

Eureka Township

Dakota County

State of Minnesota

Special Town Board Meeting of June 18, 2009 continued on
June 30, 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 Attorney Trevor Oliver was also present.

Chair Jeff Otto called the Special Meeting of the Eureka Town Board to order at 1:17 pm.

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

A motion by Supervisor Brian Budenski: To move into a closed meeting. Motion seconded by
Supervisor Dan Rogers. Motion carried by unanimous vote.

At 1:18 pm the Town Board moved into closed session.

At 2:05 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 2:19 p.m. the open meeting was called into session.

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

Township Attorney Trevor Oliver presented a brief summary the closed meeting session. The
Town Board held a closed session that was called as its own Special Meeting today at 1:15
p.m. and closed at 2:05 p.m. Trevor updated the Town Board on developments that have
happened since the June 18th meeting, some of the information that has been gathered. There
was discussion on the discovery request received on June 30, 2009, to make the record
complete so that both sides can use the exhibits for trial, making sure we have a complete
disclosure for documents. The Town Board discussed the negotiations that they were going to
engage in during the open meeting following the closed session, based on the information
learned over the last 12 days or so.

Gerald Duffy, Country Stone Attorney, Ron Bjustrom, President of Country Stone, and Chris
Penwell, Attorney for Country Stone, were present at this portion of the Special Meeting.
Eureka Township citizens Georgie Molitor and Jim Sauber were also present.

Ron Bjustrom asked if the Township received a copy of the Stormwater Drainage Report and the National Pollutant Discharge Elimination System (NPDES). The Town Board has not received a copy. Ron would overnight a copy.

The Town Board received a single diagram from Jacobson Survey. This document is what Ron Bjustrom expected to be sent. He had not seen drawing. The base drawing was dated March 2006, updated as of June 25, 2009. It has the addition of trucks to show the flow of traffic for the loading and distribution operation of the packaged materials and not the inbound materials and stockpiling activity. The indication of stockpiles is based on 2006. It does not show current stockpiles. Ron commented that he had drawn in the current location of the stockpiles for Jacobson Surveying and thought that it had been added. Ron will have Jacobson's add the stockpiles and the truck pattern for outgoing materials. The drawing shows trees on the west portion of the south berm and a little bit on the west berm. None of these trees are in place. Ron commented that they found some 12-14 foot fir trees and burning maples.

The plan shows predominantly the existing operation. Chair Jeff Otto asked if this is what they are using for the proposed operation. It does not reflect what the Town Board has indicated in terms of land use that the Town Board would consider a reasonable interpretation of the 2004-2005 level of activity. Will there be a second drawing with proposed use?

Gerry Duffy commented that the Town Board wanted a landscaping plan. Ron had superimposed the landscaping plan on the existing plan and included a traffic flow plan. They will move forward with the landscaping plan if it meets the Town Board approval. They will reconstruct the berm and get it in position and place trees on it this summer. It will screen the sight from 225th and most of Highview.

Ron Bjustrom commented the line that the Town Board wants puts him out of business. He can't operate with the line basically at the driveway. It only gives him a little patch to operate on.

Gerald Duffy argued that there is no case law that says you can't use more of your ground. There is pretty good case law that you can't make your building bigger. But you aren't going to find any case law on nonconforming uses that says you can't use all 25 acres of your 25 acres.

Trevor asked how the northern half of the property is being used. Could the distribution area migrate to the northern portion of the property? The Town Board wants the storage and staging area to move away from 225th St.

Ron commented that when he bought the pile of dirt it was a 5-year supply. They have pushed the dirt back and made it shorter. They have taken approximately 6 feet off of the top. Eventually the pile will be a much smaller. They have not added to the pile Ron stated.

Gerry Duffy commented that if they eliminate the large stockpile it would give them the option to move other material onto that spot. They can figure out how many acres they are using currently to hold inventory that will not be on the site once it is used up. They are willing to take a look at it.

The Town Board was asked if the yard is completely blocked from sight by berms and trees, then what are the continuing concerns of the use of the south end of the property.

