

# **SPECIAL PLANNING COMMISSION MEETING**

## **PUBLIC HEARING**

### **Draft Rural Collaborative Water Resources Management Ordinance**

**March 30, 2009**

**Eureka Town Hall**

Planning Commission Chair Sharon Buckley called the Meeting to order at 7:01 p.m. Planning Commission members present included Sharon Buckley, Vince Mako and Kenny Miller. Clerk/ Treasurer, Nanett Sandstrom, was present to record the minutes.

Audience members included Town Board Members Dan Rogers, Nancy Sauber, Brian Budenski, Jeff Otto and Carrie Jennings. See attached list for citizens present.

Agenda: To conduct a Public Hearing regarding the Draft Rural Collaborative Water Resources Management Ordinance. This is a continuation of a joint public hearing that was held on March 19, 2009 at the Castle Rock Town Hall. It included the Townships of Castle Rock, Empire, Eureka and Hampton and the Cities of Coates and Hampton. That meeting was properly noticed and did have a quorum of Planning Commissioners present: Nancy Sauber, Sharon Buckley and Vince Mako. Nancy Sauber has since taken the office of Town Board Supervisor and is no longer a member of the Planning Commission. There was also a quorum of the current Town Board: Jeff Otto, Nancy Sauber and Carrie Jennings.

Chair Sharon Buckley covered the protocol and procedures for holding a public hearing. The speakers were limited to 7 minutes for the first comment period. There were two comment periods, one before and one after the answer session. Written comments pertaining to this public hearing should be submitted to the Planning Commission by 7:00 p.m. April 6, 2009, its next regular scheduled Planning Commission meeting.

Mark Zabel, VRWJPO- Administrator for (VRWJPO) Vermillion River Watershed Joint Powers Organization, Water Resource Department, Dakota County Western Service Center was present to represent the Draft Ordinance.

The original draft posted for tonight's public hearing of the Water Resources Management Ordinance is dated February 25, 2009. A Final Draft Water Resources Management Ordinance, dated March 27, 2009 was received today and was available for review. No further Ordinance changes will be made as a result of tonight's hearing. If there are specific changes to the Ordinance recommended, they may be appropriate for future Ordinance amendments as outlined in the Ordinance. The agenda that will be before the Eureka Town Board will be whether to adopt this Ordinance. In doing so will allow Eureka Township to obtain permitting authority as outlined in the Ordinance. If Eureka Township does not adopt this Ordinance the VRWJPO will enforce it within the Vermillion River Watershed Area.

At 7:11 p.m. Chair Sharon Buckley opened the floor to public comment.

Terri Petter, 24005 Dodd Blvd and 10132 235th St W., Lakeville

At the last public hearing Dean Johnson said that the people on the east side of the river said that the people on the west side of the Vermillion River are polluting the river. Terri presented a letter from Brad Becker, Dakota County Soil and Water Conservation District (SWCD) that stated she is in compliance. She has worked with SWCD and put in buffer strips. They have rules and regulations. She presented aerial photos of the buffer zones. According to MPCA, these buffer zones are enough that they do not pollute the Vermilion River. The buffer zones in the proposed Ordinance almost quadruple the size of the existing buffers. She does not feel that the persons drafting the Ordinance have the qualifications of the SWCD. They want a buffer zone of 150 feet on each side of the river. They will start the 150 feet where the river meanders. She feels that isn't a good enough definition. The river doesn't meander in August. There is no water in the river. It meanders 30 feet in the spring. They are going to make a guess where it meanders. To get the 150 foot buffer- the river is not a straight river, it meanders, flows, goes into ponds and lakes. The buffer zone will take the entire 40 acres. There is only about a 10 foot buffer zone that could be mowed down to the river. The buffer zones can not be mowed. Currently the buffer zones have to be mowed. The mowing controls thistles, trees and noxious weeds. These contaminate the river. What the JPO wants and what the SWCD currently asks property owners to do clash. Our buffer zones are supposed to be mowed. They are supposed to be kept up. They can't be left wild. The JPO want the buffers to grow wild. Terri feels the JPO is overstepping its boundaries and is not sure they know what they are talking about. The property owner will not be compensated for the 150 feet of buffer zone. There is no appeal process. There has to be an appeal process, something that says that there are unique properties with certain situations.

Gerald Storlie, 11633 245<sup>th</sup> St E., New Market Township

He gave a short history of property owners along the Vermillion River to the west of 245<sup>th</sup> St. about a 1 ¼ mile stretch. There were cattle farmers and pasture along the river. When he was young he swam in the river, caught fish. Now it is grown over, trees falling over into it. The farmers used to pasture it, it was like a park. Now they say not to take care of it, to let it lay, he feels this is bad news. All the crap from the yards ran into it, it didn't seem to bother the fish or him swimming in it. There are 7-8 houses other than the farms.

Carol Cooper, 26437 Galaxie Ave., Farmington

This Ordinance is nuts. There are Federal and Sate Laws for clean water. There has been a Clean Water Act since the 70's. We've greatly improved the water quality in this country and this has not been achieved by taking people's land away. We have a program of permits for construction and industrial activity that require people to go to the MPCA if they are disturbing land over one acre. The MPCA has been administrating this program for a long time, they have a lot of expertise and experience in doing so. Now we have a local Ordinance that the Township is being asked or required to adopt that includes 12 pages of stormwater management covering the exact same issues as the NPDES Permit that is currently being administered by the MPCA. Carol asked how on earth the Township is going to do this. The Township has no staff or experience. The Ordinance envisions the landowner paying all of the costs.

