources Management Ordinance and Plan – Choices

1. Adopt Collaborative Ordinance
 - a. Adopt Collaborative Plan

2. Reject Collaborative Ordinance
 - a. Modify Collaborative Plan to point to JPO instead of Town Ordinance, then adopt by motion on Resolution

3. Adopt Trevor's Ordinance by motion on Resolution
 - a. Drop easement language by motion amendment
 - b. Other motion amendments?
 - c. Adopt Modified Ordinance by main motion
 - d. Adopt Collaborative Plan by motion on Resolution