

Eureka Township
Dakota County
State of Minnesota

Special Town Board Meeting of May 27, 2011

Agenda

Request by Country Stone to temporarily extend hours of operation.

Call to Order

Chair Brian Budenski called the Special Town Board Meeting of May 27, 2011, to order at 8:05 a.m. Members present were Supervisors Nancy Sauber, Brian Budenski, Dan Rogers, and Kenny Miller. Clerk/Treasurer Nanett Sandstrom was present to record the minutes. Audience members included Georgie Molitor and Jim Sauber.

Country Stone is requesting to temporarily extend their hours of operation until 10:00 p.m., Monday thru Friday up to June 17, 2011. Normal outside operating hours are from April 1 to July 31 are 6:30 a.m. to 6:30 p.m., Monday through Friday, and between 7 a.m. and 3 p.m. on Saturdays.

The request to extend hours of operation was made due to the condition of Highview Ave. this spring. They are looking for full operation during these hours, which would include truck loading.

Chair Brian Budenski has been in contact with Ron Bjustrom to ask him to pay for part of the Township's efforts to increase the tonnage of Highview Ave. to 9 ton. He has also spoken with Regan of Hat Trick and the Northern Natural Gas Company. Northern Natural Gas is concerned with the amount of traffic crossing their pipes, which are not deep enough.

There are no provisions for extending hours of operation in the Country Stone Settlement Agreement. It would be contrary to the agreement to allow extended operations. It would be a Board decision.

Georgie Molitor's comments included the following: This is another piece chipped away. The whole start-up of the business has been a lie. There have been other instances where conditions have been agreed to, then Country Stone varied from those conditions, and then it was agreed to by the Board to accept the changes. (The road; the stockpile of soil has to go down, but it has increased) If a citizen in the Township has more than 3 fire calls, he is to pay for them. Country Stone has already had at least 8 fire calls. Allowing this extension will lead to another and another. The chip pile was not to be taller than the building. It is twice as tall as the building. There was a tractor grading the dirt past 10:00 p.m. They are using lights on the building that may be shining down, but the lights on the equipment shine straight ahead. It looks like daylight. It was supposed to be nice and clean; it's a mess. There is truck after truck. There are trucks using 225th St. The white noise issue was to be addressed last fall. They are just addressing it now, at the end of May. Only 5 people are supposed to be working onsite; there are twice that many cars. The noise is an irritation beyond irritation.

She has to live next to it. She also has to listen to cussing and swearing. She cannot sit on the deck. When the building permit was granted, the Board was assured that everything was going inside. The current site is huge. The tying down loads of loads is still taking place outside of the site area on Highview Ave.

Nancy Sauber spoke with the Township Attorney. She had concerns and questions about setting a precedent. Whoever would support this would have to make it clear through details in the minutes that it is a singular incident. But it *would* set a precedent that the Town Board would listen to these types of requests and possibly approve them. You cannot guarantee that allowing an exception to the agreement is a onetime event. The current Board has no power over decisions of future Town Boards.

Nancy Sauber entered the following statement into the record:

I understand why we have this request, and I understand that it has been an unusual year for weather. I also can certainly understand Country Stone's desire to catch up on its deliveries for business reasons.

However, the Board has spent a lot of time, effort, and money on this process with meetings, time getting ready for meetings, time on negotiations, and even time in court. All this resulted in a settlement agreement. Both parties were amply represented by legal counsel.

If I were a person who is directly affected by this use, I would expect the Board to follow the agreement that was finally reached at the end of this very long process. I would wonder why the Board would want to agree with something that is contrary to the agreement or not provided for by the agreement that it hammered out so diligently.

If I were a person directly affected by this use, I would find this departure from the agreement to be stressful and would be wondering what will be the next thing the Board might approve even though settled otherwise. Something I thought I finally could depend on has shifted. How many more times will uncertainty in this matter affect me?

As Minnesotans, we enjoy spending a lot of time outside in the summer, which for many of us is all too short. Board approval of this extension of hours is asking that our citizens who are already directly affected by this use during the agreed-upon hours now give up a month's worth of quiet evenings on their decks or in their yards.

Further, I would imagine that other citizens of this Township, although not directly affected by this use, would reasonably expect the Board, having spent so much time, a lot of effort, and significant tax money on this enforcement, to follow the resulting agreement and to expect Country Stone to do so as well. The hours of operation are clearly set out in the agreement; there is no provision for extending those hours. To do so is contrary to the settlement.