The author of the Ordinance and the plan, Dean Johnson stated that he does not understand any part of the technical aspects of the plan and the Ordinance, yet he is the author. It is her

understanding that when the initial public hearing was held on the plan that none of the Township Officials had read the plan. She wondered if anyone has read it from cover to cover at this point. There is nothing in this Ordinance that would prevent the dumping of raw sewage into the Vermillion River, such as has been taking place. If we are really about clean water, we should address that.

At the public hearing a few weeks ago at Vermillion Township a gentleman asked is the Government going to take my property. No one at the meeting answered the man's question.

The plan that is the bases for this Ordinance states that there is insufficient data to determine the sources of the pollution. If we don't know where the pollution is coming from then how can we possibly hope to improve the situation? Carol asked Mark Zabel at the last hearing if the restrictions in the Ordinance don't work, because they don't address the sources of the problem are you going to roll them back? The answer was no, we would enact more restrictions.

When asked at the last hearing if the Ordinance will affect people's property, they were told it will not affect it unless they want to split your property. Then they were told just don't tell the buyer about the Ordinance if you want to sell your property. That statement is attested admission that it does affect the value of your property, otherwise why would you care if the buyer knew. Bit by bit by bit we are being confronted with more and more and more environmental regulation. Initially the NPDES permits applied if you were disturbing more than 5 acres, now it is more than one acre. In the proposed Ordinance if you disturb less than one acre you need to prepare an Erosion and Sedimentation Control Plan. The plan on which this Ordinance is based does the same thing. First it applies to the Vermillion River and its tributaries, then the wetlands. The next step is the lakes and ponds. Initially it will only apply if you split your property. But there is a paragraph in the plan, depending on water quality results, if we think it is necessary, we are going to impose buffers and mandatory conservation easements even if you are not splitting your land. Through all of this there is a diminishing march of diminishing returns. The closer you get to clean water, the more expensive it gets to clean it. The Ordinance places the cost, the burden and the payment of all of the expense of these additional costs on the landowner even though it is allegedly a public benefit that is trying to be accomplished. Public benefits should be paid for with public funds. There is nothing in the Ordinance or plan on which the Ordinance is based that talk about compensating landowners in any way, shape or form. For that reason it is unconstitutional.

Mark Parranto, 22702 Hamburg Ave., Lakeville

His wife and he own and operate Applewood Orchard on the corner of Hamburg Ave. and 225<sup>th</sup> St. He used to be a Real Estate developer. He has spent hours playing with Ordinances like this over the past 25 years. He is a member of the MAI, Member of the Appraiser Institute, same as a CPA dealing with appraising real estate. He is the guy that you would hire to determine the damages when the Government comes to take your property. This is what the Ordinance intends to do. This is the single largest power land grab by an unelected body that he has ever seen. They spend approximately 2 million dollars a year of our tax money and want to take away our land rights. If this was to eventually pass it would sell the land owners in Eureka Township down the river.

The portion of the creek that crosses his property is called a principal connector, also a trout stream. It is approximately 6" deep and one foot wide. It is also a drainage ditch. It is straight

for approximately ¾ of a mile. It goes from one swamp to another and eventually ends up in the Vermillion River ¾ to 1 mile downstream. It is straight, it's not a trout stream, there aren't any.

This is a poorly drafted Ordinance. On page 2, item G. Best Management Practices. The last line reads: "and other sources as approved by the Vermillion River Joint Powers Organization (VRWJPO)" they are going to change the rules when they feel like it. It says that right here.

Mark could not find in the Ordinance where it says you can continue to farm. He found the following in the definitions under Item HH. Land Disturbing Activity, the last line states: "For purposes of this Ordinance, a land disturbing activity does not include agricultural activities." Mark commented that he has been through definition lawsuits before. Definitions can be thrown out without affecting the rest of the law. This was included to fool the body that farming is going to be allowed. If they keep this up they are going to say that you can't farm after all, you might kill a trout.

If you disturb less than one acre you must submit an Erosion and Sedimentation Control Plan to the Town Board stating what you are going to do. Every single easement that they are going to require is stealing land from the landowners. There is no easement that is obtained by the Government (Northern Natural Gas, MinnCan, roads) except this proposal that they don't pay.

Andre Stouvenel- 6565 255<sup>th</sup> St W. Farmington

Citizens of Eureka, this is what we get for not participating in local politics. They will take our property and tax it. Not all of our Commissioners or Supervisors, but a few have ruined our Township.

Jerry Zimmer- 5654 225<sup>th</sup> St., Farmington

Mr. Zimmer owns 80 acres and has been here a long time. He has heard discontent from everyone. This is going to be a policy decision of the Town Board with recommendations by the Planning Commission who are appointed officials in the Township. The elected officials ran for the position and were duly elected to represent the constituents (residents and property owners of Eureka Township). He has grave reservations that this is being done. He suspects that there are other interests. He personally doesn't approve of that. These representatives are obligated to represent the Township. Not the County Commissioners, not the people in another County, not a bureaucracy established in the County. He stated discontent with the protocol prior to the meeting. Things should be able to be rehashed from previous meetings. In those meetings there were numerous questions asked those were not answered. Here we are going to make decisions.

When was the last water quality test taken? How do we know and why should we take their word for it that we the property owners along the Vermillion River are the cause of the pollution? The water may already be as pure as it is going to get. A hostile take over of our real estate is not necessary.

The Ordinance states the property owners will pay the cost of the delineation. What is the cost of delineation? Are we going to be compensated? How did you arbitrarily arrive at 150' buffer? Who determined that? What are their qualifications? We are being fed bogus and erroneous information.

