

EUREKA TOWNSHIP
DAKOTA COUNTY, STATE OF MINNESOTA

TOWN BOARD MEETING OF MARCH 8, 2021

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, Lu Barfknecht, Ralph Fredlund and Mark Ceminsky.

Supervisors Absent: Tim Murphy

Others Present: Ranee Solis, Chad Lemmons, Nancy Sauber, Julie Larson, Randy Wood, Georgie Molitor, Dan Ames, Butch Hansen, Eric Ruud, Mike Callahan and Clint Allen.

Approval of the Agenda

The following changes were made to the agenda:

1. Add under New Business, item D. 26120 Highview Ave
2. Add under New Business, item E. Annual Meeting

Motion: Chair Palmquist moved to approve the agenda as amended, seconded by Supervisor Fredlund. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

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.

Georgie Molitor – 8875 225th St.

Georgie Molitor requested to put 225th St. on the list for junk cleanup.

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

Dan Ames – Special permit for roads during restrictions

Dan Ames explained that he is requesting a special permit to allow concrete trucks to travel to his property during road restrictions in order to pour the foundation and footings for his

new residence. Commission Chair Sauber noted that special permits for this purpose have been allowed in the past, at no charge. Supervisor Ceminsky confirmed Commissioner Sauber’s statement.

Motion: Supervisor Barfknecht moved to grant a permit for the cement trucks, even with road restrictions, for access to roads necessary in order for Dan Ames to proceed with the construction of his home footings and cement foundation effective from March 11th through March 29th, weather permitting, seconded by Supervisor Ceminsky. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

Road Report

Road Superintendent Proposed Road Project Recommendations

- 240th St. establish a proper crown and dust proofing to be done twice per year from Dodd to Highview for stabilization.
- 225th St. will require some tree removal and overhead branch clearing along with ditch cleaning and a lift of gravel from Dodd to Highview.
- Ditch cleanout on Cedar Ave.
- Crack sealing of all developments (Jersey Ct. and Eureka Estates).

Road Superintendent Proposed Gravel Projects

Project #1	220 th St. Cost share with Farmington (1 mile)	1200 ton
Project #2	225 th St. Highview to Dodd	1500 ton
Project #3	240 th St. Between Dodd & Highview (1.25 miles)	1500 ton
Project #4	245 th St. West of Dodd (0.55 miles)	700 ton
Project #5	257 th St. (0.8 miles)	1000 ton
Project #6	265 th St. Conversion (2.5 miles)	3000 ton
Project #7	Iberia Ave North (0.5 miles)	500 ton
Project #8	Highview Ave. 225 th to Twp line (0.55 miles)	600 ton
Project #9	Spot gravel	1500 ton

Road Superintendent Proposed Road Budget

Gravel	\$ 140,000
Gravel Placement (blade & water truck) as needed	\$ 17,500
Grading	\$ 50,000
Ice and Snow Removal	\$ 40,000
Dust Proofing	\$ 42,000
Ditch Cleanout	\$ 6,000
Tree Removal and Mowing	\$ 10,000
General Labor	\$ 1,500

Weed Control	\$ 4,000
Garbage Removal	\$ 1,500
Culverts (pipe and labor)	\$ 5,000
Blacktop Maintenance	\$ 19,000
Signs	\$ 1,000
Tile Project (Grenada & 272nd)	\$ 5,500
Total:	\$ 343,000

Supervisor Ceminsky asked whether the road work proposed at the annual meeting was included in this list, and questioned if the tonnage was accurate. Chair Palmquist indicated that this list covers the annual meeting list, and more.

Planning Commission Update (Julie Larson)

Commissioner Larson provided an update of the March 2, 2021, Planning Commission meeting as follows:

- Permit requests:
 - The Trombley application for a new residence was recommended for approval.
- Land Use
 - Determined that an administrative cleanup was required for the Delmore property. The cluster and lot split were recorded in the database incorrectly, showing that the cluster went to the 5-acre parcel which already had a house.
 - The Friedges Landscaping/Progressive Resources building right transfer was recommended for approval with the condition that the paperwork include verbiage noting that the setback from the pit and from the wetland grandfathered pit must be met before building.
- Zimmer Citizen Inquiry: determined that the density would not be compromised but would have to find a building right to transfer in.
- Wind energy ordinance update: Commissioner Wood checked with surrounding communities' ordinances.
- MPM update: 2 Supervisors were to meet with MPM.
- Website issues: encourage the Board to note recommendations to make it more user-friendly for discussion at the April Planning Commission meeting.
- Commissioner Novacek wanted discussion and demonstrations of facts concerning Zoom vs. in-person meetings.
- Approved the January 8th and February 2nd meeting minutes.

