

EUREKA TOWNSHIP
DAKOTA COUNTY, STATE OF MINNESOTA

TOWN BOARD MEETING OF NOVEMBER 9, 2020

Due to the Peacetime Emergency and social distancing guidelines, the Town Board Chair has determined it is neither practical nor prudent to conduct an in-person meeting. Accordingly, under Minnesota Statute section 13D.021, the following meeting shall be conducted entirely through teleconferencing or other electronic means.

Call to Order

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

Supervisors Present: Donovan Palmquist, Tim Murphy, Lu Barfknecht, Ralph Fredlund and Mark Ceminsky.

Others Present: Raneë Solis, Chad Lemmons, Nancy Sauber, Simon Tyler, Julie Larson, Jody Arman-Jones, Randy Wood, Andrew Gieseke, Char Adelman, Brian Ahern, Georgie Molitor, Don Edam, Kevin Sullivan, Alisha Perkins, Bill Clancy, Jim Sauber, Mike Callahan, Daryl Johnson and Dan Adelman.

Approval of the Agenda

The following changes were made to the agenda:

1. Add item C. Eureka Estates/TKDA under Old Business

Motion: Chair Palmquist moved to approve the agenda as amended, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *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.

Brian Ahern – 6215 235th St. W.

Brian Ahern spoke regarding the proposed MPM mining pit expansion. (Comments attached)

Georgie Molitor – 8875 225th St.

Georgie Molitor reported the dumping of upholstered chairs on the south side of 225th St. between the Murphy and Sauber properties.

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

Citizen Business

Alisha Perkins – lot of record verification

Alisha Perkins is requesting that the Town Board verify that there are building rights on the parcels identified as PID 13-01800-52-013 and PID 13-01800-52-012, as proven by the property abstracts. Attorney Lemmons explained that he examined the title evidence and has determined that they are two separate parcels that have been separated since 1976.

Motion: Chair Palmquist moved to acknowledge that PID 13-01800-52-013 and PID 13-01800-52-012 have building rights as they are Pre-1982 lots of record, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 5-0.*

Commissioner Sauber noted that, when the time comes for a purchaser to want to build on the parcels, a Conditional Use Permit will be required which includes a public hearing.

Road Report

Road Superintendent – Mark Henry

Chair Palmquist stated that the Ottes were out touching up the roads. Next week, the Road Committee will get together with Bryce Otte to go over spring projects and to begin budget discussions. Mark Henry took notes on road conditions and trash to be picked up, including the items mentioned during public comment.

Supervisor Barfknecht asked about the status of the speed limit signs for 240th that were approved by the Board a few months ago. Chair Palmquist offered to check into this with Mark Henry.

Planning Commission Update (Randy Wood, Liaison)

Commissioner Wood provided an update of the November 4, 2020, Planning Commission meeting as follows:

- Permit requests:
 - Daryl Johnson, 24932 Dodd Blvd. application for a pole barn. Mr. Johnson presented an updated site plan and letter from the VRWJPO. Recommended for approval.
 - Dan & Char Adelman, 23733 Hamburg Ave. application to convert an ag building into residential. The Adelmans presented a second septic site plan. County records show the parcel is already being taxed as residential. We requested further information which may show that the three bathrooms in the ag building were previously approved. Records were unavailable at the meeting. We tabled the application until next month in order to review the property file before a recommendation can be determined.
 - Don Oreskovich, 25500 Highview Ave. application for a lean-to for cold storage. Recommended for approval.

- Kevin Sullivan, 265th application for a pole barn for cold storage of personal items. Recommended for denial for two reasons: the 33-foot setback was not met, and the size of the additional building would put him over the 5,000 sq. ft. maximum for accessory buildings.
- Discussed over-the-counter permits and suggested adding roof-mounted solar energy and exact rebuilds due to a fire.
- Reviewed Attorney Lemmons' letter about road frontage that was requested for land locked parcels.
- Added the Met Council letter from Patrick Boylan in the minutes as information, as it was not read at the last Town Board meeting.
- Performed a second review of the Planning Commission Policies and Procedures manual. An update will be presented to the Town Board for approval at a later time.
- Performed a short review of the wind energy ordinance. Commissioners Wood and Clancy were appointed to research and contact experts and contractors for consideration of updated language.