Donald Pflaum- 5780 225<sup>th</sup> St. W., Farmington

Don feels that the plan incorrectly addresses water quality and water quantity issues. Where is the science behind this regulation? Is the consultant qualified in this field? Who is going to pay for the community engineer? Why is the same consultant being used to work on Comp plans as the Water Plan? What was the competitive process for the person to be employed through this plan? The buffer is to be used to prevent sedimentation, to filter pollutants from the slope in water entering the stream. The correct way to measure buffer widths is to look at slopes, surface roughness and soil types. (These are nationally accepted.) The proposed buffer widths are excessive, wasteful and do not adequately address any of these three criteria. There are diminishing returns for needed buffer widths and many have already been put in place by landowners without any regulation and have worked just fine for generations. One size buffer does not fit all. This plan is completely regulatory. Where are the education and encouragement components? Where are the projects that are supposed to help in mitigating flooding and improve water quality? How can the community be excited about doing their part to improve the watershed when property owners feel that the Government is out to get them and outsiders have more to say than residents? Why are we spending \$30,000 a month at the County to employ staff when there is nothing to show for it except for this document? Why do the property owners along the river have to brunt the regulation when there are documented point source polluters at the headwaters that are being protected? Where is the fairness? If surface runoff is the great evil of the watershed then why isn't more being done to regulate developed areas that already have the impervious surfaces? How will conservation easements stop flooding? How will buffers improve water quality when a blind eye is being turned to documented source pollution? If you look at Empire hydrographs you will see the flow is directly proportional to weather events except for one exception. The base flow of the river has gone up since the Elko/ New Market plant has been dumping affluent into the river. We have been told that the waters are impaired with high phosphates, fecal chloroform and TDML's. It does not take a rocket scientist to see where much of the pollution is coming from. There are likely other sources of pollution in the watershed though there are no incentives in this plan for property owners to take care of the river, just fear and intimidation. Let's stop trying to change the river ecology from a prairie stream to a woodland stream to try and support trout. The only things fished out the river are car parts, garbage bags full of trash, deer carcasses and car batteries. There are native species such as turtles, frogs and other amphibians that need warm water to survive. Native insects in warmer water become food for smaller mammals in turn become food for larger mammals. We are harming the environment by encouraging trees and brush along the river through these regulations. At least the cows kept the prairie stream natural before they were regulated out.

Don thinks that this is a massive taking. If you look at the 7,000 acres on the map that has been distributed and you do the math. He doesn't know what land is worth, if you set a value at \$10,000 per acre, there is \$70 million dollars of a taking here. If you look at \$100,000 per acre, which much development land goes for in developed portions of the County that's 700 million dollars. Why aren't people outraged in this County, probably because a lot of people don't know? The plan takes away the Township zoning authority. The townships are being told to take it or leave it with little input. The townships should have the right and authority to negotiate with the County and the watershed to make the river better. If not we have lost our democracy. If the County is not willing to listen, others will. We need to go to the State, Federal Officials. We have to take a stand.

Jodi Hansen- 26190 Highview Ave., Farmington

Jodi agrees with pretty much what everyone has said. She asked for clarification. If this Ordinance passes for the Vermillion Watershed, it is pretty much a shoe in for the Cannon River Watershed also. Is this true?

Planning Commission Chair Sharon Buckley commented that has been discussion, it's not wording that is in this Ordinance at this time. It may be subject matter that the Town Board might want to take up in the future. At this time North Cannon is managed differently.

Butch Hansen- 26120 Highview Ave., Farmington

How many County jobs is this going to secure? Wetlands, what are you going to do to classify wetlands? Use state standards? Does that mean that if you have a 40 acre parcel with grass waterways, woods that has standing water for a period of time when it rains, and a pond? If you take away all those areas and put buffers around them, that leaves 20 acres of buyable property. If the land is worth \$1,000 an acre today and 20 acres is set aside for buffers the value moves from \$40,000 to \$20,000. Town Board and Planning Commission members campaigned to protect the rights of the citizens of Eureka Township. That hasn't happened. It's time to step up and say enough is enough. Stop it, this is not going to happen in our Township. You need to defend our rights. That is why you were elected and appointed. To protect our rights. Not to figure out a way to regulate us out of existence, but to allow us to achieve our goals. That should be the goal of the people who work for the County also. We left Mother England because we were tired of being regulated. That is why we came here and now we are back in the same spot again. There is so much Government regulation and Government control. Questions haven't been answered. Whose rights are we looking out for? People's rights who live in Minneapolis who want to come out and use our wetlands to walk around and enjoy? They need to buy our land. Conservation easements mean one thing. It gives someone the right to come onto your property without permission. Until we figure out what rights a conservation easement is going to allow, will it allow the DNR to come out and enforce. The DNR put mosquito pellets into his pond and it made his buffalo sick, they are not allowed back on his property. You should have the right to deny access to throw chemicals in your pond.

Who is paying for this? The property owners are going to be paying for the buffer zone. If it doesn't have the vegetation that the governing body thinks is adequate to control sediment they are going to come in. The property owner will be required to pay for and plant what they say needs to be planted. Every time officials start regulating it becomes very expensive, time consuming and it usually doesn't work out.

Where was everyone that is involved in this committee five years ago when there was raw sewage being dumped into the river? When Eureka Township fought by themselves with no help from surrounding communities to clean the Vermillion River up?

It is time for officials in Eureka Township to step back and say no, we are not going to adopt this, it is unconstitutional. This takes away rights.

