

Eureka Township

Dakota County

State of Minnesota

Special Town Board Meeting
June 18, 2009

Town Board members present were Jeff Otto, Dan Rogers, Brian Budenski and Nancy Sauber. Clerk/Treasurer Nanett Sandstrom was present to record the minutes. Township Attorneys Trevor Oliver and Patrick Kelly were also present

Chair Jeff Otto called the Special Meeting of the Eureka Town Board to order at 1:05 pm.

The meeting opened with the Pledge of Allegiance.

Agenda: To go into a closed session with the purpose of having confidential discussion with Township Attorneys Trevor Oliver and Patrick Kelly regarding the Country Stone Lawsuit.

A motion by Supervisor Jeff Otto: To move into a closed meeting. Motion seconded by Supervisor Nancy Sauber. Motion carried by unanimous vote.

At 1:06 pm. the Town Board moved into closed session.

At 2:00 pm. the Town Board moved back into session as an open meeting.

There was a brief recess taken.

At 2:09 pm. the Special Meeting reconvened.

Township Attorney Patrick Kelly presented a summary of the closed meeting session. At the closed session, the Town Board and the Township Attorneys discussed pending litigation: Town of Eureka, Plaintiff, v. Friedges Landscaping, Inc., Friedges Holding Company, Inc., and County Stone and Soil of Minnesota, Inc. The Board and the Attorneys discussed the status of the hearing that occurred on June 12, 2009, in the District Court of the County of Dakota. The Attorneys advised the Board with respect to Judge Lynch's direction concerning the ability to get together with the defendants to try to discuss certain items that are subject to the summons and complaint and notice of motion for a preliminary injunction. They also discussed that the judge had set a specific trial date to hear this matter. It was also discussed that during the interim, there were certain requirements that Country Stone was under, specifically involving truck traffic and set hours of operation. The closed meeting also included questions and answers and presented legal counsel with respect to the areas of concern that are reflected in the summons and complaint of the Township.

Chair Jeff Otto made an opening statement:

The purpose of this meeting is to discuss issues and requirements for the possibility of allowing Country Stone to continue to operate a facility in Eureka Township.

I note and remind those present that similar discussions were willingly initiated in September 2008 in the mutual interest of both parties to reach a compromise to avoid the time and expense of litigation. Supervisor Brian Budenski and I were designated by the Board to represent the Township. Mr. Ron Bjustrom represented Country Stone.

These discussions resulted in a letter signed by Mr. Bjustrom dated December 8, 2008, that I characterized then and now as a preliminary show of good faith to continue to work toward resolution of additional issues. My letter of March 20, 2009, went unanswered. My follow-up letter of April 24, 2009, also went unanswered, at which point it was apparent to us that Mr. Bjustrom was breaking off negotiations. The Board then decided it had no other choice but to seek a legal solution to enforce its ordinances.

Proceeding with this discussion at this time is doing no more than exploring this approach in more detail and is not to be construed as conceding any aspect of the positions documented and now on file with the Court. To the extent that this may be thought of as a resumption of the previous negotiation, it should be noted that this meeting was scheduled at the encouragement of the Court.

As far as how we might approach this situation, we will look to our expansion permit process and current Ordinances as guidance, but we are not committing at this point as to that being the precise mechanism by which we would go forward if we can reach an agreement on the issues.

It is our intent and preference to not delve into legal arguments in this venue here today as this is not a courtroom nor are any members of this Board legal professionals. The focus is to be on the practical aspects of the situation as they affect the interests of the Township and its residents. Our purpose also includes identifying some of the other involved agencies and governance that have jurisdiction over aspects of this operation in addition to Eureka Township, and under which the Township must also abide.

Response and discussion

Jeff turned the meeting over to Country Stone's Attorney to give a response. Jeff noted Defendants had received a letter from Mr. Oliver on the Township's behalf, indicating the core positions and issues that need to be addressed. Jeff also noted that the Township had not yet received a formal response, so he invited a response at this time.

