

EUREKA TOWNSHIP
Dakota County, State of Minnesota

TOWN BOARD MEETING
March 14, 2022 – 7:00 P.M.

Call to Order

The Eureka Township Town Board meeting was called to order at 7:00 p.m. by Chair Donovan Palmquist and the Pledge of Allegiance was given.

Supervisors Present: Donovan Palmquist, Ralph Fredlund, Lu Barfknecht, Nancy Sauber and Kathleen Kauffman.

Others Present: Ranee Solis, Chad Lemmons, Mark Henry, Carol Adelman, Monica Tucker, Mike Callahan, Bill Clancy, Dan Adelman, Char Adelman, Beth Eilers, Nathan Shaw, Stacy Shaw, Shaun Pfiel, Susan Minsberg, Dan Ames, Deb Burkhardt, Ken Olstad.

Zoom Attendance: Julie Larson, Arlene Goter, Brian Ahern, Jeff Otto, Georgie Molitor, Chad Harmer, Amy Jooksnevad, Kevin Foster, Theresa Larson.

Approval of the Agenda

The following changes were made to the agenda:

1. Add item C. Town Hall sound system improvements under New Business.
2. Add item D. ALAAC meeting under New Business.
3. Add item E. VRWJPO second meeting under New Business item.

Motion: Chair Palmquist moved to approve the agenda as amended. Vice Chair Fredlund seconded. *Motion carried 5-0.*

Road Report – Mark Henry

Gravel invitation to quote

Mark Henry presented a gravel invitation to quote for Board approval. The projects to be quoted include:

Project #1:	225 th (Cedar to Highview)	Approx. 1,200 ton
Project #2:	Highview (225 th to 235 th)	Approx. 1,200 ton
Project #3:	235 th (Highview to City line)	Approx. 1,100 ton
Project #4:	Ipava (250 th to 267 th)	Approx. 2,000 ton
Project #5:	Essex (245 th to 255 th)	Approx. 1,200 ton
Project #6:	225 th (Denmark to Essex)	Approx. 1,200 ton
Project #7:	Granada Ave	Approx. 800 ton
Project #8:	Spot gravel	Approx. 1,700 ton

Motion: Vice Chair Fredlund moved to approve the gravel invitation to quote as presented. Supervisor Barfknecht seconded. *Motion carried 5-0.*

Mark Henry asked the Board to waive the road restrictions to allow for gravel delivery for 225th St.

Motion: Chair Palmquist moved to waive road restrictions for gravel delivery on 225th St. until March 21st. Vice Chair Fredlund seconded. *Motion carried 5-0.*

Dust control

The Board agreed to utilize the JPA with Dakota County for dust control.

Street sweeping

Motion: Supervisor Barfknecht moved to approve Terpstra to complete the street sweeping. Supervisor Kauffman seconded. *Motion carried 5-0.*

Public Comment

**The opinions expressed in public comments are those of the authors and may not represent the official positions of the Town Board. The Town Board does not control or guarantee the accuracy of information contained in the comments, nor does it endorse the views expressed.*

Chair Palmquist opened the floor for public comment and asked three times if there were any attendees who would like to make comment. Hearing none, the floor was closed.

Citizen Inquiry

Dan and Char Adelman – Follow up on driveway and lot split

Dan and Char Adelman presented a proposed lot split and driveway drawing. Because the lot split presented several potential issues, the Board referred them to the Planning Commission for further review and discussion.

Planning Commission Update – Chad Berg

Summary of the March 1, 2022, Planning Commission meeting

- Citizen Inquiry from Dan & Char Adelman regarding a lot split.
- Recommended approval of the Adelman/Tucker garage permit.
- Recommended approval of the Chad Harmer ag-exempt building permit.
- Recommended denial of the Nathan & Stacy Shaw accessory building permit.
- Discussed and reviewed the Housing Right Transfer text amendment. The Planning Commission will discuss shared driveways and emergency access at the next meeting.