Lynn Koch- 23787 Dodd Blvd

Lynn agrees with everything said there tonight. When the Government is involved there are always double standards. The landowners have to obey the rules but the Government does not. She owns a cabin on Shield's Lake near Faribault, she has 40 feet of Lakeshore, and she lost 5

feet of lakeshore last spring. She was told she could not restore the lake shore or protect it from further degradation, that she would have to do plantings. The same summer, the same County on the same lake put down 250 feet of riprap to protect their road. They could have put plants like she did. They are not at risk to lose land, but she is. The same summer they put sewer line down her property. It crosses the Vermillion River. 9 months before they paid her for the easement she was ask what her big concern was. It was that she didn't want any trees cut down along the creek. She was told, no problem we have directional boring equipment that will go right under the creek. When they came with the easement they said they are going to cut down every single tree on the creek for 200 feet off the road. Where were you, the JPO? She had to fight them herself. They started condemnation proceedings on her property. She saved half of the trees, but lost half of the trees. So you are going to take 300 ft of property down her 80 acres. Down the line you might say we have the easement let's put in a bike trail, walking trail, let's do what we want with it, because rules only apply to the landowners, not Government authorities. You can't guarantee that won't happen.

Dan Storlie, 24005 Dodd Blvd, Lakeville

Dan asked what Mark Zabel's qualifications are. What he has done, where he went to school, why he is an expert. He has talked to other experts in Dakota County. They told him that water clarity is what you are here for. If you are going to get water clarity the trees need to be cut out, grass buffers need to be put in. That is the only way to clear the water, to get rid of the sediment that is washing in. He is tired of the mud slinging that the west side of Eureka Township is doing the polluting. It is Elko/ New Market discharging effluents. He has put in grass buffer strips. Has anyone asked him what could be done to make the river better or invited him to a meeting to discuss issues? The JPO has been working on this for 2 years and landowners were only informed 2 weeks ago.

Jason Curry, 8725 235<sup>th</sup> St. W.

He agrees with Dan, it is frustrating. It is hard to call it the Vermillion River where it flows through his property. It flows through about a half mile of his property. There is debris, tires, it dries up every fall, the fish all die, and it is polluted with downed trees. It is frustrating. A DNR representative was out about 4 years ago to see if he could clean up the area and to create some jump ponds for the fish to survive in. As landowner we want and try to do the best for our property. You are coming in and trying to put all these restrictions on property owners. It is not helping anyone. He doesn't see the point of it. We are so far down the road from a bike path or walking trail. We are 1 on 40 acres. Why are they stepping in and trying to take our rights away. It not like we have housing developments going up around us.

Dick Wagaman- 25791 Dodd Blvd., Lakeville

He has only 2 acres. A lot of rights are being eroded. This is unconstitutional. It is time for the Board to set up and realize what they have to do. They have to work for their constituents. He urges them to do so. Set up and be counted.

John Storlie- 23449 Dodd Blvd., Lakeville

He is extremely against this. There is too much Government regulation. It is a very emotional thing when land starts getting taken away and you are not compensated for it. The sewer line came through his property, he was compensated for it, but there were things that they had to stand up for. The property owners are getting railroaded. This is not right. He has a list of the water clarity on the Curry farm. He has run this farm and Lynn's for years. Everything is low,

except the fecal, which came from Elko/ New Market. The Phosphates and nitrates are low. We are doing our job as steward of the land. For them to come and take more acres away from us because they want a bigger buffer zone is taking money out of his pocket two ways, by not paying for the land and for the crops that he can not grow on it.

It is time for the Planning Commission and Town Board to stand up and stop this. This is too much. It is too much Governmental agency going on. We are over-governed.

Mark Zabel, Administrator for the VRWJPO was asked to address citizen's questions and concerns. He was hired into the position July 2008. He is from Western Carver County. He grew up on a 125 acre Dairy Farm, they farmed 500 acres. He went to Gustavus Adolphus College and continued his education at the University of Minnesota. He has worked at several consulting firms, for Dakota County SWCD for 6 months and he worked for the Minnesota Department of Agriculture as a hydrologist for 17 ½ years. His degrees are geology major with geography minor.

This Ordinance is the endpoint of a planning process that was begun by the VRWJPO in September 2003. There was public hearing to kick off the planning process to develop a new watershed plan for the new VRWJPO. The old JPO was dissolved when two communities did not sign on. The rules were adopted in March 2007 and have been in place ever since. All Government units are required to develop a local plan of official controls and Ordinance to implement the watershed plans and rules. All townships except Ravenna and the City Vermillion chose to implement the permitting on an interim bases while they developed their Ordinance. The local Ordinance may be more restrictive than the watershed Ordinance but it can not be less restrictive than the watershed Ordinance. The Ordinance before the Township is essentially the same as the watershed rules. The only question before the Township is whether they want to be the permitting authority or if they want the permitting to revert to the Watershed.

For any lot of record, if the existing property is not changing the buffers have no impact. The only time the buffers come into play is when land is subdivided.

Mark read the definition of Best Management Practices in the Ordinance. One of the questions was whether the VRWJPO would change their Best Management Practices if they were found to be ineffective. Yes indeed, if management practices are found to be ineffective they would be changed. It is highly unlikely that buffers would be found to be ineffective, because buffers are a national standard that has been used everywhere.

In regards to the meander belt, the meander belt has to do with the bank full flow. The edge of the stream would be at the bank full edge. You can see the defined channel. Draw a straight line tangent going down both sides, this would be the point the buffer would start to be measured.

In regards to the SWCD and the JPO, they work extremely close together as partners on all kinds of activities.

In regards to erosion and sediment control plans, if less than 1 acre is being disturbed the Ordinance would require that a Sediment Erosion Control Plan be developed. For disturbances over 1 acre in size a Stormwater Pollution Protection Plan (SWPPP) would need to be developed.

Developments over 40 acres in size would be reviewed directly by the JPO for a Land Alteration Plan.