Permit Requests

Trombley, 27650 Jamaica Ave, PID 13-03100-52-015 – New Residence

Motion: Supervisor Ceminsky moved to approve the building permit application for PID 13-03100-52-015 at 27650 Jamaica Ave., seconded by Supervisor Fredlund. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

Land Use

Rebecca Delmore, 13-01100-51-011 – Administrative cleanup of earlier cluster and confirmation of buildability

Motion: Chair Palmquist moved to approve for Jeff Otto to make the necessary administrative cleanup of the earlier cluster and confirmation of buildability for 13-01100-51-011, seconded by Supervisor Barfknecht. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

Progressive Resources/Friedges Landscaping, 13-00500-01-013/13-00700-26-030 – Transfer of Building Right

Motion: Supervisor Ceminsky moved to approve building right transfer for Progressive Resources/Friedges Landscaping from PID 13-00500-01-013 to PID 13-00700-26-030, seconded by Chair Palmquist. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

It was noted that the Planning Commission had recommended, based on the recommendation of the attorney, to include in the Resolution approving building right transfer that setbacks from the gravel pit and wetland must be met prior to issuing a building permit.

Butch Hansen commented that moving the grandfathered right off of the Progressive Resources parcel now exposes the native right for the quarter-quarter. Attorney Lemmons responded that he and Jeff Otto concluded that there is only one right, be it grandfathered or native. Transferring a grandfathered right is not going to resurrect the native right.

Motion: Supervisor Ceminsky moved to send a letter to Progressive Resources directing them to annex to Lakeville because we do not allow commercial in our Township.

Supervisor Barfknecht noted that Progressive Resources had requested annexation and the city of Lakeville denied it.

Supervisor Ceminsky stated that, without the building right, the property has no use because we do not allow commercial.

Commissioner Sauber reminded that Progressive Resources were told that commercial is not an allowed use under our ordinance, we did not tell them to annex. Secondly, annexation law favors the cities, with two local government units and the land owner, why would we advocate to lose land from the Township? Thirdly, they do have a use for their property.

Attorney Lemmons offered that as long as there is a reasonable use, there is no taking. He advised that the Board is drifting into an area here that he does not think they should be discussing.

Supervisor Ceminsky asked what the reasonable use is since there is no house and we do not allow commercial. Attorney Lemmons responded that the concept of reasonable use

for the purpose of taking is not “what is the highest price you can get for your property if a certain use is allowed”. The question is, is there a use for the property and what did you know you could use the property for when you acquired it with the then-existing ordinances. Eureka’s ordinances have been very stable in that the only real use is agricultural. That use is still there and they’d have a hard time making an argument that they don’t have a reasonable use for the property.

Supervisor Ceminsky asked if, as far as our land owners are concerned, the Township is going to say the use of their land is agricultural. Attorney Lemmons responded that residential is an allowed use on agriculturally zoned property and Progressive Resources is voluntarily giving up their building right. Again, the Board is drifting into an area he does not think they should be discussing.

Chair Palmquist agreed that this should not be discussed tonight. He noted that there are two residents who have applied for annexation into Lakeville. The Board would be wise to see how Lakeville deals with the two requests before any further discussion.

Motion died for lack of a second.

Treasurer’s Report

Net Pay & Claims

Supervisor Ceminsky requested that the Road Superintendent list the roads that were driven on his mileage report. Chair Palmquist responded that he will ask Mark Henry to do so going forward.

Motion: Supervisor Fredlund moved to approve the net pay and claims as presented, seconded by Chair Palmquist. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

Supervisor Barfknecht requested that Dakota Electric be notified to remove Marcia Wilson from the billing address. Commissioner Sauber responded that they have already been notified to send them to the Clerk.

Receipts & Disbursements

Motion: Chair Palmquist moved to approve the receipts and disbursements as presented, seconded by Supervisor Fredlund. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

Remaining Reports

None

New Business

Petrash – Confirmation of buildable lot/unpaid plan review fee from 2007-2008

Supervisor Barfknecht noted her interpretation of the documents presented: Although the property was surveyed in 1978, there is no documentation creating two separate parcels until 1985. The density in that quarter-quarter section, with all of the Eureka Estates

homes included, far exceeds the density limit, and I am not sure there should have been a building right there.