Mr. Duffy, Counsel for Country Stone, made a brief statement. They were present at the meeting to discuss ways to resolve the situation with both parties getting some benefit out of an ongoing relationship. Mr. Duffy suggested following the items from Mr. Oliver's letter of June 15, 2009, to Chris Penwell and Melanie Triplett of his office as a guide to the discussion. *See attached letter to Christopher Penwell and Melanie Triplett of Siegel Brill Gruepner Duffy & Foster, P.A. dated June 15, 2009, from Trevor Oliver of Kelly & Lemmons, P.A.*

Hours of operation: Mr. Duffy commented that they are willing to talk about hours of operation. He asked if the Township is looking at the operation to stay at the April to December timeframe. His client would like to be able to operate year-round. If Mr. Bjustrom could operate year-round, what hours of operation would the Township want?

Jeff Otto stated that the months of the year was less the issue than the hours. There may be some flexibility regarding the months of the year. The Town Board looked at hours of operation for mining. Mining is of a similar nature in that it has outside activity, stockpiles, etc. The current restrictions for mining operating hours are 7:00 a.m. to 5:30 p.m., Monday through Friday.

Mr. Duffy asked what Bachman's hours of operation are. That information was not known. Jeff Otto stated that the reason for the 5:30 p.m. cut-off of operation for mining is to avoid the noise impact for the dinner hour when people are getting back home and wish to have a peaceful dinner. That is why the cut-off is 5:30 p.m. instead of 7:00 p.m.

Mr. Duffy said that Country Stone would like to be treated the same as Bachman's and the other landscaping operations in Eureka Township. He said that they would like to know what Bachman's hours are, so they could get some sort of idea if they (Country Stone) are the only one in the landscaping-type business that would be subject to shorter hours. They are willing to talk about reducing their hours, but he would want some idea of what the landscaping operations are doing in terms of their hours of operation. It was determined that the two businesses that Mr. Duffy was interested in were Bachman's and Cross Nurseries.

Truck Traffic: Mr. Duffy referred to Mr. Oliver's suggestion to move storage and distribution off-site so as to reduce truck traffic. Mr. Duffy stated that to move those uses off-site would not reduce truck traffic. The trucks would still be hauling product and, whether it is palletted mulch or bulk mulch, it would still require the same number of trucks. They are sensitive to the truck traffic issue. They suggested upgrading the road to their business, so that it is not dirt. It would reduce the amount of dust to their entry.

Jeff Otto clarified that Mr. Duffy was speaking about actually paving Highview to the second, southern driveway.

Mr. Bjustrom commented that they would like to explore what that paving may cost. He said that they would like to set money aside for future paving, and, maybe in two or three years, they would have enough money. They would ask for help from the Township to pay for half of the paving costs. Country Stone could at least put down calcium chloride on the road. Long-term they would like to have the road paved. His two biggest challenges at all his facilities are trying to eliminate dust and controlling where water goes. They haven't decided what the budget is, but this year they are going to pave some of their loading area where the truck traffic is the heaviest in the facility. They are willing to budget that, but would like to figure out what paving the road would cost and start setting money aside.

Mr. Duffy stated that they have installed a sign on the property that tells the drivers not to turn right onto Highview when they exit. They are to turn left and go directly into Lakeville. He stated that they have talked about getting a letter out to the suppliers and other trucking users that they are not to use any road except Highview. Mr. Duffy stated that if a truck does not turn left coming out of Country Stone and go immediately into Lakeville, what they would really like is for someone to get the license plate number and call him. Mr. Duffy gave his cell phone number. Mr. Bjustrom said he could also be called.

Supervisor Budenski described problems with semi trucks loaded with mulch using Highview to the south of 225th St. W. When stopped, the reason one trucker gave for going that way was the fact that the I-35 bridge is out at County Road 70.

Mr. Bjustrom asked that he be contacted if trucks are using Highview Ave. south of 225th St. W. He was unsure of when the sign went up, but stated that since February truckers have been given a sheet of paper telling them which way to exit. Mr. Duffy said the sign was up when he was at the site a month ago. Mr. Bjustrom said that his own trucks know they cannot go south. They would have to call the trucker's broker or the trucking company and say that there were problems and that if it happened again, the trucker would not be allowed to truck out of the site any longer. Ron said he can control his own people, but he cannot control the others. He said he would need names to do something about it.

Mr. Oliver asked what the timelines were for the paving project. Ron replied that, within the site, they would do some this summer, where the main drive comes in to the building. Then each year they would keep adding to it where the trucks would be.