When Country Stone came to Eureka, they knew the circumstances. You have a country road in a township that does not have ready funds standing by to spend on the type of improvement that would make the road more stable for this use. Aside from the weather, the reason the portion of Highview in question is in the condition it is in is due to the heavy truck traffic by

semis loaded with bagged product. Country Stone has created its own problem, in my opinion.

The Township taxpayers should not have to pay the estimated \$35-40,000 to bring the road to a condition more suited to bear the traffic that it takes. Normal township traffic is not what has damaged the road to this extent.

I believe that it would be best to improve the road to a higher standard just as I also believe it is in Country Stone's own interest to contribute significantly to the project to achieve that. I do not think that *not* extending their hours makes it any *less* in their interest. By that, I mean that I do not think that the Board should feel it has to give them a month's worth of extended days in order to assure such a contribution. I reject that idea. I think that both parties should abide by the settlement agreement that was negotiated between them, that the citizens of Eureka should be assured that the Board worked hard and long to arrive at the best settlement agreement it felt possible under the circumstances, and that the citizens should be able to rely on the Board for that old-fashioned value of constancy. Thank you.

Dan Rogers commented that he was on the Board when the building permit was applied for. The plans presented at the court hearing are not the same plans presented to the Town Board at that time. The trucks were going to drive inside the building to be loaded and unloaded. All the noise was going to take place inside the building. The plans showed Friedges, not Country Stone.

Georgie Molitor made further comments that the poor road conditions are from the heavy truck traffic. Eureka Township citizens should not have to pay for damage to the road resulting from Country Stone's use of the road. They should only have to pay normal maintenance costs. The only reason it needs to be upgraded is because of the truck traffic.

Per the agreement Country Stone shall pay the Township annually \$2,500 for the cost of maintaining Highview Ave. from the south driveway of the facility going northward. It will cost the Township \$35,000 to rebuild the road to 9 ton.

Jim Sauber commented that the Town Board worked hard on the Agreement; they spent many years. Country Stone has operated under the Agreement for less than 2 months, and they want changes to the agreement. He would be frustrated if he were the Board.

Supervisor Nancy Sauber commented she *is* frustrated. She worked many hours. She made a number of suggestions for changes that made it a better agreement. Both parties had lawyers. They signed the agreement. It is what it is- follow it.

Supervisor Brian Budenski commented that he is favor of approving the request as a onetime allowance while he is on the Board.

Georgie Molitor commented that Butch Hansen and John Friedges are the ones that put Ron Bjustrom into this situation. He is in a situation that he needs to make his money and do what he can. She is still living there. She lives by the rules. Her farm has been in the family for over 150 years. She lives with this every day.

Supervisor Nancy Sauber commented that this is an opportunity for the Board to do right by the citizens and uphold the Agreement. The Board should follow it negotiated agreement.

A motion by Supervisor Nancy Sauber: To deny the request by Country Stone to extend their hours. The motion was seconded by Supervisor Dan Rogers.

Discussion on the motion followed.

Supervisor Kenny Miller asked if the negotiations on the road upgrade will be set back if the request is denied. He is looking purely at a financial situation. Country Stone is not going anywhere. The pressure on the road is not going to go away. The Township needs to do something with the road. Cross Nursery also uses Highview for their business. He feels that the Town Board needs to do whatever they need to do to defray the Township's out-of-pocket on getting the road usable for the traffic that is there now. They need the money to fix the road. He is looking for a way to facilitate revenue to fix the road. He is concerned with the road.

Georgie Molitor commented that she has no problem with Cross Nursery.

Supervisor Nancy Sauber commented that this approach that Kenny is talking about seems to be saying the Township is being held hostage. That the decision on granting or denying extended hours might hurt or help Brian on the negotiations for the road repair. We cannot sell extending their hours for the road reconstruction. It is not for sale. It is still in their interest to fix the road even if the Township doesn't grant the extended hours. They knew when they came here that the road wasn't up to the traffic. They asked the Township to pave it. Jeff Otto told them that the Township simply does not have the money to do so. If they hadn't known the road wasn't sufficient, we wouldn't have been talking about it. There was discussion that if there is a tie vote the motion will fail.

Nancy Sauber withdrew her motion. Supervisor Dan Rogers accepted the withdrawal of the motion.

A motion by Supervisor Nancy Sauber: To approve the request for Country Stone's extension of hours. The motion was seconded by Supervisor Dan Rogers. Vote was taken on the motion. Nancy Sauber- nay, Dan Rogers- nay, Brian Budenski- yeah, Kenny Miller- yeah.

The motion to grant the request failed; therefore, the request is denied.

All members were in favor of adjournment.

Meeting adjourned at 8:55 a.m.