Supervisor Ceminsky stated that a letter from the Township dated February 15, 2008 tells them they have a building right and a buildable parcel.

Eric Ruud, Top Notch Realty, indicated that it is his client's belief that the lot is buildable.

Attorney Lemmons noted that he does not see evidence that this is a Pre-1982 parcel. The minutes from the 2007 and 2008 meetings do not explain how the Supervisors reached their opinion that it is a buildable parcel.

Supervisor Ceminsky pointed out that page 5 of 10 says it was filed at the Dakota County Surveyors Office on August 10, 1978, but the parcel ID was not obtained until 1985.

Supervisor Barfknecht stated she feels an error was made in the June 11, 2007 minutes in that there was a survey to separate the 5 acres but they did not actually record it until 1985. There is a statement to correct the record, made by Supervisor Otto, to "Let the record now reflect that the Board motion at the May 14, 2007 Board Meeting pertaining to the Sexton Property ID 13-01600-018-26 was intended to acknowledge that the lot was a buildable lot", not that they were approving a building application. The Board, all along, has led them to believe it was a buildable lot. It appears they were going to build, and then it fell apart and was placed back into the parents' name.

Attorney Lemmons noted that the fact you have a survey done does not create a pre-1982 lot of record. You actually have to create a tax parcel. The minutes and letters do not show that it was a separate tax parcel in 1982. The ordinance does allow two parcels to be recombined for tax purposes, and then split off again, but it had to have existed as a separate tax parcel in 1982. You can check the tract index to see if it was split off by a recorded deed. As I review this, I get the impression that all they did was have the property surveyed. They may have requested Dakota County create this as a separate tax parcel. When the County went to a computerized system, they wiped out all of their old records, so there may not be a way to know if this was a separate tax parcel in 1982.

Supervisor Ceminsky asked if this Board must rely on the previous Board's determination that this as a buildable lot. Attorney Lemmons responded that this Board is not governed by a finding made by a prior Board, the doctrine of estoppel does not apply. Unless there is evidence from those minutes that there was a determination made that this was a separate pre-1982 tax parcel. The ordinances related to consolidation of lots of record for tax purposes gives you the right to recreate those tax parcels as long as you create the exact boundaries. If it was a separate tax parcel in 1982, and they combined it back into one tax parcel, they could recreate it as long as they recreate it exactly as it was done in pre-1982.

Commissioner Sauber asked, hypothetically, if they took away the split eliminating the 5 acres, and then recorded it, does that fit under consolidation of lots of record for tax purposes, or did they lose their pre-1982 lot of record because they changed the

boundaries? Attorney Lemmons responded that it would be the former, a 1985 lot would not be a lot of record, you couldn't recombine them.

Attorney Lemmons advised that Eric Ruud could check the tract index to determine if there was a deed recorded creating the 5-acre parcel. He could also create a lot of record by going to the County and having them create a second tax parcel.

Non-pump Septic Report from County

Acting Deputy Clerk Larson indicated that the County sent a non-pump septic report and requested the Board's input on how to proceed. The County sends out three notices, and last year when the Clerk sent out additional letters, she received a lot of angry emails and phone calls. Supervisor Barfknecht asked if the Township can be fined for not staying on top of residents who are not pumping as they should. She recommended that, instead of spending a lot of money to send letters, we should put something in a newsletter or post it on the website.

Commissioner Sauber indicated that we pay the County to send out those three notices (6 months before, at the time due, and 6 months after) and we pay them to keep the records. It is the Township's responsibility to enforce the ordinance.

The Clerks were directed to compose a letter stating "If you have received notice from the County regarding non-pumping of your septic system in the last six years, please contact your provider to have them forward verification of pumping to the Township and the County. If you have not pumped there are violations and penalties that will be assessed". Include a copy of the ordinance.

Resolution approving election judges

Motion: Chair Palmquist moved to approve Resolution 2021-02 appointing election judges for the March 9, 2021 Township election, seconded by Supervisor Fredlund with a friendly amendment to add Susan Rogers and Julie Larson as alternate judges. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

26120 Highview Ave

Supervisor Ceminsky indicated that he received a copy of a letter sent to the realtor for the sale of this property indicating that there are no conditional use permits or nonconforming uses on this property. When realtors call to find out and they are told there are none, this puts the Township in a serious position of malicious intent because of who owns this property.