Permit Requests

Nathan and Stacy Shaw, 8802 250th St. W., 13-02000-02-020 – Accessory building

The Clerk was asked to read the instruction and motion made at the January 24, 2022, Town Board meeting regarding the application:

“The Shaws were instructed to submit a revised building application to include the open lean-to to the Planning Commission. After approval by the Board, Inspectron will calculate the additional permit fee which will be doubled.

Motion: Supervisor Barfknecht moved that no further action will be taken regarding the square footage of the horse barn and open lean. Chair Palmquist seconded. *Motion carried 3-2.*"

Chair Palmquist reiterated the Board's interpretation of the Ordinance is ambiguous as to how to measure buildings. A court would rule in favor of the landowner in such situations. This is why the Board voted to take no further action on this issue. Chad Lemmons added that an ambiguous interpretation of the Ordinance is always against the governmental body.

Motion: Supervisor Barfknecht moved to approve the accessory building application for Nathan and Stacy Shaw at 8802 250th St. W. as presented. Chair Palmquist seconded. *Motion carried 3-2, with Vice Chair Fredlund and Supervisor Sauber opposed.*

Supervisor Sauber made the following statement for the record: "I vote no for the reason that the Ordinance sets the accessory building square footage at 5,000 square feet. Even with the unprecedented inside measurements, this structure is over the limit. There is no provision to allow for overages. I believe voting "yes" on this motion is incorrect and a mistake."

Friedges/Hyponex, 22447 Highview Ave, 13-00500-05-010 – Accessory building

The Board noted the settlement agreement has not yet been approved by all parties. Supervisor Barfknecht noted that there are two buildings on the application, an office and a warehouse, which will require two separate applications. The Board also questioned whether the office building was too close to the well at 4 feet.

Motion: Chair Palmquist moved to approve the 6,000 sq. ft. warehouse application with the permit to be issued on the condition that both parties sign the settlement agreement. Supervisor Barfknecht seconded. Supervisor Sauber made a friendly amendment that the Township hire the Township Engineer, TKDA, at the applicant's expense to determine whether the SWPPP required under the settlement agreement is sufficient with the addition of impervious surface from buildings and concrete. If not adequate, the Township Engineer will advise the Board on changes. Such evaluation and possible amendment of the SWPPP will take place before construction commences. Supervisors Palmquist and Barfknecht accepted the friendly amendment. *Motion carried 5-0.*

Chad Harmer, 23450 Hamburg Ave, 13-00900-06-015 – Ag-exempt building

Motion: Supervisor Sauber moved to approve the ag-exempt building for Chad Harmer on PID 13-00900-06-015 as all zoning requirements are met. Chair Palmquist seconded. *Motion carried 5-0.*

Carol Adelman/Monica Tucker, 6631 225th, 13-00300-01-011 – Garage

Supervisor Barfknecht pointed out that, according to Ordinance 3, Chapter 1, Section 4, any structure or use existing as of September 7, 2004, and which did not conform to the provisions of Township Ordinances as then enacted, is deemed a legal nonconforming use. Chad Lemmons added that nonconforming uses run with the land, and a replacement can be made of the same size and form.

Motion: Supervisor Sauber moved to approve the replacement of the nonconforming garage for Carol Adelman and Monica Tucker on PID 13-00300-01-011. The accessory structures on this property are nonconforming and not subject to the square footage limit as they were built before the limit was imposed. Chair Palmquist seconded. *Motion carried 5-0.*

Minnesota Paving & Materials, 5100 235th St. W. – Reclamation plan

Supervisor Sauber recused herself from the discussion. The Board agreed to forward the reclamation plan to the Planning Commission for a full review. Supervisor Kauffman pointed out that each area of the reclamation plan was not addressed.

