

Eureka Township

Dakota County

State of Minnesota

Special Town Board Meeting of June 18, 2009, continued on
July 14, 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 continuation of the June 18, 2009, Special Meeting of the Eureka Town Board
on July 14, 2009, to order at 1:35 pm.

Agenda: To go into a closed session with the purpose of having further discussion with Township
Attorneys regarding the Country Stone Litigation.

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

At 1:37 pm the Town Board moved into closed session.

At 2:01 p.m. the Town Board moved back into open session.

A short break was taken to allow all parties to gather for the open session.

At 2:09 p.m. the open meeting was called into session.

Gerald Duffy, and Chris Penwell Attorneys for Country Stone, were present at this portion of
the Special Meeting.

Eureka Township citizens Georgie Molitor and Jim Sauber were also present.

This open session of the meeting of July 14, 2009, was a continuation of the Special Town
Board Meeting on June 18, 2009. The only agenda item was to discuss the situation with
Country Stone on the property at 225th St. and Highview Ave.

Chair Jeff Otto commented that he had accepted the statement by Mr. Bjustrom at the last
meeting that he had not received two emails that had been sent to him by Jeff. To complete the
record, Jeff entered the following additional comments:

The March 20th e-mail that was sent by Jeff Otto to Mr. Bjustrom started out by confirming the
key points of their conversation of that morning. Therefore, it was a summarization of what
was discussed by phone earlier that same day. The discussion had included the fact that the
Town Board asked for the benefit of an expression of Mr. Bjustrom's intentions sent to them in

time for the next Town Board Meeting on April 13th. Even without the follow-up of Jeff's email that was missed, Mr. Bjustrom would have been aware of that request from the phone conversation. Second, Jeff had promised a follow-up with an email. If it had not been received in short order or sometime the same day, certainly someone from Mr. Bjustrom's organization could have contacted Jeff and verified a miscommunication in email to get it straightened out.

Jeff iterated that the Town Board and full counsel had reviewed in detail the response of July 9, 2009, in which Country Stone identified 6 points. They had also reviewed a more complete copy of some Stormwater Pollution Prevention Plan detail submitted by Country Stone, as well as the site landscape/grading/truck route plan and the topographic survey that were included with the letter.

The Town Board has indicated in numerous conversations over the months that it is interested in a return to the status of activity of 2004- 2005. The aerial photo of 2005 would be a version of that status that includes the building. Representations made about this facility at the time of the building permit application have not been followed. The Town Board has not seen enough movement and commitment in terms of the points represented in the July 9, 2009, communication from Country Stone to satisfy that level of compromise.

The Town Board emphasized, as an example, the hours of operation. On December 8th Mr. Bjustrom gave the Town Board a signed letter committing to hours of operation that were basically for this year's production season: April 1st thru July 31, 2009, 7 am to 7 pm. In April, there were observations that this was being violated. There was a comment by a company representative at the hearing, which is a matter of record, that they are operating 24 hours a day. There is a credibility issue.

Nothing has been put forth to suggest ways that would facilitate Township monitoring and enforcement of anything that might be agreed to. This would be a follow-on discussion if the parties were to come to an agreement here.

The Town Board has clearly indicated that a return to the level of operation of 2004-2005 includes the restoration of the south portion of the property up to the building, with an allowance for the second driveway. (This is shown on the drawing the Town Board provided with the red line of demarcation on it.) These are major issues. There are numerous others that the Town Board has continually identified that have not been adequately addressed.

Chair Jeff Otto asked for response from Country Stone's Counsel.

Mr. Duffy commented that he was sorry that it had come to this, but things are where they are. He appreciated all the effort put into it. They have tried to put effort into it also. Sometimes the best laid plans go astray.

Mr. Penwell asked for clarification on the hours of operation.

The Town Board had put forth 7:30 a.m. to 5:30 p.m. The second shift operation is not acceptable any portion of the year. Putting in a second production line, so two shifts could work at the same time, is also a concern because of the intensity of use issue. (Traffic in and out of the facility during working hours is an issue, for example.)

Chair Jeff Otto commented that the road proposal is an interesting thought, but the Township is not in the position to commit major money to the paving of Highview Ave. It is not a Township priority to do that portion of the road because it is not of major benefit to the Township as a whole. The Township would certainly welcome the facility, if it were allowed to continue, to proceed with blacktopping or find some other means to more adequately contribute to the Township for the wear and tear on that stretch of road. The Township is not prepared to make a long-term commitment to participate in a paving project.

Mr. Penwell asked why the line in the sand is particularly as given, assuming that the yard is completely blocked from sight. Is there a reason that the Board cares that the south half of the property is used for pallet storage, which is a relatively passive use of the property? He understands that there could be complaints aesthetically, but again, if it is blocked from sight, what difference would it make?

Chair Jeff Otto explained that part of it is aesthetics. Part is the topography, the southern part being lower than the rest of the property, and that screening is not going to be effective if it is put that far south (on 225th St. W.) The other part is it instantiates this amount of activity on the entire property which did not exist in 2004-2005. It is an expansion. To agree would be to say that such an expansion is okay if you put it behind a screen. The Town Board is not willing to agree to that. It was not what was represented to them. It is a dramatic increase of the use of the property, which is both an aesthetic issue and speaks to the intensity of use. There is also the issue of the forklift that places and removes the pallets in the storage areas with the backup beeper noise, so it is not a passive use of the area.

Township Attorney Trevor Oliver indicated that it (the drawing with the red line demarcation) is the most tangible representation of what the 2004-2005 level of activity means. Before that time, the operations were occurring on the northern half of the property. Since that time, it has expanded to the southern half. It is an important line for negotiations.

Mr. Penwell commented that the judge wanted the two parties to discuss and resolve the issue. Township Attorney Patrick Kelly commented that the judge *had suggested* in chambers that the two parties try to resolve the issue.

A motion by Supervisor Nancy Sauber: To adjourn. Motion seconded by Supervisor Brian Budenski. Motion carried by unanimous vote.

Meeting adjourned at 2:24 p.m.