Screening and Landscaping: Mr. Duffy proposed rather than raising the berm, putting up a wooden fence 8 to 10 feet high on top of the berm. They would then complete the berm around the corner.

Ron said they will check on adding trees to the berm instead of a fence. Because of the wind load, a fence can be only so high. They were going to check what kind of trees they might put in on the berm and get to a taller height than a fence. Eight-foot evergreen trees would probably be the maximum height that they would plant.

Supervisor Otto commented that the Township has had some recent experience looking at something similar-berm vs. trees or some combination of the two. Because of the drainage, if the berm is more than about four feet high, if it does not have a flat top to it too, the trees will not survive. A foot-four berm with trees on top of it to add height might be a possibility.

Jeff said that where the Township would want to get to is a site plan to work out the details and just how much of the property is involved in this use. The Township would also like to see a reduction in the amount of land used, back to levels that are comparable to what was used in 2005.

Jeff said that the site plan would show what Country Stone is proposing for which berms at which locations so that the Board can understand and consider what the visual impact and what the benefit would be. The Board would not want all berms to be the same necessarily. It would depend on what the situation is. The Board needs something more specific to look at and be sure that it is clear.

Mr. Duffy clarified that the Board wanted a site plan and then asked what it wants on the site plan.

Jeff Otto replied that part of the other agencies' involvement will be dealing with issues such as stormwater drainage. There may be a requirement by the Vermillion River Watershed Joint Powers Organization, for example, to have a Stormwater Pollution Prevention Plan (SWPPP) be produced for the site.

Mr. Duffy stated that Country Stone has a National Pollutant Discharge Elimination System (NPDES) permit from the Minnesota Pollution Control Agency (MPCA). He said that as far as he is concerned, as far as he knows, that is all that can be required on that site. Country Stone must retain all their water on the property. That is why the pond is there

Mr. Oliver asked about the silt fence on the north side of the property; is the plastic the end-state, or is there something more permanent to be done over the course of time? Mr. Duffy said he did not know the answer, but he could find out. Mr. Oliver said that is the kind of thing the Town needs to know. Ron Bjustrom said the fence was there because of the Soil and Water Conservation District (SWCD). Trevor said that he could understand the County recommending the plastic silt fence as an immediate step to prevent erosion, but usually, within the permitting process, they want a design for a more permanent solution as opposed to just placing plastic fencing. Mr. Oliver said that he would assume that has been addressed and that is the type of thing the Town would like to know. Jeff commented that he would look to the Town Engineer to identify specifics about what would be appropriate. Trevor said that there may be some questions about traffic routing. Trevor asked for a landscape plan and a traffic plan. Jeff said that the landscape plan should cover the drainage issues. Trevor said that any alterations shown in their current water plan should be included. Technical documentation goes into the plan. The MPCA would approve the permit and plan; the Town wants to be informed. Jeff said that if Country Stone would share with the Township any documentation that it had already provided to the MPCA, it would be helpful. The Township asked for a copy of the NPDES permit and the SWPPP. Mr. Duffy said that he would get copies and send them to the Township.

Trevor said that the parking areas and the staging or phasing of the paving on-site should be shown. One of the issues is the back-up noise. At one time it was said that the trucks would come through the building. At another time, it was said that there would be a circular path so that there would be no large trucks backing up. That would be one of the ideas behind getting a traffic plan. Another part would be to get an idea how concrete or asphalt is going to go onto the site to deal with dust.

Nancy Sauber and Jeff Otto agreed that the addition of impervious surface and how it would affect run-off should be addressed as well. The SWPPP is triggered by cumulative acreage; as additional paving is done, this could change that equation. It may require revisiting the SWPPP process. Mr. Duffy said that there is no question that if paving is done, the storage capacity of the pond must be increased. Mr. Duffy said that they would look at that issue.

There was a brief discussion of the berm/tree combination that was at one time considered as part of an earlier application. It was asked whether an actual design had been submitted before the alternate berming plan which involved berms both at the road and right at the mining site was agreed upon. That can be checked.

Mr. Duffy summarized that there are three plans being asked for: a site plan, a traffic plan, and a landscaping plan. Mr. Oliver repeated that the NPDES and SWPPP are also being asked for.