Permit Requests

Daryl Johnson, 24932 Dodd Blvd., PID 13-01800-58-010 – Pole shed

Commissioner Larson requested that Mr. Johnson address three structures on the property which, if included in the total square footage, would be more than 5,000 sq. ft. Mr. Johnson explained that there is a gazebo at the back of the house consisting of a cement patio with a canvass roof. There are 2 additional animal shelters which will be removed. He also noted that the manure is not spread, it gets hauled away, and there is no roof on that.

Supervisor Ceminsky commented that lean-tos for animals would not count in the tally if it is housing for animals. Commissioner Sauber responded that the total square footage is of accessory buildings, excluding ag buildings. Since Mr. Johnson's property is not ag property, they are not ag buildings, even if they are used for animals.

Motion: Supervisor Ceminsky moved to approve the building permit application for PID 13-01800-58-010 at 24932 Dodd Blvd., provided that the two 8x10 shelters are removed, seconded by Chair Palmquist. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 5-0.*

Don & Cindy Oreskovich, 25500 Highview Ave., PID 13-02100-51-011 – Lean-to

Motion: Chair Palmquist moved to approve the lean-to permit application for PID 13-02100-51-011 at 25500 Highview Ave., seconded by Vice Chair Murphy. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 5-0.*

Kevin Sullivan, 5560 265th St. W., PID 13-02600-75-012 – Pole shed

Mr. Sullivan resubmitted his application with a decrease in the size of the structure and having met the setbacks. However, in following procedure, the application must go back to the Planning Commission for review of the new plans.

Dan & Char Adelman, 23733 Hamburg Ave., PID 13-00900-50-013 – New residence
The application was tabled by the Planning Commission until the next meeting. Chair Palmquist advised the application must return to the Planning Commission for review and recommendation.

Treasurer's Report

Clerk/Treasurer Solis presented the Treasurer's Report for November 9, 2020. Bank balances as of October 31, 2020: checking account \$13,005.97; outstanding checks \$58,286.68; savings account \$666,065.31; CD accounts \$68,613.18; total accounts \$689,397.78; Township escrows \$233,688.96; other escrows \$9,740.74; October claims \$42,762.15; October payroll \$4,338.29; total disbursements \$47,100.44

Motion: Chair Palmquist moved to approve the Treasurer's Report as presented, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Nay. *Motion carried 4-1.*

Net Pay & Claims

Motion: Vice Chair Murphy moved to approve the net pay and claims as presented, seconded by Chair Palmquist. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 5-0.*

Supervisor Ceminsky noted that, in order to stay consistent, Mark Henry should be submitting his hours on the Township time sheets instead of submitting an invoice.

Receipts & Disbursements

Motion: Supervisor Fredlund moved to approve the receipts and disbursements as presented, seconded by Chair Palmquist. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 5-0.*

Remaining Reports

Clerk/Treasurer Solis has completed training with the MAT Treasurer trainer and is currently implementing the suggested changes.

New Business

Annual CUP review – Prairie Creek (Simon Tyler)

Simon Tyler announced that he had no changes to report. He stated that they are having ongoing issues with speeding traffic and asked if the Board would consider moving the 25-mph speed limit sign further north to forewarn traffic of the reduced speed. Chair Palmquist offered to speak with Mark Henry about the possibility of moving the sign, or placing a school zone sign.

Motion: Chair Palmquist moved to approve the annual CUP review for Prairie Creek School, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye.
Motion carried 5-0.

Updated over-the-counter permit list

Supervisor Ceminsky noted that the exact rebuild permit states that it is to be reviewed by the Zoning Administrator, but the Building Official must determine that the plans meet the specs. Commissioner Sauber offered that it should state Zoning Administrator and Planning Commission Chair/Vice Chair.

Motion: Chair Palmquist moved to approve the over-the-counter permit list as revised, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye.
Motion carried 5-0.

CARES Act Funding

Vice Chair Murphy sought input on the updated proposal from Sol-I.S. Technology and determined that the quote was reasonable. Chair Palmquist added that the quote is extremely detailed.