Mike Callahan stated MPM is only addressing phases 3-5 at this time in an effort to get into compliance. Supervisor Kauffman requested that MPM address each part of the reclamation plan for the Planning Commission review. In addition, under chapter 10, the Township may send an engineer to inspect the mines, at the expense of the mines. Mike Callahan responded that the Township engineers already reviewed and approved the reclamation plan, and an escrow was paid at the time of application. We are 15 days away from the deadline to submit the revised reclamation plan. Supervisor Kauffman stated that the Board needs an expert to review the revised plan, and it is not intended to hold up or interfere with the reclamation.

Chair Palmquist noted that the Board is requesting the engineer's opinion with only 15 days left and should extend the deadline. Mike Callahan offered that the end of May works for MPM.

Motion: Chair Palmquist moved to grant a 45-day extension from today contingent on the Township Engineer reviewing the reclamation plan and reporting back to the Board. Supervisor Kauffman seconded. *Motion carried 4-0, with Supervisor Sauber recused.*

Vermillion River Aggregates – Follow up on mulch storage

Supervisor Sauber recused herself from the discussion. Supervisor Kauffman provided the following analysis:

The 2019 Board correctly determined the examples of accessory uses in the Accessory use definition were not meant to be exhaustive. The list does, however, show that all examples of Accessory Uses fit the primary condition that the use be incidental to mining. Topsoil and minerals are removed and stockpiled during mining. However, mulch is never incidental to mining; it is incidental to forestry. Accessory Uses are not all organic materials that are not harmful. Accessory Uses are only items incidental to mining.

Ordinances are to be interpreted as a whole so they can be read consistently and make sense. It is nonsensical to conclude that minerals mined off-site and imported for storage at the mine must be limited to 25% of a mine's on-site production, but mulch, which is wholly unrelated to mining, can be stored without limit.

Finally, the flat prohibition in Section 2(J) against storage of materials not associated with the mineral extraction facility is dispositive. There is no indication in the words of Section 2(J) that the Board could reverse the prohibition by a separate vote similar to the language in Section 2(I) Accessory Use permission. The only way the two sections can be read as consistent is if Accessory Uses, on which a Board can grant permission, but storage is still

limited by Section 2(H), are only uses associated with mineral extraction, and thus, separate from the unauthorized storage covered by Section 2(J), for which the Board cannot grant permission.

Mulch is not a mineral and is not associated with mineral extraction. Therefore, mulch storage is not an Accessory Use. Therefore, the Board cannot grant permission to store mulch in mines.

A prior Board approved the storage of mulch and Vermillion River Aggregates now has 3 acres dedicated to storage. This is inconsistent with the Ordinance. A prior board focused on the fact that mulch is like topsoil and mines can store topsoil. However, mulch is not incidental to mining. Section 2(J), particular to older mines, has a flat-out prohibition against storage and I do not see any way that this is legitimate under our Ordinance. You built this into your business plan and receive revenue from it. The Board has to ask you how much time you need to have a shift in your business plan so you can make up for that hole in your revenue stream. Dan Ames responded that the contract with Scotts is 3 years, and Vermillion River Aggregates estimates it would need 5 years as they plan to be mining in that area at that point.

Motion: Supervisor Kauffman moved for the Board to find that mines cannot store mulch, but because a prior Board incorrectly instructed Vermillion River Aggregates that they could, and it has been baked into their business plan, to allow Vermillion River Aggregates 5 years to complete their contract with Scotts and cease storing mulch. Chair Palmquist seconded. Vice Chair Fredlund made a friendly amendment to cease all storage by March 14, 2027. *Motion carried 4-0, with Supervisor Sauber recused.*

Dan Ames requested the Board waive road restrictions to allow him to truck in 4 loads of rock to fortify 235th.

Motion: Chair Palmquist moved to waive road restrictions on 235th St. for one week. Supervisor Kauffman seconded. *Motion carried 5-0.*

Land Use Requests - None

Treasurer's Report

Clerk/Treasurer Solis read the Treasurer's Report as on February 28, 2022: New Market Bank checking account: \$3,021.66; Outstanding checks: \$6,334.39; General Fund savings account: \$414,177.36; Road & Bridge Fund savings account: \$588,739.18; Petty cash: \$100; Total assets: \$1,003,016.54; February disbursements: \$24,577.52; February receipts: \$0.