Sanitary facilities for truck drivers were discussed. Dan Rogers said that it has been reported at Town meetings that truck drivers have been seen relieving themselves along the side of the road. Ron Bjustrom commented that restroom facilities are available inside the building and perhaps it is happening after hours. Jeff said that it is true that there are bathroom facilities, but added that when there is a convoy of two or three trucks, the second and third trucks park on Highview and while they are there, they use the ditch to relieve themselves. Another serious aspect of that is the parking of trucks along Highview, which is a hazard. The sightline coming over the hill is poor. The road is not wide enough for safe passing of the trucks. It has even been seen where the trucks park on the wrong side of the road. Trucks should not be parked on Highview Ave. That is a key part of the traffic plan. The Board wants to see evidence that there is enough parking reserve on the site to handle these convoys.

Nancy Sauber asked Mr. Bjustrom what he meant by “after hours.” He replied it would be when they were closed. Nancy said that a Country Stone representative stated at the June 12th meeting that they operate two twelve-hour shifts at the site, or twenty-four hours a day, so when would “after hours” be.

Dan Rogers stated that the reported incidents he mentioned were at the end of the school day.

Mr. Duffy said that, if truckers are relieving themselves alongside the road, Country Stone will have to put a stop to it

Brian Budenski added that in the spring, coming home after school with his kids, which is 3:00 p.m. to 4:00 p.m., going south from CR 70 on Highview, he has seen three, four, five semis on the shoulder, waiting to get in. They can't get in. That is serious; to drive around them, he has to go onto the other side of the road to get around the trucks. The Sheriff has been called several times. The trucks simply should not be parked there.

Ron Bjustrom commented that the 24-hour operation is not year-round. It started in June.

Trevor stated that it is not clear how long the double-shift period was. This issue was brought up by the representative's comment. It ties in with the whole discussion of hours. There is not a set date that the 24-hour operation will end.

Trevor had found the customer hours for Bachman's. There is the question about whether there are different hours for contracting and shipping.

Jeff added that there is also the question about whether Bachman's has any dump trucks arriving with material being dumped with doors slamming to get the last of the material out of the dump trucks. That kind of noise issue is part of the cut-off of hours at 5:30 p.m.

Chipping onsite: Mr. Duffy commented that there will clearly be no more chipping of pallets on site. Ron Bjustrom commented that there was confusion with pallets. He thought that it

was the timbers from the pipeline. He assumed somebody might have seen them grinding the timbers.

Jeff said the grinding was heard; it is predominantly a noise issue. There is also an issue with the lighter mulch material that the grinding produces. It is more susceptible to being windblown. It is also an air quality issue. The Town would prefer not to see that product line being included, unless Country Stone can come up with much better ways to manage the noise and the pollution aspects of it. Jeff said the grinding of any wood is a problem.

Ron said that, typically, when the mulch comes in, it is ground once. It still has sticks in it this big. So, they grind the mulch a second time on site there. That is what they do most of the time. They don't do timbers or pallets. They do grind the mulch from a bigger size down to what they bag it at.

Brian Budenski asked what about pallets, the kind that material comes on? They have been grinding them for the two years that he has been on the Board. There have been semi loads coming in with empty pallets that were ground. They have been stacked up there.

Ron stated that all they do with pallets is ship product on them.

Nancy Sauber asked why there are piles of broken-up pallets on the site. Ron said that they are from the fall when they stack their inventory. They take a pallet and flip it upside down and put it on the pallet that is sitting there. Then the second pallet, they sit on top of that. The shipping pallet has only three boards on the bottom. The stacks of pallets in the southwest corner are the pallets that when they unload in the spring, they are the empty pallets that are on top. Ron said that they do not grind pallets; they grind mulch. There is no problem to saying that they never will grind pallets.

Supervisor Rogers said that he has seen mulch with Country Stone's name on it that is clearly from boards, such as from pallets. Ron said that their wood comes from land-clearing sites or from two collection yards, one in Minneapolis and one at Fort Snelling; most of it is trees from the City of Minneapolis. It is ground at a different facility, and brought to Lakeville. The timbers they got were from the pipeline. The aerial photo, Ron said, shows the timbers. Other than the grinding of those timbers, the pallets are used to put product on. Mr. Bjustrom stated that he does not grind pallets onsite. They do grind pallets at their site in Wisconsin. The pallets stacked on site are used to ship product.