1. Meeting room equipment quote

Motion: Vice Chair Murphy moved to accept the teleconferencing equipment quote from Sol-I.S. Technology in the amount of \$24,970.46 and add the item to disbursements, seconded by Chair Palmquist. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Nay. *Motion carried 4-1.*

Motion: Chair Palmquist moved to accept the laptop quote from Sol-I.S. Technology in the amount of \$1,311.04 and add the item to disbursements, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Nay. *Motion carried 4-1.*

2. Spending report

Motion: Supervisor Fredlund moved to add \$1,311.04 to the spending report for a total of \$8,562.53, as well as \$82.97 for the CARES election fund, to be returned to the County, seconded by Chair Palmquist. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Nay. *Motion carried 4-1.*

3. CARES Act County-Municipality Grant Agreement

Chair Palmquist was designated to sign the agreement.

4. Township to Dakota County Transfer Certification Form

Chair Palmquist was designated to sign the form.

Old Business

Attorney items

1. Cease and desist letter for open burning at 9235 Upper 240th
Attorney Lemmons reported that the letter has been sent to the resident.

2. Road frontage – Commission Chair Sauber

Commissioner Sauber explained that a realtor had inquired about two lots on Cedar Ave, one behind the other, that Attorney Lemmons was asked to look into. The question presented was whether the back lot would have to have road frontage or if it could be accessed from an easement. The ordinance states a person MUST demonstrate road frontage. Alternate access may be made by a permanent easement which would join and share another driveway. The attorney's interpretation is that you must have the road frontage but do not necessarily have to use that road to have access to a road. Case in point, Gloria Belzer's former property fronts on 245th but, due to water issues there, she had an easement with Krapu's to access their driveway to Dodd.

Attorney Lemmons provided his recommendation is that, in terms of section 5A, to begin paragraph 3 with the following language: As long as the parcel satisfies the conditions set forth in paragraph B, section 4 of Chapter 3, clause B requires you have 33 feet of frontage on a public road. If you add that requirement, you cannot have a landlocked parcel. The problem, as I see it, is clause 3 of section 4, paragraph 1 implies that you can have an alternate means of access. It does not require abutting a public road. Adding the recommended language would solve the problem of having landlocked parcels.

Supervisor Ceminsky asked if we would be forcing the land owner who has road frontage in front of them to have to sell them property instead of an easement. Attorney Lemmons responded that you cannot force an abutting property to grant an easement. That is getting into another area of law called Cartways. Depending on the situation, a land owner can petition the town to create a cartway to act as access to a public road.

Supervisor Ceminsky asked if a lot without road access could not be built on unless it obtained an easement from neighboring property owners. Attorney Lemmons responded that unless they qualify under the provisions of the cartway easement statute, they could not. If the Township created a cartway, it would be up to the landowner who petitioned for the road to compensate the Township for the money it spends to acquire the road. But you must meet all statutory requirements to do so.

Supervisor Fredlund asked if we are saying that people with a landlocked lot cannot build on their lot because they do not have road access. Yet, they can buy access and create a flagpole lot that alters the shape of their original lot, which then loses their building right? Commissioner Sauber and Attorney Lemmons agreed that it is not good policy to allow landlocked lots without road frontage to have building rights. Part of the Pre-1982 lots of record language included that it had to be buildable at the time that it was created.

Commissioner Sauber stated that if the Board agrees to the suggested change, the change would require a public hearing because it is in ordinance 3. The Board agreed to send the recommended change to the Planning Commission for a public hearing.

Mn Paving & Materials

1. Follow up on complaint – operating on Saturday

Vice Chair Murphy stated that Mike Callahan had requested pictures of the Saturday operations in order to handle the issue with the trucking company. An additional significant issue before the Board tonight, which comes from Commissioner Clancy who has invested a considerable amount of time in, is that we need to deny the EAW that has been submitted in order to stop the 60-day automatic approval. At the last Town Board meeting, it was determined that the Planning Commission had to have input as to the firm that was hired to do the EAW, and they did not. Needless to say, we have to put the brakes on this to prevent it from being automatically approved.

Motion: Vice Chair Murphy moved to deny the MPM IUP application, seconded by Chair Palmquist.

Supervisor Ceminsky noted that, at the last Town Board meeting, the Board made a motion to approve Bolton & Menke to perform the EAW. The Planning Commission has a lot of valid questions that need to be answered. If we deny this, it ends now and we never get the answers to the questions. We should request a 60-day extension to request more information so that the Planning Commission gets their questions answered.

