

EUREKA PLANNING COMMISSION
REGULAR MEETING
FEBRUARY 2, 2009

Chair Sharon Buckley called the meeting to order at 7:02 p.m. Commissioners present were Sharon Buckley, Vince Mako, Kenny Miller, Ken Olstad, and Nancy Sauber. Town Clerk Nanett Sandstrom was present through the permit request and land use and zoning portions of the meeting. Audience members included Kelly Brosseth, Supervisor Dan Rogers, Supervisor Carrie Jennings, Supervisor Jeff Otto, Supervisor Cory Behrendt, Carol Cooper, Randy Allen, Randy DeGroot, Rob Ripley, Paige Quintus, and Betty Hauser.

Approval of Agenda

There was one addition to the agenda. Ken Olstad moved to approve the agenda as amended. Kenny Miller seconded the motion, which passed unanimously.

A. Permit Requests

Randy Allen, 9320 235th St. W., Lakeville, accessory personal use pole shed

Randy was present to represent the application, which was for a 3,200 square foot pole shed with 14' sidewalls. Since his property is in shoreland, Randy was advised that he needs to procure a letter from the County regarding shoreland permitting. Setbacks were adequate. Randy filled in the total square footage of the project and initialed and dated the addition. Randy stated that the pole shed is to be for personal use. There is no Conditional Use Permit or Nonconforming registration for the property. Kenny Miller moved to send the application to the Board with the recommendation for approval, with the condition that a shoreland letter from the County is submitted. Vince Mako seconded the motion, which passed unanimously.

B. Land Use and Zoning Issues

1. Kelly Aggregates Mine Interim Use Permit (IUP) Application

The public hearing for this application has been rescheduled for February 10, 2009, as proper notice had not been given for the first date it was scheduled.

The Land Alteration Plan (LAP) review was held at the Dakota County Western Service Center in Apple Valley on January 15, 2009. Commissioners Sharon Buckley and Nancy Sauber, Supervisor Carrie Jennings, Ron Quanbeck, Engineer for the Township from TKDA, Kelly Brosseth, owner and applicant, Shawn Dahl and Pat Mason, both of Ames Construction, as well as Kate Kleiter and Richard Pennings from American Engineering and Testing, Inc., and Kurt Quaintance from James R. Hill, Inc. attended the review at the offices of the Vermillion River Watershed Joint Powers Organization (VRWJPO). Tae Kim of the VRWJPO and Jim Davidson of the Dakota County Soil and Water Conservation District conducted the meeting. There was some confusion as to whether the VRWJPO had actually received the Environmental Assessment Worksheet (EAW) information. It has since been clarified that they had.

Sharon Buckley reported that she had received a phone call from Pat Mason. Sharon stated the VRWJPO has said that they do not actually issue a permit for this application, and they will be sending some information. Nancy Sauber commented that her understanding has been that until the Township adopts the Water Plan, the VRWJPO does the permitting. Sharon agreed that is what she had understood as well. In any event, the VRWJPO will be sending some information about this. Sharon said that Ron Quanbeck was going to do the same, but she has not yet heard back from him.

Ron has told the Township that whatever conditions might be applied to the IUP must be consistent with the feedback from the VRWJPO, whether they issue the permit or simply give advice on what conditions should be included. It is even more important, he said, that there not be a conflict, because then neither the IUP from the Township nor the permit from the VRWJPO, if they do issue one, would be enforceable. It all needs to be coordinated.

Pat Mason had indicated that they may be requesting a special meeting of the Planning Commission after the public hearing and before the regular Planning Commission meeting to address any issues that may come up at the hearing.

2. Other Land Use and Zoning Issues

There were none.

C. Approval of Minutes – January 5, 2009, Regular Planning Commission meeting

There were two corrections offered. Sharon Buckley moved to approve the minutes as corrected. Ken Olstad seconded the motion, which passed unanimously.

*At 6:30 p.m., before this meeting, a public hearing was held on the berming portion of the Mining Ordinances. In the interest of accommodating those persons who stayed from the hearing to listen to the Commission's discussion of that matter, the Commission decided to move that discussion forward on the agenda.