In regards to water quality sampling, the JPO has 8 stations on the Vermillion River. The water samples taken are in the number of 100's of samples. The reports are on the website. Summaries are also provided. This information is available to everyone. The monitoring process is carried out annually. There is a monitoring site on the Curry property at 235<sup>th</sup> St. and Highview Ave.

In regards to buffer widths as to vegetation, soils and slope. Buffers set to these criteria would be completely variable one point to another on the landscape. That is not a practical approach. The buffers set went through the public process and were agreed upon. These are the buffers we have at this point. They are not going to change unless done through an official amendment process, which is another open and public process. The amendment process is a formal process the JPO uses to make changes to a rule. It has several criteria by State law. It could take up to 1 ½ years to complete. To propose an amendment, a suggested amendment would be sent to the JPO, in their next amendment session they would include the suggestion. A variance is an individual permitting issue. It would be evaluated on an individual permit basis. If the Township is the permitting authority the variance request would go through the Township, if the JPO is the permitting authority it would go through the JPO. Mark read from the proposed Ordinance: Section 11. Appeals and Variances. There is an appeal and variance process, it is in the hands of the Township. It provides for review and comment from the JPO. The Township makes the final decision.

Kenny Miller asked if the buffer requirements could be appealed or modified or are buffers buffers?

Mark Zabel explained that buffers could be changed under the same process as the other parts of the rules. The request would need to put into the JPO.

Kenny Miller commented that we are pretty much focused on the floodplains of the Vermillion River and tributaries. The scope and the authority of this Ordinance speak to the Vermillion River Watershed. Whether the property is in the floodplains or not you will have control over land uses as guides of the Watershed. Is this proper?

Mark Zabel explained that the 1 acre or less Erosion and Sediment Control Plan come in effect in any development within the watershed, it is not necessarily within shoreland or flood plain or buffer areas, it is anywhere.

The question before the governing body is whether they want to retain permitting authority at the Township level, by adopting the Ordinance or that they want it to revert to the VRWJPO.

Kenny Miller asked if the Township has the option of modifying the plan.

Mark Zabel explained that the Ordinance has to at least implement the rules. It can be stricter, but it can not be less strict than the rules. The Ordinance is the same as the rules. It is not stricter than the rules.

Vince Mako asked for clarification that the rules are currently in place. He asked what Governmental organization adopted these.

Mark Zabel explained that these are the VRWJPO rules. The rules implement the plan. The plan is driven from State Statute. The State Statute that provides for comprehensive management of water within the Seven County Metropolitan Area. From that a plan is developed. The plan is on a watershed basis, so that waters within the watershed are managed throughout the entire communities. Subsequent to that plan there are local plans. The local plan must be compliant with the watershed plan, so conflicts do not occur through the communities.

Vince Mako asked how this plan compares to other plans in surrounding communities.

Mark Zabel commented that felt that they are very similar. Some are more restrictive and some are less restrictive, such as the North Cannon.

In regards to compensation, no compensation, this is not part of the Ordinance.

Mark Zabel commented that he could for see something like FNAP Farm Land Natural Area Program, where applicable. When lands are being subdivided there are often other easements that are taken for roadways and parkland, so this is not an unusual situation for land that is being developed.

Sharon Buckley asked for clarification of a subdivision. What language is used in the Ordinance?

Mark Zabel explained that any lot split is the same as a subdivision. There are listed exceptions, such as, as long as it qualifies for green acres or Ag Preserve. There are other exceptions that are listed.

The issue on dumping raw sewage into the river, the JPO would be calling the MPCA.

The right to farm issue, the Ordinance is silent on the right to farm, because there is a right to farm. What the Ordinance doesn't say is that if you are farming land as it exists today and you continue to do that as your regular operation. There is nothing in the Ordinance that changes that. The only time that something comes into play is if you subdivide your land or develop something on your property.

If a large piece of property is split so that one piece for tax purposes and one piece is less than what would qualify for Green Acres or Ag Preserve, then the smaller piece of property would require buffers, even if the property is retained by the same owner.

Vince Mako commented that Eureka Township's density is 1 on 40. There was some talk at the Castle Rock Meeting that the wording might be changed to allow for small splits. The language was going to be presented to the JPO. Was the language presented to the JPO?

Mark Zabel replied that the language was presented to the JPO, it was denied. The reason was it would be a relaxation of what is currently in their rules. It would be less restrictive than their rules. It could not be granted in the form of this Ordinance. It could be explored as an amendment to the rules.

Sharon Buckley asked if a parcel is in two watersheds, which Ordinance would apply? Is this stated in the Ordinance?

Mark Zabel commented it would be up to the Township to determine this. Normally it would be the more restrictive of the two Ordinances. Mark does not know if the Ordinance speaks to this directly.

Sharon Buckley asked about the staffing structure of the JPO. Does the JPO have adequate staff or will they hire outside engineers?

Mark Zabel explained that the JPO staff has one full time (Mark Zabel) and 2 part time staff (Watershed Specialist and an Administrative Specialist). They have access to a County Engineer and a County Attorney as well as other County Staff. When County Staff is used their time is billed directly to the JPO. Engineering Consultants are used on a project basis. A community engineer is identified in the Ordinance, their billable hours would probably be higher than using in-house consultants.

Calvin Pflaum asked who the VRWPO staff members are and what their budget is.

Mark Zabel replied that there are two County Commissioners from Dakota County: Joe Harris, Chair and Paul Krauss, Secretary/ Treasurer and one Scott County Commissioner: Tom Wolf. The budget is 1.1 million dollars annually.