Motion: Supervisor Ceminsky moved to send the property owner a letter stating that he does have a legal registered nonconforming use and CUPs with restrictions. *Motion died for lack of a second.*

Nancy Sauber asked Supervisor Ceminsky who he is alleging has this malicious intent and is telling people what can or cannot be done on the property. Supervisor Ceminsky responded that he has been told that, when people called the Township to find out about

the non-conforming use and CUPs, Julie Larson is telling them that there is none of that on the property. Nancy Sauber stated that she has received no questions about that property, what so ever, from any realtor or potential buyer and has made no statements about what is there or not there. She thinks he should be a little cautious as to who he is implying has malicious intent.

Julie Larson indicated she has not answered any questions about this property in the Township with the exception of this morning when a realtor asked if they could run a boarding and training facility out of Mr. Hansen's property. Her response was that it is not an allowed use under our current Township ordinances.

Supervisor Ceminsky reiterated that a realtor told him their clients called and Julie Larson told them there were no nonconforming uses or CUPs. Nancy Sauber responded that that is ridiculous, Julie made copies of all of that for Mr. Ceminsky and for Mrs. Hansen.

Chair Palmquist stated that, other than what Julie has stated, no one else has reached out to anyone in the Township about that property. If the realtor is saying that, he wants the name of the realtor, who they talked to, what they talked about and what the feedback was.

Butch Hansen stated that when his sister-in-law called to see if the nonconforming use was transferable, she was told there was no nonconforming use, it had expired, and the only CUP on that property was for an airport. A gentleman showed up tonight to look at the property and was told the exact same thing, and that a business cannot be operated out of there. Julie just admitted that she talked to someone and told them they can't board horses.

Nancy Sauber responded that, first, nonconforming uses do not expire. Secondly, there is a question about when one sells a property with a nonconforming use, in the past it was determined that the new owner must have a similar use.

Butch Hansen stated that what he needs from the Township is a Board statement that he has a legal nonconforming registration that allows business to be run off that property.

Commissioner Sauber posed a question for Attorney Lemmons: If you have a nonconforming use for boarding horses, but we no longer allow that use, can a new owner board horses under the nonconforming use? Attorney Lemmons responded that a registered legal nonconforming use can be altered, but it cannot increase the impact on neighboring properties. The Board has the right to make some determinations on that. Legal nonconforming uses are governed by statute; they can continue; they cannot be expanded; they cannot be altered in terms of use. If a use is abandoned for a period of more than 1 year, the use is lost. However, you do have a legal registered nonconforming use and, until you can make a determination of what is/is not allowed under that nonconforming use, you have to determine whether or not the process of treating the legal nonconforming use was created. There is no proof that a legal nonconforming use was created, we need to see the paperwork. The only way you can run a training and boarding horses' business now is if it was allowed then. A legal nonconforming use is not a free ticket for any kind of use. Only a legal nonconforming use can be altered, a standard nonconforming use can continue but cannot be expanded or altered.

Supervisor Barfknecht recommended that, the easiest way to handle this would be to make a copy of the legal nonconforming use registration form and forward it to Mr. Hansen's realtor. Then, any interested buyers can review the document to see what can/cannot be done on the property. Attorney Lemmons agreed.

Butch Hansen expressed his concern that he must prove that his registration was accepted as a legal nonconforming use. This has cost him two sales of his property by whoever is manning the phones at Township telling them they cannot run a business out of there.

Attorney Lemmons reiterated that the best course of action is to make a copy of the registration and provide it to the realtor. We should not be interpreting what the legal nonconforming use does/does not allow, let them read it for themselves.

Butch Hansen asked who is going to make that determination? Attorney Lemmons responded that you are allowed the use that is registered. If we provide the form saying here is the use that was registered, that is all we should be doing. We should not get caught in a situation where the Township is interpreting the uses, as that is construed as providing legal advice. If there are any questions about allowed uses, direct them to the ordinances. Supervisor Ceminsky added that Resolutions 37 and 38, approving the registration, should also be provided.

MPM Update

Supervisors Murphy and Palmquist met with MPM to discuss the complaints from the past six years and were assured that MPM will take care of all issues as they arise. Since our complaint process takes a long time before action can be taken, it was agreed that Mike Callahan and Clint Allen will be notified immediately when a violation has occurred or a complaint has been received. They want to be a friendly neighbor, and communication is key.

MPM has no solid expansion plans for the next two years. Supervisors Murphy and Palmquist are to send a punch list of items for MPM to respond to.

Motion: Chair Palmquist moved to approve the annual IUP review for Mn Paving & Material, seconded by Supervisor Barfknecht for discussion.