D. Other Business

1. Berm Ordinance

Sharon said that she had received written public input after the hearing. She asked the Commission if it would accept it. Nancy said that, normally, such written input is accepted before the hearing and is read into the record. Sharon said that the input was from Randy Allen and his wife, Susan, stating that they preferred the shorter (berm) design (on the Kelly Aggregates site) and that they are not in favor of concrete and blacktop crushing. Since that is actually pertinent to the hearing for the Kelly Aggregate application, and not the Ordinance hearing, it was agreed that Sharon would receive it, but for the later public hearing.

Kenny Miller stated that, although the Planning Commission had discussed the concept of three or more owners or majority agreement vs. the "no written objection from any owners of real property" at its Ordinance meeting, he appreciates the input from the public hearing. One difficulty with the "three or more" idea presented by Rob Ripley is

that there may not even be three owners that are affected. Each instance will be different. If majority of affected landowners, not unanimity, were the goal, one couldn't put a number on it that would apply, necessarily, to all applications. Kenny said that he does agree with the underlined portion of Rob's proposal. That is: "Furthermore, berms may be required at excavation site on any side or sides between the excavation site and residences where 3 or more owners of real property located within 1,000 feet of the proposed extraction activity may satisfy this requirement, subject to Town Board approval of the decision." If it is workable as part of the design on a case-by-case basis, that would be a good point. Again, as part of the Ordinances, it has to work for all applications.

Nancy Sauber said that she also had the same comment about the "three or more" as there may not be three or, perhaps, three may not be a majority. Therefore, she does not feel that Rob's suggestion is workable in the form he presented it. Nancy stated that the Planning Commission had discussed majority *vs.* unanimous *vs.* "no written objection." She still feels strongly that, if any one affected landowner objects to a lower berm (for example), then what is currently in the Ordinance is there for his/her protection. Hopefully, the affected landowners could come to some kind of agreement. She would think that something lower with trees, which would be better to look at, would likely be agreeable to the landowners. Nancy also commented that she liked Vince Mako's suggested change about "no written objection." There would not need to be unanimous *agreement*. A particular landowner may not be totally in agreement with a given design, but would not object to it because it is at least satisfactory. Nancy asked Rob if what he meant by "may satisfy this requirement" in his underlined section was that the landowners would agree. Rob said that is what he had meant; he had copied that wording from the Commission's proposal. Nancy went on to say that the Commission had also discussed the location of the berms in its discussion. The Ordinance says "along all road rights-of-way." In the instance that is currently in the permitting process, the extraction activity is some distance from the road right-of-way, and a berm would be more effective closer to the site of the activity itself. The part about the berm screening from the right-of-way would not necessarily be violated by placing the berm back from the right-of-way, closer to the mining activity. This could be another area of flexibility that would make sense and still do the job of screening adequately.

Kenny interjected a comment about the height of the berm as being a *minimum* of eight feet. A berm may have to be higher to provide effective screening. Nancy agreed that the Commission had discussed that there may be situations where the road is higher than the mining location and a higher berm may be needed to screen. That would have to be evaluated in each instance. Vince Mako asked who determines if the berm provides screening. Is the Town Board the final authority on that point? Nancy replied that up to now, the requirement has been a minimum of eight feet, and she does not know how the evaluation of the effectiveness of an eight-foot berm (and no higher) has been made, or if it has been checked after the fact in any given instance. There has been a recent instance where a berm was added to at the request of a neighboring landowner. Sharon added that the Ordinance language of "a minimum of eight feet" allows the Board flexibility to require a higher berm. Nancy agreed. Sharon said that the problem with the Ordinance is

that it does not allow lower berms and does not allow locations of the berm other than at the location of the road. Nancy agreed.