A citizen asked when you talk about the soil type, the gradation how it varies along the river. When you came up with the 150 feet, did you actually look at the river and take an average of the river or did you take the worst case scenario? How did you come up with the 150 feet or did they pull it out of a hat? Was there any science involved in the 150 feet and what is it?

Mark Zabel commented that it was before his time. To the best of his knowledge it was a combination of the science as well as professional judgment. He did not have the answer to the process used. He could try and find out this information.

Butch Hansen asked for clarification on the variance process. If he was going to come in and apply for a variance he would and apply at a township level. It would be the Township's decision to issue a variance. Then what do we need the JPO for, if the Township is going to govern whether or not he gets a variance. The JPO won't be the governing body that decides whether or not he gets the variance. If the JPO is in control of what the Township is going to do, by allowing them to do certain things, the JPO standard or we can set a standard of our own.

Mark Zabel replied that the JPO is the oversight body in the same way that the JPO answers to the Board of Water and Soil Resources. The JPO provides oversight in regards to the variance. When the variance application comes in the JPO would comment to the Township as to the parameters of the variance. The Township would still have the decision making authority.

Butch Hansen asked for further clarification. If the township decides he is entitled to a variance and the JPO doesn't like the fact that the township is going to give him a variance, who is going to decide if he gets the variance? Will the JPO say no, because it doesn't meet our standards?

Mark Zabel commented that the JPO would likely override a variance request if it is too severe. It is still the authority of the Township. These questions are outside of his expertise. He would go to the County Attorney and ask counsel on that.

Don Pflaum asked where the idea of Conservation Easements came from. It is not a mandatory State Statute. There are no other watersheds that he is aware of that has such a program. This has never been done around here and is making a lot of people mad. Whose idea was this?

Mark Zabel replied that Conservation easements are a tool that is used in other areas, not just here. They are used in other states such as Maryland and Massachusetts.

Kenny Miller commented that there are wetland waterway classifications, buffer dimensions and standards. It seems that the conservation corridor is arbitrarily thrown out there to get the width. Water quality calls for 20-30 foot width, 150 widths for conservation. What are the premises for this? Does the 150 feet just constitute a reason for land taking or is it protecting the water quality? There are different classifications of constant flowage of the river and intermittent flowage as determined by the DNR. Various Government bodies attach differences in flowage to a lot of areas in Eureka Township. Do they come into consideration or is it just because it is Vermillion River connected that it is 150 feet? There is probably 1/3 of the Vermillion River bed that flows through Eureka Township that is dry a good percentage of the year. Are you still looking at a 150 foot buffer of the meander boundary of a river that is dry part of the year?

Mark Zabel commented that there are different classifications throughout the watershed, from 150 feet, 100 feet, 50 feet, and 30 feet. The 30 foot buffer is upper watershed areas that are drainage of the uplands. The 150 foot corridor is the river corridor where near river activities are going to be influential on the river water itself. There are differences between the different classifications.

Terri Petter commented that her property is located on part of the river that dries up in August and September, the only time that they get water in August in September, when it hasn't rained for two weeks is when they release water from the Elko/ New Market plant or are dewatering when they are installing the line. In July, August, September the river is dry.

Mark Zabel commented that the Elko/ New Market plant is being diverted to the Empire plant, so if that is the case that discharge will no longer be a part of that.

Bev Topp commented on Conservation easements, they don't go into effect until people split their property. Conservation easements like the Farmland and Natural Area Projects, they buy conservation easements from the CRWP that goes with the land. She doesn't know of any conservation easements that are free unless the landowner donates them. Did the JPO consider putting in a clause for when they force the landowner to turn over the land over for easements for paying them for it? It sounds like they are setting a new precedence forcing people to give easements and not paying for them. Is that something that our township could join forces with other townships to ask for a provision?

Mark Zabel commented that in this Ordinance there is no provision, but that doesn't prevent us from developing a new program that would do that. Any time that you have a request that you would like to see put into the amendment process, you can send it into the JPO, it will be considered. When they go into an amendment process all of those would go into together.

Jerry Zimmer asked what the qualifications are of the three board members that are on the JPO, who make the decisions on the variances.

Mark Zabel answered that they are elected officials.

Mark Zabel commented that he is not surprised that the river is dry in the headwaters area, because much of the river is in sandy outwash and so the majority flow in the river is from groundwater.

Jody Hansen asked about public opinion on the buffers. What public was asked? Who was the group that made the decision on the buffers? She asked the names of the persons in the Watershed Planning Commission. Are there any people from our local area, any landowners? When were the public hearings? She has a hard time comprehending that the general public said 150 feet, go for it.

Mark Zabel commented that there have been several public hearings. The public hearings are published in the local papers. There are two advisory groups, the technical advisory group and the Watershed Planning Commission. The technical advisory group is made up of Consulting Engineers, City Staff and other technical experts. The Watershed Planning Commission is made up of local elected and appointed officials and citizens. The names of the members are listed on the website. The public hearing would have been published in the local newspaper, same as other public hearings are required to be published.

A citizen asked who was supposed to contact us on this. If you look at the portion of river they have, it affects 40 acres of property. Shouldn't the Eureka Town Board or Planning Commission or Dakota County or the State say, hey these people should probably be informed what is going on. Lynn Cook has over 80 acres, it runs through shouldn't she be informed? We weren't informed by anyone that has to do with this.

The floor was opened for a second comment session. Chair Sharon Buckley asked that comments be directed specifically to the issue at hand, which is recommending to the Board whether to adopt this Ordinance for Eureka Township to implement ourselves or the VRWJPO.