Jeff Otto asserted that the core issues in grinding are noise and air quality, regardless of what is ground or not ground. If the machine is running, it is generating the noise that is the issue.

Mr. Bjustrom replied that in all their noise and activity, you would not be able to pick out the noise of grinding. You would only be able to hear the steady engine roar. They do not grind all the time.

Jeff Otto commented that maybe they need to see a demonstration or evidence of the noise level of the different operations. Mr. Duffy said that the noise standards are set by the MPCA. They can find out if they are within the limits.

Trevor said the noise issue might be addressed with screening, something that would bounce the sound the other way, toward the airport. The noise traveling west is what draws the bulk of the complaints. Mr. Duffy said that they would be willing to look at that, short of eliminating it entirely. They would look at all options.

Ron Bjustrom commented that grinding hours could be limited from 8 to 4, during the noisiest time of the day. The little bit they do, they could do it then. It would not be early or late. He is willing to have Town Board members come out and walk around and listen to the operation.

Town Board Chair Jeff Otto spoke on behalf of the Town Board on their issues. Two Exhibits were presented. Exhibit 1 is a reference photo of early 2006. The building was permitted in late 2005; the photo shows grading for the building, which was built in 2006. This would encompass the level of operations, then, from 2005. Exhibit 2 is from 2008 and is comparable to what the facility is today. It shows a red line of demarcation. What the Town Board is advocating is the return to the level of operations that was being utilized in 2005. The area to the north of the red line includes the driveway that was added since 2006. This is part of what the Town Board means returning to that level of operation in terms of the visual impact of the facility. What is south of the line of demarcation would be returned to a natural state, either being re-seeded in natural grasses or allowed to return to agricultural use as it was in used in earlier years. In conjunction with the line of demarcation, that is where the Board would want to see the line of trees to provide screening from the active side of the property. Screening at this location would provide a more effective screening of the activity and the structure than screening located at Highview Ave.

Dan Rogers stated that he was on the Board when this first came forward. What was presented to the Board by an individual who represented the property owner on the application was that there would be no expansion of the business. There are quite a few in the Township who heard this. The purpose of the building was that the trucks would come through the building to be loaded and unloaded inside the building. This was to have created a quieter environment. That is what was put forward to the Board. There is no way a truck could be loaded inside the building now. It was presented to the Board that a truck would be able to come through one side of doors, load or unload, come out the other side and leave. There was to be less noise and less dust, the hours of operation were going to remain the same, and there would be no additional truck traffic. That was what was presented to the Board; that is not what occurred.

Jeff added to the point on the expansion subject. The Town Board would like to see better loading. There is no reason that use of the building to facilitate the loading, at minimum, cannot be accomplished. Dump trucks are a different kind of problem. The Town Board would like to see a better solution on that, too, but certainly the loading can be accomplished. In terms of intensity of use of the facility and truck traffic, it would not be acceptable to put in a second production line.

The requested information will be presented to the Town Board in the next 7 days. The meeting was held open and will continue on Tuesday, June 30th at 2:00 p.m.

Mr. Kelly asked if Country Stone would be presenting a proposal to the Board at the meeting on the 30th. Mr. Bjustrom said that they would have what they can do and what they cannot do.

Ron Bjustrom commented that he said in his affidavit that he did not receive the March or April e-mail. After reading the Board minutes, he said they noticed that the emails were referenced, so he said he did a search for them. He said he located the April e-mail in his deleted file; it was not read. He did not locate the March e-mail. Supervisor Budenski asked about the voicemails that were left. Supervisor Otto said the emails were the last two communications. The email address was correct. He thought that it was a reliable mechanism as that is how they were communicating. Mr. Kelly said that the Board understands Mr. Bjustrom's explanation. Ron stated that he did not intentionally ignore the Town Board.

A motion by Supervisor Jeff Otto: To recess and continue the meeting at 2:00 p.m. on Tuesday, June 30th. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

A motion by Supervisor Brian Budenski: To adjourn. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

Meeting adjourned at 5:39 p.m.