Ken Olstad said he thinks that the point that Mr. Ripley is making is that, if there are three or more owners who want something additional at the mine site, then that should be required. Vince concurred that what he thought that Rob was trying to do was to make this a *requirement* if that was deemed desirable. Nancy asked Rob if he were speaking (in the underlined portion of his proposal) about *additional* berms, requiring any besides the berm at the road right-of-way, rather than the location of the berm. Rob said, not necessarily. He stated that what Nancy had said earlier about flexibility in the location of the berms was maybe more appropriate and would accomplish the goal. He also said that he agreed that “three or more” was unenforceable and that “majority” sounds better and makes sense. Nancy said, yes, “majority” would make more sense, although she does not agree with that. What is currently in the Ordinances protects the property owner who objects. Hopefully, the alternative design would be worked out among the affected landowners. It was discussed at the Commission meeting that the safeguard should be there, just as the Commission said that the applicant has to approve it as well. Sharon agreed and said that was the important concept that the Commission had wanted to include. Ken agreed that it is very important that it is a minimum safeguard that is there for everyone if he wants that. The individual cannot be out-voted to accept a lesser protection. Or, Vince clarified, a different protection. Ken agreed that “lesser” is an evaluation of something other than the eight-foot minimum; different works.

Vince Mako said that he appreciates Rob’s notes, but that he thinks that the consensus of the Commission is that it does not want anything put upon any of the parties, whether it is the operator or an adjoining landowner, or the Board for that matter. All of those parties have to agree upon a change. If they don’t all agree, then it reverts to the minimum (of eight feet). According to the Commission’s suggested wording of the Ordinance, people would have to work together to get it done. No one is given power over anybody else to change the current protection.

Sharon said the desire is to write in some flexibility, not a requirement to change or the requirement to have majority rule. The ability to be flexible and how to implement that is what is being discussed. Sharon added that the concept of having no written objections has not yet been reviewed by the attorney. What the attorney’s thoughts on that might be is unknown at this point.

Vince Mako asked a question about the “mining berm administration” suggestion. It was clarified that this suggestion would be to add a paragraph to the Ordinances; it would become part of the Ordinances themselves. Nancy commented that the last line of the proposed administration language might not be quite right. It states: “The Town Engineer will review this input and recommend a design reflecting the input received.” Nancy commented that the design might reflect the input in that the Engineer considered it, but that there might be conflicting alternative designs offered and the Engineer’s design cannot meet them all.

Kenny said that the important part is that a minimum berm is specified, the visual screening of the mining activity is requested, and the Commission would be allowing options that will provide that visual screening outside of the minimum eight-foot standard that has been set. The rest of it should be taken into consideration for every proposal for mining by all parties concerned. What is desired is to allow a change in that minimum of eight feet if it is required, or if it makes sense. Nancy reminded Kenny that the Commission had taken out the word “visual” with the idea that screening is for noise, dust, and vibration, as well as for sight. Kenny said that the Commission is looking at screening that provides for more than the minimum, something that is outside of the minimums, and as long as all parties agree to it, it would be acceptable. In other words, Kenny stated, an eight-foot berm, whether there are trees on it or not, or if it is thirty feet high rather than eight feet high, or set it here or set it there-as long as it provides screening, that is the ultimate goal. It has to be agreeable to all parties to make that change from the Ordinance firm wording of the minimum eight-foot berm. Kenny said that he did not think that it is necessarily proper to talk about creating changes that are mandated by one person, unless that one person is the only one involved.

Vince commented that, the way he reads the Ordinance is that, with a minimum of eight feet, the Town Board can require, without consensus (of the property owners and/or the applicant), more than eight feet. Because the screening has to apply, the Town Board, at its discretion, can require more. Kenny said the Board can require where the line is drawn as to how many people have a say when it decides. Nancy said that, if it were to be something greater than eight feet, it would presumably be based on something measurable at that site. This discussion is about what if it is something other than the minimum eight feet requirement. Kenny replied that his point in the whole discussion is that screening is needed, and it is a decision of the whole Board. They take input from, and they are not being driven by, one person who is an adjoining landowner, or by all persons who are adjoining landowners. They take the input and use it in making their decision to apply it to the particular instance on every permit application. Nancy said that, if this change is made to the Ordinance, if there is an alternative design that is worked on by the engineers on both sides, and is agreed to by the applicant, with no written objection by an adjoining landowner, then the Board follows that. Kenny stated that if one person says he has to have this (minimum eight-foot berm), and he has the ultimate authority to influence the Board’s decision, then he, Kenny, does not agree with that. The Board considers all input and makes a decision. The Planning Commission and the Board make a decision on everything that is happening with the issuance of that permit. They are mandated to listen, but are they mandated to take the objection of one person, Kenny asked. According to the proposed language, Nancy said, if there were no alternative design arrived at, the Board would have to go with the minimum eight-foot berm. Kenny said that would be a default position; nobody would be able to have less than eight feet unless there is a decision to require more or less. Alternate forms of screening are outside the minimum eight-foot high berm. Ken Olstad commented that the “more case” is different from the “less case.” If the Board wants to provide more than the minimum amount of protection, the operator may agree to do that, and that would most likely be prompted by the neighbors’ requesting of it. Operators have done this in the past. The Ordinance does not need to be changed for that to happen. What this