Attorney Lemmons stated that the Board must send a notice to the applicant before the 60 days runs out, that you are electing an additional 60 days under the statute. If you deny it, they cannot reapply again for one year, under your ordinance. You can deny it on the basis of incomplete information. On the other hand, you could take the route to elect to extend your 60-day period of consideration by sending written notice. This would give them time to provide the information that the Planning Commission is requesting.

Commissioner Larson noted that the IUP that has been presented to us allows for Saturday operation. The IUP states that all mining ordinances will be followed, but Saturday operations are not included in our ordinance language.

Mike Callahan expressed his confusion that at the last meeting the Board discussed hiring the engineering firm to perform the EAW, but now the Board is going to vote on the application? Chair Palmquist responded that the Board is not voting on the application tonight, but is pointing out what is wrong with the IUP.

Mike Callahan pointed out that the ordinance calls out Monday-Friday operations, which is what is stated in their application. They have listed Saturday “mechanical” operations. Any mention of hauling would be a typo. Commissioner Larson responded that a new IUP application should be submitted with the correct information, and encouraged him to use the language that is used in the ordinances regarding the observance of holidays.

Commissioner Clancy stated that we may be digressing, but this is a very complex topic. If we are going to talk about operating on Saturdays, the existing pit is not permitted to do so under its IUP. Mr. Callahan said he agreed with that statement and did not know it was occurring. We are in agreement that MPM does not have permission to conduct Saturday operations without prior permission from the Board. The IUP application for the expansion states that you would like to operate on Saturdays for loading and trucking. Mike Callahan responded that, as far as he knows, they do not want hauling or trucking on Saturdays. The only thing they would like to do on Saturdays is maintenance.

Andy Gieseke, MPMs Production Manager, clarified that asking for Saturdays puts us in alignment with all of our other CUPs across the state and in Iowa. We are not looking in Eureka Township to produce or sell on Saturdays, but at times we need to catch up on maintenance. A lot of our sites allow us to do maintenance on Saturdays from 6:00-noon. Commissioner Clancy pointed out that the existing pit is not permitted on Saturdays of any type at this point and time, and your recently submitted EAW states it wishes to operate on Saturdays for loading and trucking. If all you want is maintenance, why is the EAW asking for loading and trucking? Andy Gieseke responded that he assumes it is a typo, but would still ask permission to perform any work on Saturdays because if they do not ask for it, it will never get granted.

Commissioner Clancy announced that the matter for the Board to consider tonight is whether the Planning Commission's request for denial to stop the 60-day clock, or the recommendation of an alternate way of stopping the clock, should be considered. The Planning Commission has extensive questions regarding the document received September 18, 2020, and has launched a finding of fact at the Planning Commission level, and are in an information search, document gathering search and document analysis phase. What was deemed as the next step is meeting with Bolton & Menke, as discussed. We either deny the application, or go forward with that meeting and begin to discuss the questions and concerns related to the existing pit as well as the expansion.

Commissioner Clancy announced some of the questions and concerns as follows:

- Saturday operations;
- reclamation of the 5 phases which were to be done;
- concrete recycling and dumping;
- percentage of imported materials vs excavated materials for the existing ready-mix plant;
- ready-mix plant as a permitted accessory use vs what may be a primary use;
- direct negotiation by MPM with surrounding land owners on setbacks. The existing pit appears closer than existing setbacks and the expansion pit EAW specifically states your intention to "directly discuss deviation with landowners". We are not sure how that would measure up with our Township ordinances, not sure such those deviations are legal or that landowners can give that permission;
- expansion permit states that the structure and sites will have an appearance that will not have an adverse effect on the adjacent properties. The view from 235th and Essex would indicate that it cannot be visibly blocked given the existing topography;

- the 2007 EAW states the area denoting future mining is located within the required 1,000-foot setback and the remaining 80 acres of land will remain in ag production. The property is bisected by utilities resulting in the remaining 80 acres being unusable for mining. Yet the 2020 EAW proposes it is suitable for use, but needs to be much closer to residences, at 100 feet. It should be noted that at the time of the existing pit inception there were reported citizen complaints over the proximity of 1,000 feet from housing. That, today, truck noise can be heard all the way from the existing eastern pit in the back yards of homes on the west side of Essex. That reduction to 100 feet could dramatically impact quality of life and home values;
- Construction of a haul route from the east to west side over the gas utility pipeline;
- the number of loads daily estimated;
- how to evaluate the risk of the pipeline breakage, related danger and cost to repair;
- how this can be screened and not impact the visible appearance of the pit;
- duration of operation. The existing pit's IUP is set to expire 17 years from issue. The expansion pit has numerous inconsistencies on dates stated on multiple documents, ranging from 10 years to 20 years to 25 years. The new 2020 EAW statements are conflicting. Section 6 says "mining activity is anticipated to last approximately 10 years", section 17 in the noise section states "the Eureka pit expansion is expected to mine for approx. 10 years", and section 19 says "25 years";
- transportation: noise level and risk to the community.