Motion: Supervisor Sauber moved to approve the Treasurer's Report as presented. Chair Palmquist seconded. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye; Kathleen Kauffman - Aye. *Motion carried 5-0.*

Net Pay and claims

The Clerk presented payroll in the amount of \$3,629.15

The following claims in the amount of \$11,321.33 were presented for payment:

Internal Revenue Service	Tax for February payroll	\$1,196.62
PERA	Retirement for February payroll	\$765.67
Kelly & Lemmons	February legal services	\$2,244.25
Lewis, Kisch & Associates	2020 Audit	\$2,400.00
ECM Publishers	Election filing notice	\$294.00
Driessen Water	Water softener	\$64.76
Dakota Electric	Storage building	\$22.88
Dakota Electric	Town Hall	\$156.41
Central Farm Services	LP tank 2	\$67.10
T & C Commercial Cleaning	March Town Hall cleaning	\$150.00
Tops Inc	February copies	\$211.95
Frontier	February phone	\$76.59
Point North Networks	Feb billing/start up migration	\$1,322.50
Point North Networks	March billing	\$285.00
Point North Networks	Technician migration	\$1,117.50
DSI/LSI	Feb garbage	\$113.95
Ellen Canfield	Election mileage	\$52.65
Mary Dawson	Election mileage	\$2.34
Richard Fott	Election mileage	\$12.87
William Pekarna	Election mileage	\$10.88
Susan Rogers	Election mileage	\$3.51
Cheryl Schindeldecker	Election mileage	\$4.10
Elaine Swedin	Election mileage	\$7.60
Julie Larson	Election mileage	\$121.68
Amy Liberty	Election mileage	\$11.52
Funds Transfer	Transfer to Fire Fund	\$1,700.00

Motion: Vice Chair Fredlund moved to approve the net pay and claims as presented. Supervisor Sauber seconded. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye; Kathleen Kauffman - Aye. *Motion carried 5-0.*

Receipts and Disbursements

There were \$0 receipts presented for February.

The Clerk presented February Disbursements in the amount of \$24,577.52

Remaining reports

The Cash Control Statement, Schedule 1, Interim Financial Report, Investment Activity and Outstanding Checks were reviewed by the Board.

Clerk Matters

RFPs/Quotes

The Clerk reported that RFPs for grounds maintenance went out and quotes will be presented at the next meeting. She asked the Board to provide some direction on the building official and road maintenance contracts, as there was discussion of possibly changing start dates. Chair Palmquist requested a copy of the road maintenance contract for the next meeting.

Schedule Reorganization meeting

The Board agreed to schedule the Reorganization meeting on March 22nd at 7:00 p.m.

Planning Commission vacancy posting

The Board authorized the Clerk to post the upcoming Planning Commission vacancy on the website.

New Business

Complaint received against an employee

The Board agreed to hold a special closed meeting on March 22, 2022, at 6:00 pm to discuss the complaint received against an employee.

The Clerk was directed to provide a copy of the complaint to the employee and notify him/her that he/she has the right to request an open meeting.

The Board directed the Clerk to post a special closed meeting on March 22nd at 6:30 for discussion of the Hyponex/Scotts litigation with its attorneys.

Attorney retention

Chair Palmquist noted that typically the Board, as a whole, would approve a request for RFPs for legal services prior to Board review. Supervisor Kauffman asked Chad Lemmons if Kelly & Lemmons would like to be considered to continue performing the Township legal services. Chad Lemmons responded they he does not wish to be considered. He is retiring soon and no one else in the office is willing to come to the Township, but he will complete the open tasks. The Board thanked him for his resolute and loyal service.