proposed change is about is in the case of the four-foot berm with trees, the Ordinance did not allow that to happen. However, everybody concerned seemed to think that would be a good thing. That is why a change is being considered. The change applies only to when it is desired to make the berm “less” in some sense. Kenny replied that his point is that, if one or two adjoining property owners object, then that is taking the decision out of the Board’s hands and giving it to those one or two landowners. Ken asserted that is actually not the case. It is giving the Board more leeway than it had. It is saying, with the agreement of certain parties, the Board is able to lessen the (existing) requirement and make it something different, such as four feet instead of eight feet. Currently, the Ordinance does not let the Board do that. This change would give the Board more authority to do that. It is not unlimited authority to do that; it would be limited to if someone objected. If someone says he wants the eight-foot berm there for his protection, then he gets that. This gives the Board more discretion, not less, than the current Ordinance.

Vince Mako said that he is a little concerned about the part of the suggested administrative language which says “standard eight-foot high berm.” The Ordinance says a “minimum of eight feet.” Vince said that he wants to clarify that maybe it would usually be an eight-foot high berm if that satisfies the screening requirement, but nobody can assume, however, that it won’t be higher than eight feet. No operator should be able to demand that this says eight feet high and that is all he has to do. Nancy agreed that the wording of the suggested new subsection should be changed to reflect that it is a minimum of eight, not a standard eight feet. Ken said that what constitutes a standard minimum berm is defined elsewhere. It could just say “required berm” or “standard berm,” eliminating the words “eight-foot high.” Nancy said she is not sure that is what is wanted. Kenny asked why not just keep the wording consistent as “minimum eight-foot berm?” Ken said the language is talking about different-from-the-minimum required berm, which is eight feet or high enough to provide screening. Depending on conditions, that “high enough” might be nine feet.

Nancy commented that, in general, she thinks that perhaps the proposed language might be “upside down.” It might be better to state the current requirement and then go on to talk about the alternative. To say that a combination of berms, etc., can be agreed upon as an alternative to satisfy the screening requirement and that, if such an alternative design does not exist, then the requirement is the current requirement is perhaps backwards. First, it should state the requirement as it exists, and then state the alternative to it.

Additionally, Nancy questioned whether the proposed wording that says: “In the absence of an alternative design that has been agreed to by the applicant and by the neighboring landowners...” ought to be changed to be consistent with the “no written objection” wording. Again, there might be a landowner in a given case who, while not exactly agreeing to the alternative design, may not object to it, either. Sharon concurred. There was more discussion of this point which was along the same lines as that described above. Ultimately, Ken Olstad suggested the wording: “In the absence of such an alternative design, berms shall be...” There was agreement on this wording.