Terri Petter commented this isn't about water quality, it is about property rights. We are obviously getting our property taken away. This is going to stop people from building wetlands, rebuilding wetlands and building ponds, because they would just get more land taken away. The JPO is setting themselves up for lawsuits. They have sued the County and Apple Valley before. If the Township does adopt this Ordinance they are going to open themselves up for huge lawsuits. People are going to lose 40 acres, 20 acres. They are going to go back after that money. Mark had commented that two communities did not enforce the old JPO Ordinance, maybe Eureka Township should be the first community that doesn't go with the new JPO Ordinance. Empire is questioning adoption. Maybe Eureka should stand up for peoples' rights. Mark said it only takes affect if land is subdivided, where does it say that down the road that they

are not going to implement this if you are not subdividing? He also said if both parcels qualify for Green Acres or Ag. Preserve. Usually if you split off 3 acres both parcels are not eligible for Ag. Preserve or Green Acres. The standards are changing all the time. She knows at least 5 farmers that are being taken off Ag. Preserve or Green Acres because they are tightening down on Green Acres and Ag. Preserve because the State wants their tax money. Pretty soon there won't be anyone on Green Acres or Ag. Preserve. Mark said that the 150 foot buffers are a practical approach and they had a professional opinion. The letter that Terri gave the Planning Commission says that she is in compliance with all the MPCA Ordinances with her 30 foot buffers. If the MPCA already says that the 30 foot buffer is ok, then why does he say other professional opinions the MPCA probably knows what they are talking about. Her 30 foot buffers are fine. The JPO says for practical purposes and practical approach that they are going to put 150 foot buffers all the way. She doesn't get where that is coming from. Mark also said professional judgment. To her, professional is the MPCA and SWCD. If the Township lets a Board who's not elected like the JPO start making laws and rules we are opening ourselves up for a big can of worms. Everybody is going to start to run us over.

Dan Storlie feels that it is all a bunch of B.S. They do not know what they are doing or where they are going or anything, it's all a guessing game what is going on here. If the Township wants to stand behind a guessing game it is a joke. They have a 30 foot buffer and that is for a feedlot. It is not even farm ground or anything else. If you stand behind this he will come after every last one of you. He has grown up in this Township his whole entire life. His family farms a Century Farm. He is thinking about getting out of here. You guys are nuts.

Butch Hansen commented that he is tired of the double talk. If you come in for a variance, the local Government has the right to deny or approve the variance. The JPO is going to rule whether or not you are going to have the variance. They will tell the Township that he or she cannot have the variance. Everybody keeps concentrating on the Vermillion River. It's the Vermillion River Watershed. Which means every chunk of wetland in the Township is going to be governed by the JPO. It was asked who's on the staff, we know the three commissioners, we want to know who the committee members are that helped write the Ordinance, the people that pushed to enforce this and shove this thing down our throat. If our Township has the authority to grant a variance, then the JPO doesn't have any authority. You can't have it both ways. Either our Township is going to have authority or it's not going to have authority. The double talk is the JPO is going to allow the Township to issue permits and do the enforcement under their instruction on how they are going to do it. It has been said that the Ordinance can be more restrictive, not less, so if the Township chooses to stiffen the Ordinance and make it more restrictive the JPO will be thrilled to death. If the Township says it is not going to enforce the Ordinance the JPO is going to step in and enforce the Ordinance. It will be the Town Board members that look bad. The JPO is going to use the Town Board to enforce the rules. This has been done to control growth in our community. It was done in the 90's. We need to look at the people on these committees that helped develop this Ordinance. It was done to restrict the growth of our community. Our neighboring community to the north has industry on the Vermillion River. This law was in effect back in 91-92. There are enlargements of car dealerships that sit on the Vermillion River that happened after that. He finds it hard to believe that all of a sudden the Vermillion River has become such a valuable resource. He fought with his own tax dollars to get the sewage out of the Vermillion River.

Carol Cooper commented that we keep hearing that there are two questions, whether we want to continue permitting or not. There is another question, why doesn't the JPO want to support the bill Pat Pariseu wants to present to the legislature in St. Paul, to give a year's extension, this would allow some type of negotiation in order to arrive at something that makes sense for people instead of making everyone crazy. Mr. Zabel stated the plan is driven by State Statute, that's true in so far as Water management Plans are required. It's not true as to the content of the plan is not driven by State Statute. The State Statute does not talk about conservation easements or buffers. As far as Variances the State Statutes give the JPO or Water Management Organization the authority to grant variances or to instruct the local Government unit to whether or not a variance should be granted. If the JPO really cared about water quality we would have seen something very different than what we have seen. Instead of meetings taking place without anyone knowing about them, we would have seen educational outreach, voluntary compliance, instead of a condescending attitude that we know what is right, we know what is best and you don't. We would have seen affirmative efforts to solicit the opinion of landowners in this process. She knows from experience that she can get people to meetings like this and her budget is nowhere near a million dollars. These people here are all part of the environment, they are the engine that makes things work. They get up every morning go to work. They pay their taxes so Government officials can get paid and get their pensions. When they are hurt it affects the rest of us. It affects the environment. Why are the most polluted parts of the world places where people are in a survival mode where they don't have the luxury of passing or enforcing clean water laws? When you pass laws without regard to the affect on people you will have intended consequences you will have no more voluntary pond making, no more voluntary lets take care of the environment, because all of a sudden you are putting burdens on the economics of the environment and people will be struggling monetarily like they are in this economy. This plan talks about the stress levels of Brown Trout. They don't mention the stress levels of the people right here. Carol's opinion is to extend the deadline and try to come up with a plan that is workable and does care about the environment as well as the people that take care of it.