Supervisor Sauber stated she is sorry to see Chad go. He has a great understanding of our Ordinances and for this action to be taken by one Supervisor is inappropriate.

Jeff Otto encouraged the Board to allow Chad to continue with the housing rights text amendment. Chad Lemmons agreed to continue with the open tasks that he has on his desk, the text amendment being one of them.

Supervisor Kauffman explained that in observing protocol, she asked Chair Palmquist if she could contact attorneys to see if they would be interested in responding to the upcoming RFP for legal services. In the past, we have not received any responses other than from our current attorney. Chair Palmquist commented that he started reaching out to road contractors in the same regard long before the RFP for road maintenance was posted.

Supervisor Sauber stated to reach out before an RFP is posted is different from what was done here.

Supervisor Kauffman stated she reached out to Steve Fenske from MAT to verify the process. He explained that this is not a competitive bidding process. Our current service does not have to be bad in order to do comparison shopping.

Supervisor Kauffman presented the following summary to the Board:

Bob Ruppe from Couri & Ruppe was referred to us by Paul Reuvers. He submitted a letter with background information:

- Couri & Ruppe represent 275 townships.
- Bob Ruppe represents only townships.
- He teaches classes on township law.
- He teaches classes for MAT.
- He will attend meetings when necessary, but not all meetings, as it is not common practice.
- He comes highly recommended by both Steve Fenske and Paul Reuvers.
- He works deeply in every area that we need general advice in.
- He is very qualified.
- He is interested in being considered for general counsel.
- He does not handle litigation.

Troy Gilchrist from Kennedy & Graven was referred to us by Steve Fenske. Information from their website is provided in the packet:

- Kennedy & Graven represent 150 townships.
- Troy Gilchrist is former general counsel at MAT.
- He performs all aspects of township law.
- He is not interested in general counsel as he is overloaded on that work.
- He is interested in being considered for litigation and limited special projects.

I have confirmed that we can have attorney-client privilege, but not if we conduct all of our business in open meetings. The Board can delegate authority to one or two Board members to deal with the attorney on legal issues. According to Steve Fenske, so long as it is likely to lead to litigation, the Board can hold discussions in closed meetings.

Our history of handling all attorney items at the Town Board meetings has greatly affected our ability to move matters forward efficiently. We need to restructure the way we are conducting our legal business. I strongly suggest that we do not have the attorney routinely sitting in on our meetings. Attorney presence does not mean we get the right advice we need at the time we need it, and there is no attorney-client privilege. I suggest we assign two Supervisors to work with our general counsel on a regular basis, as well as two Supervisors to work on special projects. I suggest myself and the Town Chair for general counsel. Special projects should be myself and somebody deep in a particular area for the second person.

Although Bob Ruppe's hourly rates are higher, we will save money by not having him at every meeting. We paid Chad Lemmons \$6,000 last year just to attend meetings. That is 27 solid hours of work from Bob Ruppe sitting in his office, which would get a lot accomplished.

I expect we will spend more money, but we have room in the budget. I am positive this switch of legal counsel, and the way we approach it, will improve the value we get for the Township.

Motion: Supervisor Kauffman moved to retain Bob Ruppe of Couri & Ruppe for general counsel, to be managed by the Town Chair and Supervisor Kauffman, and to retain Troy Gilchrist of Kennedy & Graven for litigation and special projects, to be managed by Supervisor

Kauffman and one other Supervisor depending upon the particular subject matter. Chair Palmquist seconded. *Motion carried 4-1, with Supervisor Sauber opposed.*

All remaining agenda items were tabled until the March 28th meeting.

Adjournment

Motion: Supervisor Kauffman moved to adjourn the meeting. Chair Palmquist seconded.
Motion carried 5-0.

Meeting adjourned at 10:32 p.m.

Respectfully submitted,

Ranee Solis, Town Clerk

Minutes Officially Approved By: _____ on: _____
Town Chair Date