Nancy then raised the topic of the placement of the berms. The Ordinance wording, which the current proposed wording does not change, states: "Earthen berms shall be constructed along all road rights-of-way." The objective is that the mining activity is screened from the right-of-way and from the adjoining property. That may not necessarily mean that berm has to be along the right-of-way. Sharon said that was a concept that the Commission had not worked on regarding the wording. Nancy said that it was discussed, however. Sharon said that when the current Mining Ordinance was written, she, personally, had not envisioned that the berm might be so far removed from the actual mining and that it might be more effective in another location. [Sharon, as well as Kenny, had served on the Mining Task Force that worked on the current language.] The locating of the berm at the site of the mining activity (in the Kelly Aggregates example) would screen the road and the people living across the road from the activity, Sharon asserted. Nancy said she agreed. Sharon said the Commission had not discussed it. Nancy said it was discussed, but agreed that no wording had been proposed. Ken said to change the language regarding the placement of the berm might take a lot of effort and would be complicated. Nancy stated that dealing with the berm placement issue could take place later, but she does remember Ron Quanbeck's stating that the berm (in the Kelly Aggregates example) would be more effective if it were placed at the mining activity site. Kenny suggested that the operative words were "shall provide screening." As long as that is met, that takes care of the placement of the berm. Ken said he believes "screening" has to be quantified. How much screening is enough screening? Kenny said it should be a decision by the Board of Supervisors on a case-by-case basis. Nancy stated that, in some cases, the berm may well have to be along the road right-of-way, but that, in others, a different placement might be more beneficial. Perhaps the Commission could seek more input as to what might be the most effective way to word it.

Supervisor Carrie Jennings stated that it needs to be decided what it is that is being screened. If the screening is to be for someone driving along the road, it would be different than if the screening is for a second-story window of a nearby house. It might just be required that the line of sight be blocked for whatever height it is. This elevation would most likely be different for each instance. Kenny agreed. Ken clarified that he believes that what Carrie is saying is that, to go the route that Nancy suggested, those viewpoints for which screening has to be effective should be defined. Kenny suggested adding the word "effective" to "screening." That would apply to any circumstance.

Vince Mako raised the point that it would be possible that an application might be made to mine at a location where the owner does not own land that includes that up to the road right-of-way. Is the Ordinance enforceable in that case? Or what if someone owned an entire section and wanted to mine at a five-acre site that might be quite a distance from the road? According to the current wording, he would have to build a berm along the road-right-of-way, even though it would be far removed. Vince said that he agrees with Nancy that this wording needs to be worked on and changed.

Ken recapped that the Commission is dealing with two issues. The first is that, if there is agreement on an alternative design that involves a lesser berm, then that could be

allowed. Ken said the entire Commission might agree with that. Vince suggested that the first two lines of the proposed language could be eliminated. Kenny countered with there is not much need to screen the mining from a cornfield; it is the residence that matters. Ken said someone may want to build on the cornfield someday. Kenny said the adjoining property might be another gravel mine. Would you berm that? Nancy said that what is important with the screening of adjoining property lines is the existence of a residence there. Kenny also stated that what is important for screening for a residence is what exists at the time of the permitting.

Kenny asked if his suggestion of stating “effective screening” would work and leave flexibility. Ken said he believes that there has to be a concrete minimum. Eight feet does that. Nancy said that she does not believe that anyone would argue against “effective screening,” but that what is effective would be somewhat subjective. Ken suggested that perhaps the berm placement issue be postponed, and the Commission could move forward with the alternative design part of the change.

Sharon stated that the proposal that is in front of the Commission allows the flexibility for an alternative design, and that is what was desired at this point. Nancy asked the question what if the alternative design involves the location of the berm at the extraction site and not at the road right-of-way. Right now what is proposed allows flexibility, but only at the road right-of-way, Nancy stated. Sharon agreed with that and said that the location aspect could be discussed later. Nancy said, yes, but that she just wanted to clarify that in her understanding of this, without the change in the first line of the proposed language, the alternative designs would be limited to those that have a berm at the road right-of-way. Ken agreed. Nancy said an alternative design could ask for an additional berm at the site of the mining extraction, but, under the currently proposed language, there would also have to be one along the road right-of-way. The proposed lines that speak to an alternative design as being a combination of berms and other screening does not refer to the placement of the berm(s). The Commission has always approached this from the perspective that “alternative design” meant something other than the minimum eight-foot berm and including vegetation, possibly, but not from the perspective of the placement of the berms.

Sharon said that the original language only intended to screen from the road. If one is driving along the road, one cannot see the gravel pit. It had nothing to do with any residences along the other side of the road. Residences are involved only on adjoining properties and if the setbacks are altered. This language does not provide for protecting the residences across the road. It is not possible in all instances to screen the sight of the gravel pit from all residences.