Commissioner Larson stated that the reclamation aspect is a problem. Chair Palmquist commented that it could be added as a punch list item. Mike Callahan responded that we are trying to do the best we can to follow the ordinances for reclamation, but there are some instances where the ordinances contradict the way a mine should be properly reclaimed. For example, the ordinances talk about having 3 inches of black dirt. Currently, all of that dirt is lined up in our berms, being used for screening. We are working on plans for a temporary reclamation before we cover the entire area back up with black dirt to get it into Ag production.

Commissioner Larson commented that this was a five-phase deal and phase one has not been closed out. MPM has more exposed aggregate than is allowed by the ordinances. Clint

Allen responded that when MPM took over the pit in 2017, all 5 phases were open. There had been no reclamation and mining had been spotty and high graded. We have tried to go back and spot whatever was left, so it was very hard to reclaim the way it was left to us. Currently, with the ready-mix plant gone, we do have some good sand reserves that we can access for the first time. We would like to mine for 2 years, getting as much as we can. We have a good plan to get reclamation started this year. If we can mine and reclaim at the same time, we can recoup some of those costs and reclaim in an orderly fashion. We are cleaning up a lot of the messes we inherited. We are trying to be as responsive as we can and will hopefully have a lot more to show after this year. If we can be allowed to mine and reclaim this year, I think you will see that we mean what we say. We have not had that ability with the way it was mined in the past.

Commissioner Wood commented that MPM seems to be blaming past mining operators, but they also have been the cause of many problems. For example, they have been mining within 100 feet or less of a house and stockpiling above the berms near that house. They made an agreement with that homeowner and gave them a paved driveway, which I think is extremely unlawful. It is a flagrant violation of our ordinance.

Attorney Lemmons advised that we are getting bits and pieces of an overall story here, and that is not a good way to make a decision. You need the overall history to understand what has been going on, what should have been done, what has not been done, what has been done, to make a decision. At this point, there have been no critical violations cited by the Board and there have been no determinations of critical violations in the past. Until such time as there are critical violations determined and approved by the Town Board, there is no reason why you should not approve their IUP review. If someone on the Board wants to raise a critical violation at this time, they have the right to do so. As to the issue regarding the reclamation plans, it sounds like you already have a system to review with MPM and reach an agreement regarding what should be straightened out. There has been no critical violation of the reclamation plan, we do not know which parts of reclamation plan have been violated or who has created the violations. To make a decision based on bits and pieces is the wrong way to go about it, and that is what is happening here.

Supervisor Ceminsky reminded the Board of the different variance for setbacks on mining properties. The ordinance states setbacks but allows the Board to make changes. When we looked at the setbacks for this mine, we discovered that there was a 50-foot setback on a portion of the plan. Clint Allen confirmed that there is a record of such a setback, with the neighbor's approval, in the application and in the IUP. Mike Callahan corrected that it was in the development agreement that was approved by the Board in 2007 that gave the mine operator the ability to mine within that 1,000-foot setback with the written permission of the land owner.

Commissioner Larson stated that you cannot have an agreement with a land owner that violates our Township ordinances. Attorney Lemmons responded that the point that is being made here is that the development agreement, approved by a prior Board, allows the operator to make that arrangement with an abutting land owner.

Chair Palmquist stated he wanted to withdraw his motion and table the IUP review until the next Town Board meeting to allow time to review the development agreement. Clint Allen asked if is this something that can be raised outside of the annual review? As part of the annual review, you typically point out any violations and complaints that have occurred, not generally just open comment during the meeting. Chair Palmquist agreed that this is a separate issue.

Supervisor Barfknecht stated that what is on the table for tonight is their annual review, what was addressed during the year; were things taken care of; where they stand now; and what they are proposing to do for 2021.

Commissioner Larson stated she stands firm that MPM pit is not in compliance. Attorney Lemmons responded that in the definition for development agreement, it clearly allows the Town Board to set terms that are outside the ordinance. At this point and time, the question is whether there any violations which have been raised in the past year that have not been resolved.

Commissioner Clancy stated that he received an email from Attorney Lemmons stating that the development agreement does not supersede our ordinance. The fact that there was a ½ inch by ½ inch box on an attachment that said they could directly negotiate with the land owner did not supersede our ordinances. Attorney Lemmons responded that he is simply referring to the definition of development agreement which states the Board has the right to establish additional terms outside the ordinance.