Commissioner Clancy further stated that there are so many inconsistencies in the document received in September that the document needs to be denied, or we have a lot of work to do to sort this out.

Attorney Lemmons added that there is a third alternative here. The applicant may also waive the 60-day rule, but they must do so in writing before the expiration of the 60-day period. If MPM agrees to waive the 60-day period before the 18th, we no longer have the 60-day problem. I think we need to review the ordinance in a lot more detail. For example, Ordinance 6, Chapter 7, paragraph M gives the Board the right to allow shorter setbacks, taking certain issues into account.

Commissioner Larson commented that she would recommend the Board deny the application because it does not meet the ordinance. Attorney Lemmons responded he would want a lot more information before stating the IUP application does not meet the ordinance. It was already granted and has been in existence for a very long time.

Supervisor Barfknecht expressed that another 60 days will bring us into January, which correlates with their annual review. They were not in compliance at last year's review, and what is going to get them into compliance is nothing other than the expansion of the pit, which is what they are trying to do. Supervisor Barfknecht Called the Question.

Supervisor Ceminsky stated that there have been a lot of allegations made tonight. I do not know if they are in compliance, I do not know the numbers for this year, they have not been

presented yet. We have not made a decision on whether we would grant less than 1,000-foot setbacks. I am withholding judgement until I get more information.

Supervisor Fredlund offered that, in his opinion, this pit is not even eligible to ask for an exception to the 1,000-foot setback because, as he reads the ordinance, you can go within less than 1,000 feet from a neighboring gravel pit. In his opinion, it does not apply to residences.

Motion: Supervisor Fredlund moved to amend the motion to state to deny the IUP application as of November 13, 2020 if we do not receive a waiver of the 60-day rule from MPM before that date, accepted by Chair Palmquist and Vice Chair Murphy provided that Commissioner Clancy had no issue.

Commissioner Clancy stated that he would welcome the opportunity to sit down with MPM and hash through all of the concerns. The commitment we need tonight from Mike and his team is, not only the letter, but to meet and discuss the questions in a joint, good-faith manner, with the first step being the meeting with Bolton & Menke. Mike Callahan responded that MPM is in full agreement to do so. Commissioner Clancy announced that he and Commissioner Larson will meet with MPM to begin direct conversation on the questions presented, will gather the information and publish it back to the Planning Commission. Then the Planning Commission will make its recommendation to the Town Board.

Mike Callahan asked the Board if they have any questions regarding the status of the Saturday operations complaint that was tabled last meeting. The Board requested to know the outcome of the discussion with the subcontractor. Andy Gieseke responded that we contracted with Fitzgerald Excavating as their secondary supplier for a County project in Castle Rock Township, and in turn, liquidated the inventory we had. We sold the inventory as self-load with instructions to operate under Eureka's hours of Monday-Friday. We found out that they broke the terms of the contract after the fact. Once we were notified, we manned the pit every day for the final week.

Motion: Vice Chair Murphy moved to deny the IUP application as of November 13, 2020 if we do not receive a waiver of the 60-day rule from MPM before that date, seconded by Chair Palmquist. A roll call vote was taken: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Tim Murphy – Aye; Lu Barfknecht – Nay; Mark Ceminsky – Nay. *Motion carried 3-2.*

Eureka Estates / TKDA

Supervisor Barfknecht reminded that a meeting has been scheduled for January, and asked what the next step is going to be. Chair Palmquist responded that we should ask TKDA to attend the next meeting to discuss our options and agree on a plan of action. We can then make an outline of proposed solutions to the drainage issues and present it to the residents at a public meeting. Supervisor Ceminsky requested that TKDA provide presentation material for the resident meeting.

Adjournment

Motion: Chair Palmquist moved to adjourn the meeting, seconded by Supervisor Ceminsky. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 5-0.*

Meeting adjourned at 9:25 p.m.