The Town Board is basing its position on the principle of getting it back to 2004-2005 use. The Town Board views this as an illegal expansion. They want it contained to the level authorized. Because of the elevation changes the size of the berm and screening to the south and to the west would have to be substantially increased to screen the entire property as opposed to putting it up in the middle where it would be more effective. It would be closer to what needs to be screened.

Trevor indicated that the complaints involve activity, engines, etc. By having the storage yard in the front, near 225th St., the activity will be out front, the noise carries. If it is pushed farther back the noise will be moved away from residential area the Town Board is trying to protect.

Jeff Otto commented that part of the noise problem is the slamming of tailgates. Berms and or stockpiles, used as berms on the west side could contribute to noise abatement. Currently there are berms on the west side of the property. These berms are not adequately controlling the noise. Noise is a problem to the west and sight screening to the south.

Gerry Duffy commented that he can talk to noise consultants on other methods of noise abatement.

The drainage issue was addressed. Gerry Duffy commented that there is no drainage off the site. Normal drainage flow must be maintained. With the NPDES Permit you are not allowed to increase the flow or allowed to discharge any water that has not been subject to the pond treatment. Ron Bjstrom commented that the north side of the pile drains to the north.

The silt fence was discussed Ron said that Dakota County Soil and Water asked that a silt fence be installed. Gerry Duffy will check with Dakota County on what needs to be done with the stockpiles/ silt fence. He will find out if there is a permanent solution/ better silt fence.

Chair Jeff Otto asked that they keep in mind when drafting the new plan setback requirements from property lines: 10 feet for driveways and 30 feet for structures.

It was noted that a Conway Trucking semi with Indiana plates was seen using 225th St. W. Discussion on how to keep trucks from using 225th St. followed. Discussion included the possibility of 5-ton load limit signs being placed on Dodd Blvd to alert drivers that 225th St. is a 5-ton load limit road.

The Town Board checked on operating hours at Bachman's and Cross Nursery. The hours of operations were presented prior to the meeting. Their hours are slightly less than what the Township has proposed. Saturday hours are allowed at old mining operations and by special request for new mining operations.

Loading and unloading issues were briefly discussed. A temporary loading and unloading dock for vans and trailers is located near the building. The key to loading and unloading inside the building is the reduction of the noise of the backup beepers of the forklifts.

Mr. Duffy commented that he will do the items he has committed to tomorrow. The NPDES documents will be overnighted to Chair Jeff Otto.

The Special Meeting was scheduled to continue on Tuesday, July 7, 2009, at 10:00 am.

Chair Jeff Otto presented the information he researched on paving of Highview Ave. A copy was given to Country Stone representatives. Phase 1 is 2400 ft x 28' wide from the Lakeville line to the south driveway of Country Stone. The proposed cost is \$197,578.00. Jeff qualified that this did not include any shoulder widening or any necessary subgrade work which

potentially could increase that cost. The railroad crossing is additional. A minimum of \$50,000 and we understand installing a controlled rail intersection (arms/ flashing lights) is now a State requirement and is estimated to be an additional \$50,000 or more. The Township does not have the money in its budget to contribute to paving.

Country Stone representatives left the meeting. Town Board continued to discuss the issue.

The Town Board will hold a closed session at 9:30 a.m. on July 7, 2009, prior to the open portion of the meeting scheduled for 10:00 a.m.

Comments were taken from Georgie Molitor. She commented that the drainage of the area has been changed to flow to the north. The north access road to Highview Ave. is on the neighbor's property to the north side. The south drain is well hidden under the grass; it is below the road. It was put in before the berm was installed. It leads to the holding pond and is below the level of the water in the holding pond. It drains under the road into the original culvert in the road on Nick Friedges property into the waterway on Cross Nursery property. Water has to be coming out of the pond because it is well below the level of the pond. The septic system and the pond are close together. A septic system should have several hundred feet to run out before it reaches water. Country Stone has dumped and added to the dirt pile and gravel pile. Georgie asked if all this is put into place, which Town Board member is going to patrol the operation. The permit was only given because everything was going to be moved inside. The west side berm is 8 feet tall is 2" from Georgie Molitor's property line.

The Town Board needs to receive a copy of the NPDES plan and permit before following up on the drainage issues.

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

Meeting adjourned at 3:46 p.m.