Kenny commented that there is a perceived urgency to change the Ordinances because of the application before the Commission. Maybe the Commission is rushing into it. Nancy said that, if the language needs to be reworked further, perhaps the Commission could at least agree to what the goals of that reworking might be. Vince asked Nancy what those goals are. She said that, in her mind at least, the goal would be to allow for flexibility in the height of the berm when there is an agreement with no written objection

and in the placement of the berm. With the application currently before the Commission, neighbors wanted a lower berm, the applicant agreed to it, in fact proposed it that way initially in the EAW for the Level 3 permit, but the Commission had to say no because the Ordinance does not allow it. The Township Engineer had stated that the berm would have been more effective in the Level 1 application if it had been placed near the mining activity, but, again, the Ordinance did not allow that. The goal would be to provide effective screening however that might be best achieved.

Kenny, with input from Kelly Brosseth, clarified that to require an (additional) berm by the mining site would not be desirable because it would take (more) land out of agricultural production (in the Kelly Aggregates case). Nancy said she was talking about being able to have the berm located closer to the mining site (on a given application.) The aspect of the phasing of an operation, both in extraction and reclamation, in reference to berm placement was discussed. Sharon said that if the Ordinance had allowed a different placement of the berm at the time, it may have been located at the mining site (on the Brosseth property), but the Ordinance did not allow that. That berm would not be moved now. Kenny said the Ordinance has to apply to all applications in the future. The location of these berms does not necessarily have to do with where the edge of the property is. Sharon said her point was that if the Ordinance had been more flexible, there might be a different configuration on the (Brosseth) property right now. The Commission is saying that it would like to see that flexibility for the future.

Ken said that there needs to be some kind of minimum. If it is left as just “effective,” what happens when there is a big argument and no agreement on what constitutes effective screening? In that case, there needs to be some sort of minimum. It is good to allow the alternatives, but it has to be an alternative to something. There needs to a minimum to fall back on, or it could end up with nothing.

Sharon said this is an amendment that the Board has proposed. The requirement is that the Planning Commission has to hold a public hearing. That has been accomplished. The Commission is not *required* to make a recommendation, although the Board likes it when that happens, Sharon stated. The Commission could vote on what it has, it could form a subcommittee to work it over further and possibly work with Board members on it, although this could lead to timing issues, or it could just drop the issue without any motion or action whatsoever. Ken said that he needed to understand how that would relate to moving forward with the Kelly application. Sharon said that, without a change, the Ordinance as it stands would be what would apply in that case.

Ken moved to recommend to the Board that there be a modification to the berming section of the Mining Ordinance so that it would read: “Earthen berms shall be constructed along all road rights-of-way. In the instance where the setback from a residence applies under Chapter 7, Section 1(M), then, in addition, earthen berms shall be constructed along the adjoining property line. Berms shall provide screening of the mining activity from the right-of-way and any adjoining property line on which a berm is required. A combination of berms and other screening which has no written objection from any owners of real property located within 1000 feet of the proposed extraction

activity may satisfy this requirement, subject to Town Board approval of the design. In the absence of such an alternative design, berms shall be a minimum of eight (8) feet in height. All berms shall be no steeper than a slope of 3:1 and have a silt fence at the base on the side closest to adjacent property. The silt fence shall be maintained until vegetation is established, at which time it shall be removed.” Nancy Sauber seconded the motion.

As part of the discussion, Supervisor Jeff Otto offered that, in the particular permit that is in process, he would like to remind the Planning Commission that there is an existing berm that is from the Level 1 permit and which has to stay in place. On the new permit, a second berm near the mining site would take additional acreage out of ag production. Also, if there is phasing of the activity, and the berm is required near the activity, it would be only a partial berm, and it would not be as effective as upgrading the existing berm. Sharon said she did not think the Commission was talking about requiring a second berm in that instance. Jeff said that, if that were a sticking point, if a second berm would be proposed, the developer would veto it anyway. Sharon said he already had vetoed it when that was suggested before.