Supervisor Barfknecht asked Attorney Lemmons if he is suggesting that we table the vote on the review until we have all read the development agreement. Attorney Lemmons responded that he is pointing it out for the purpose of clarification. At the annual review, the issue is whether there any outstanding violations that should cause the Board to want to continue any hearing on whether or not it should be approved. Do we have any violations have not been dealt with?

Commissioner Clancy stated that the question on the table is the fact that they directly negotiated with a citizen in direct violation of our ordinance. The development agreement does not supersede that, according to Chad months ago. Are we going to allow people to supersede our ordinances through direct negotiations in payment and financial benefits?

Supervisor Barfknecht stated that she has heard this but has never seen any documentation to support this. She asked for the identity and address of the land owner

Attorney Lemmons stated the Board, at the time the development agreement was adopted, negotiated with the operator as to terms outside of the ordinance. Commissioner Clancy interjected that the email that was sent goes the other way. Attorney Lemmons responded you asked me to make comment without all of the information. The development agreement is a written contract between the operator, property owner and Township which outlines the terms of the permit for a mining extraction facility, including any additional terms outside this ordinance, that are imposed by the Town Board.

Kathleen Kauffman expressed additional terms is still consistent with the original advise provided in the email. Additional is not contradictory, it is more than regulations require, it is not less than or contradictory to.

Clint Allen stated that, from our point of view, the development agreement does say we can mine within 1,000 feet with the land owner's consent. The ordinance does say that with Board approval you can have less than 1,000-foot setbacks. That is not contradictory. The question is what was the agreement with the original board? There are conflicts, and we are open to what the Board determines, but at this point I want to define violation. According to the ordinance, there are several steps that have to take place. A violation has to start with a complaint. The Bboard has to provide a written violation and give the operator/owner the steps needed to get into compliance. Without that being done, there is no violation by definition of the ordinance. You cannot hold up a review based on this alleged violation when the Board has never made it an official violation.

Attorney Lemmons commented that a review of a permit details the status of the permit holder's response to complaints or violations during the previous year. Unless a violation is still open, the permit should be approved. Chair Palmquist added that if new complaints have been brought to light at the review, they must be formal complaints to be handled outside of this review.

Commissioner Wood asked Attorney Lemmons to explain the difference between critical and non-critical violations. Attorney Lemmons directed him to Ordinance 6, Chapter 8, Section 6 – Determination of Critical Violations: Violations will be reviewed each year by the Town Board. If violations are deemed not critical by the Town Board, the following year of the permit will start with no pending violations. If violations are found to be critical by the Town Board, such violations will be added into the following year of the permit and continue to count as a violation.

Commissioner Wood inquired about the status of an outstanding complaint about a driveway; mining within 100 feet; stockpiles over the berm; scrap metal; and bringing concrete slabs in. Interim Deputy Clerk Larson responded that the complaints have been forwarded to the Town Board. Commissioner Wood stated that the complainants have not been notified that they have been satisfied.

Mike Callahan stated that he was sent an email of the entire complaint file, which consisted of about five complaints which occurred before 2016. Some of the minutes show complaints have been reconciled, but what was sent was prior to MPM. We have responded to everything sent to us.

Interim Deputy Clerk Larson announced that the complaints were from citizens and she will resend them tomorrow.

Chair Palmquist requested all formal complaints from 2019 and 2020 to be sent to the Town Board.

Clint Allen stated that two meetings ago the Board asked Attorney Lemmons to locate violations from 2017. A month ago, the Board was supposed to send every complaint, which was done. We know there is a petition out there with things we want to address, but we have not received a formal complaint. We want an orderly discussion with the Board on what they want us to address. To date, we have done everything asked of us. This would be the third tabling of the review, with no new information, if the Board tables it again.

Supervisor Ceminsky Called the Question, seconded by Supervisor Barfknecht. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

Vote on the original motion: Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

The Clerks were directed to place review of the development agreement on the next meeting agenda, as well as all complaints.

Annual Meeting

Due to the current social distancing mandate which will allow no more than 13 people at Town Hall, and statute which will not allow citizens to vote via Zoom, we are recommending that the Annual Meeting be recessed until a later date.

Motion: Chair Palmquist moved to recommend recess of the annual meeting to resume on July 27, 2021 at 7:00 p.m. at Town Hall, seconded by Supervisor Barfknecht. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Abstain. *Motion carried 3-1.*

Adjournment

Supervisor Barfknecht moved to adjourn the meeting and table the remaining agenda items, seconded by Supervisor Fredlund. Roll Call Vote: Donovan Palmquist – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 4-0.*

Meeting adjourned at 10:01 p.m.