Mark Parranto said that he was going to add some things about what it was going to cost until he heard Mr. Zabel tell us that this has never been done in Minnesota. They may have done it in Maryland, maybe even California, but in Minnesota this would be considered an exaction. Exactions are not allowed under State Law, so he thinks that this could be changed in court, based on what he said without having researched the Ordinance. An exaction essentially is demanding that a landowner pay in excess of their benefit for public good. If you have to give them a 150 foot easement out of your property that is far more than you personally with your land would need in order to do something. An analysis would be that you have to put the fire department building on the corner of your property and pay to build the fire department building in order to do something with the rest of your property. He thinks the Town Board needs to represent all of us, to stand and fight. It is the only way it is ever going to stop. Basically what we have heard is about a fiat when he reads in the local papers looking for Ordinances that are being proposed that might affect him all of them, including the school district things. He has not seen any, not one or three or four public hearings. This is the only way it is going to stop. To start with the Town Board, because when you get through the Planning Commission and Township Governments the rest of them are full of bureaucrats. They don't do anything except what the rulebook says and they don't care. He asked that the Planning Commission recommend to the Town Board that they fight now because the treats are useless.

Jerry Zimmer commented that this is going to cloud the title to a guy that owns a little more than a small piece of acreage. He's got all these legal descriptions with permanent lifetime easements that didn't inflate the value of the property but just killed it. We have heard all the good, but not any of the dark side of it. He has over a half mile of the rotten river. Pat Pariseu has written an amendment to this, it will be attached to a bill. The decision should be tabled until that time. You have to remember changes can be made. In the 70's the DNR inventoried the river. It was a policy decision of the Town Board to adopt it. 40 years later we have 300 feet on each side of the river, now we have a possible overlap of another 150 feet. That's too much Government. He bought and paid for his land, it has a real esthetic value. They have no legal right to take it away.

Donald Pflaum commented that they have a lot of acreage along the Vermillion River. This is personal. They have a lot of generations' worth of hard work, buying these properties, keeping the farm going. They take a lot of pride in their property. When somebody comes in and says you do this, these are the rules, take it or leave it, it doesn't sit well. The solution to this is so very simple. All you have to do is take out the clauses in this document on Conservation Easements, don't make them mandatory. If people want to put their property into Conservation Easements voluntarily, let them do it. Don't do anything mandatory. This is why people are so mad. Why haven't elected officials said no, they are not going to change this? The setbacks are a problem, it is his understanding that buffers are needed for certain purposes, but when the State says you really need 50 feet you don't need 150 feet and there are places along the river that they have dedicated more. That makes him think a little more, what is going on here? Five years ago he submitted testimony, public comment when they were developing these rules and Ordinances. He thought he was going to get real thoughtful response back explaining what the buffers were going to do and rationale for the splittage. What he got back was "see item one, Lakeville response." When he looked at Lakeville's issues, it had nothing to do with his issues. It didn't answer his question, so he did some investigation. He found they were looking at 50 foot buffers. Certain advocates got involved that support trout and recreational activities and lobbied to get the numbers increased. People from Minneapolis and St. Paul, not even from Dakota County testifying to get the buffer standards increased. We don't need an expanded FNAP program. We have spent a lot of money protecting properties. If this is going to be an excuse to expand the program, he won't support it. He doesn't want any tax payer's dollars going into these conservation easements especially if they are mandatory. If they are voluntary that's one thing. This mandatory business has to stop. It's a violation of Constitutional Rights. He doesn't want the Government's money to try and take care of something we are already doing. He doesn't want to push this through court, because courts are going to say you are right, you are going to get an x amount of dollars and judge is going to rule that because you take public money that people can walk on your property and do some things on your property. He doesn't trust anybody anymore. That is pretty sad, why can't he trust anybody?

Jody Hansen commented there has to be some sort of better way of notification for people for these public hearing that have happened. She is one who looks at the paper for public notices, one who drives and checks the posting board at the Town Hall to see what is going on that she feels is important to be a part of. She doesn't know when the Board found out about this, if it was back in 2003 when the input started. Maybe it could be put in the newsletter. It should include an explanation on what is going on to get the emotions rolling if that is what it takes. It's the peoples input that needs to be heard for anything that happens in the Township that affects us. An e-mail list could be put together. She asked for notification of the Cannon Valley

Watershed meetings. She agrees waiting for Senator Pat Pariseu to get the postponement at a State level for this.

Sharon Buckley commented that there is an e-mail list that the clerk sends notices out to.

John Storlie questioned, we have Dakota County Soils and Water. Why do we need another form of Government with this one? The SWCD people have been educated with this, why do we need another Governmental agency? He agrees that we need to wait for the bill to be passed. Lets table this and work it out a little bit. There have been a lot of things brought up that just aren't clear.

Dan Storlie commented that this Ordinance appears to him like a blind man going through the woods, bouncing from one tree to another trying to decide which way to go. When you see the Government come and want take your land, the last time when people tried this they were arrested. Do you think this will happen this time, he doubts it. He encourages the Board to fight this and not let this happen.

Mark Hansen- 26190 Highview Ave., Farmington suggested that they take a vote, a raise of hands on who would like to see this postponed until this gets put in front of the Governor. We have time to work this stuff out and to get some kind of compromise.

All or nearly all audience members raised their hands in favor of postponement.

Chair Sharon Buckley encouraged citizens to send written comments to if they do not feel that they have had the opportunity to express all their comments.

Chair Sharon Buckley called three times for additional public comments, hearing none the public comment portion of the meeting was closed at 9:45 p.m.

Any further discussion of the Planning Commission will continue at the regular-scheduled Planning Commission Meeting on April 6, 2009.

A motion by Vince Mako: To adjourn. Motion seconded by Kenny Miller.

Meeting adjourned at 9:46 p.m.