Kenny said that he thinks that the Commission needs to focus on the Ordinance for any future application and wondered if there was any vehicle that the Board could use to work with Mr. Brosseth on his current application, outside of changing the Ordinances. Nancy Sauber said that has already been asked (of the attorney) and that Supervisor Behrendt had already stated at a Board meeting that the Ordinances at the time of the issuance of the permit must apply. Kenny stated that Ordinance cannot be drawn for each applicant. Nancy replied that she believes that this application (Brosseth) highlighted that there is a lack of flexibility. That is why the Commission was moving in the direction of increased flexibility, not just for the Brosseth application, but for any application. Kenny said that maybe the Commission needs to consider all the issues that were discussed at this meeting and not be pressed to move quickly. Ken commented that the change in the motion is a smaller change than where the Commission wants to eventually go, but it is not counter to or contrary to the “more flexibility” direction that Commission wants to go. Therefore, there is no reason not to do it. Discussion continued along the same lines as earlier.

Vince commented that he does not see that the sentence that starts “A combination of berms...” precludes moving the location of the berm. Nancy said that she is not sure whether it does or doesn’t, but the fact that when it says that if the alternative design does not exist it goes on to talk of height and not location, and that earlier it says location is along rights-of-way, it *may* preclude changing the location. Perhaps that is a legal opinion that should be sought. Sharon added that she is not sure that the option of changing the location is clear.

The vote was taken. Four Commissioners voted in favor of the motion; Kenny Miller voted nay. The motion passed.

The Commission agreed to delay any discussion of the administrative proposal to another time. It was clarified that the Board could do something about this if it wanted to, however, because the public hearing did include that language as well. That requirement has been met. Points already raised by the Commission were the issue of “minimum” vs. “standard,” and the wording of the last sentence regarding the Engineer’s reflecting the input received. Nancy suggested that the Engineer should consider the input, but his design may not necessarily reflect it or all of it. Kenny asked whether the Engineer is being asked to consider the information to the point of asking him to make a new design, or is he being asked to review any design that has been submitted to him. Sharon suggested discussing this at another time.

2. Board Report and Miscellaneous Updates (This was formerly number one on the agenda. The Commission was now resuming its original agenda after the accommodation for the Brosseth IUP audience.)

a. Building Official Files

Sharon asked Nancy Sauber where things were at on this matter. Nancy said that she had spent some time again on this and hoped to have a report for the Board at its next meeting. In the interest of being as complete as possible, she intends to include the over-the-counter permits in that report as well as those that came before the Commission, which were on her original list.

b. Comprehensive Plan and Feedback from the Metropolitan

Council

Sharon reported that the Council had four issues. One was that a zoning map was needed, even though the whole Township is zoned agriculture, with allowing one house per quarter-quarter. The item that needs further discussion is the “water chapter.” The Board has discussed reconvening the Comprehensive Plan Update Committee

Kenny Miller asked about Dakota County’s review of the Comprehensive Plan. Under the topic of “Parks, Trails, and Recreation,” it talks about being consistent with the County’s “vision of a regional greenway in the vicinity of Chub Lake, as recently clarified with the Council.” Kenny said that it says: “Dakota County staff looks forward to future discussions of the Chub Lake Greenway with Eureka Township.” Kenny said it was his understanding that this was a dead issue; the citizens involved did not want to go down that road. Kenny said that it seems to be the County’s understanding of Eureka’s Comprehensive Plan that this greenway is still proposed or supported. They are saying that Eureka is going to work with them on the Chub Lake Greenway. Kenny had thought that this was not so. It was agreed that this would be discussed in the future when the reviews of the Comprehensive Plan from various sources were examined, as mentioned at a previous meeting. For the moment, the feedback was being compiled for discussion later, although there was the option of dealing with some at an earlier time, as also mentioned at the previous meeting. The Commission was not having the full discussion at this meeting.

c. Conversation with Scott Qualle, Eureka’s Building Official

Sharon spoke with Scott about Individual Sewage Treatment Systems (ISTS). As has been said before, there are the new rules about a second soils verification, which Sharon re-explained briefly. Eureka has another inspector, Darryl Gilmer, doing the second

inspections. This applies to drain fields, not the tank itself. Scott said that he *is* issuing ISTS permits for replacements or other situations where there is not a housing permit involved at the time. This was discussed again. There may be a flaw in the administrative procedure, as a recent replacement did not receive a permit, although everything required was done and done properly. The contractor in this instance handled all the paperwork for the homeowner, so it was not known whether this particular case was entered into the Qualle process or not. This needs to be clarified. There is a portion on the application form for septic. A person replacing a system could come in and check *only* the box for septic on the building application form. It is unclear that this has been done. There is not a need for a separate application form; there is a need for a separate permit. Sharon Buckley said that she would talk to Nanett to be sure this is being handled properly.

Sharon brought up the topic of enforcement of pumping of an ISTS. In Carver County, the County does all the septic. Here in Dakota County, unless the property is in shoreland, the County is not involved in the installation or replacement of systems. However, a resident does receive notice from the County when the triennial pumping is required. Sharon asked what happens if a person ignores the notification. Kenny replied that the County can have someone come to pump the septic and bill the owner. Sharon said that one part of the Comprehensive Plan feedback from the Metropolitan Council was that this issue of enforcement needs to be spelled out in the Comprehensive Plan. Sharon said she would follow up with the County. ISTS 7082 is the statute that applies, Kenny said.

Sharon had also talked to Scott about the demolition permit. The result of that discussion was that, unless it is the demolition of a house in conjunction with a rebuild and thus a zoning issue, this permit should be an over-the-counter permit and can be dealt with by the Building Official as such.

Scott told Sharon that he does not charge to come to Commission or Board meetings, and, further, Scott believes that they, the Building Officials, are underutilized in this regard. He thinks that his attendance at meetings on a quarterly basis would be a good idea. Nancy added that she believes that very thing was discussed before at Scott's hiring.

There were a few outstanding matters that Scott had, but Sharon said that she referred him to the Board as these were not Commission items. Supervisor Jeff Otto was present, so he was informed of this.

d. Permit Application Forms

Ken is still working on these and will report in the future.

e. "Plastic" Buildings

Kenny Miller reported that he was informed by the State that these buildings *can* be permitted if the plans are reviewed by the Building Inspector, and they meet State standards. The wind load is the problem most of the time. "Permanent" vs. "temporary" is a separate matter.

f. Subsurface Sewage Treatment System (SSTS)

It was brought up at the last Board meeting that someone at the Township level should be trained, and that, perhaps, a Commissioner could be the one involved. The Commission discussed this for a while and came to the conclusion that perhaps this is not something for the Commission itself but that someone like Darryl Gilmer (who does second soils verifications for the Township) would be the person involved at the Township level.

f. Rural Collaborative Water Plan Meeting

There was a question of an update. Two Commissioners were intending to attend the meeting on January 21st, but were ultimately unable to do so. It was unclear whether there were Supervisors present at the meeting. Sharon said she can report to the Commission on this following the next Board meeting if it is further discussed then.

1. (Back to) Ordinance Updates

a. Proposed Road Haulage Ordinance

Chair Sharon Buckley started the discussion by stating that, at the last review of the Ordinance, the Commission removed the section about and any reference to commercial and industrial uses as the Township does not permit them. This wording applies to Castle Rock Township, but not to Eureka. There is a meeting on this scheduled for Thursday, February 5th, at Castle Rock Town Hall. Vince Mako said he intended to attend and Kenny Miller said he would possibly as well. When Castle Rock is finished with their version, Sharon stated, Eureka would look at anything remaining that needs to be tailored to this Township.

b. Other Ordinance Updates

The Commission discussed the topic generally as to what is still pending and any other ordinance matters that have arisen during the time this process has been taking place. The Uniform Street Naming and Addressing System (USNAS), payment for plan review even if the project is dropped, berm location and bond amount for Mining Permits, plumbing wording from the Building Official, and definition of commercial agriculture change were some of those items.

A meeting for Ordinance updates will be scheduled for February 17, 18, or 19, depending on the meeting date settled upon for the special meeting that is likely to be requested for the Brosseth application. Buildable lots and clustering language will be further considered first. All Commissioners were asked to thoroughly read the materials that have been distributed so far and to come prepared with any questions.

Sharon Buckley moved to adjourn; Kenny Miller seconded the motion. The meeting was adjourned at 10:43 p.m.

Submitted by,
Nancy Sauber, Recorder