

Eureka Township

Dakota County

State of Minnesota

Special Town board Meeting
January 18, 2006

Call to Order

Chair Connie Anderson called the Special Town Board Meeting of Eureka Township to order at 7:05 PM. Present were Supervisors Connie Anderson, Gloria Belzer, Cheryl Monson, Dan Rogers and Clerk/Treasurer Nanett Champlain, to record the minutes.

The meeting opened with the Pledge of Allegiance.

Chair Connie Anderson stated that there were several microphones on the table. The township is recording the meeting for recording of the minutes only; this tape is not retained after the minutes are approved. The other recordings are being done by private citizens.

Agenda

Board discussion on Friedges Landscaping Building Permit approved by the town board on November 14, 2005.

At the January 9, 2006 Eureka Town Board Meeting Eureka Citizens asked for clarification on why the town board made the decision they did. At that time the town board decided to set a special meeting to address the issue.

Chair Connie Anderson explained that the meeting is being held for town board discussion. The town board will open the meeting to public questions and comments once they have finished their discussion.

1. Clarification to why the board made the decision they did.
2. Why they are considered legal non conforming?
3. How is it going to benefit the community?
4. Believes that the board did not follow the ordinances correctly.

Clarification to why the board made the decision they did.

When the board looked through the ordinances, they determined that Friedges falls under non conforming uses and structures, so they put their emphasis in making their decision. They referred to legal opinion that was obtained November 8, 2004 on a black dirt issue. At the November 8, 2004 Town Board Meeting, the town board decided that Friedges fell under legal non conforming use, they were not extracting minerals thus not falling under the mining ordinance. Further legal clarification on this issue was to be obtained for the December 2004 Town Board Meeting. This legal opinion was never obtained and was not again discussed until the present.

Chair Connie Anderson read the portion of the approved minutes of the November 14, 2005 Town Board Meeting relating to Friedges Landscaping permit.

The question of less truck traffic was then addressed. It was the town board's understanding that with the building and second driveway- when the weather conditions were such that they could not work onsite, that there were more trucks hauling the dirt off site to be processed. With the

building onsite you would have less truck traffic hauling the material offsite, because all processing would take place onsite during in climate weather.

Friedges Landscaping did come in today and paid for their building permit.

Supervisor Dan Rogers was not present at the November 14, 2005 Town Board Meeting. He stated he could possibly understand why a public hearing was not held under non conforming but that for the issuance of building permits (page 49) the ordinance states that any application of commercial or industrial building permit that a date needs to be set for a public hearing. Dan questioned why this part of the ordinance was not addressed.

The building permit that was issued today for Friedges Construction (Permit #05-11-029) was for an Agricultural Related Business. Cost of Permit \$10,134.44

The town board did not review that portion of the Ordinance; they stayed under Non Conforming. That is what the decision was made on. The determining factors were: Was it going to make an alteration or impact on the property. With the information presented, town board members did not feel there were negative reasons and 3 board members voted to approve the permit. (4 members present).

Supervisor Gloria Belzer felt that in all fairness to Mr. Friedges, so that the town board was not denying something that he was entitled by the ordinance that an attorney opinion be obtained. She felt if an attorney opinion was not going to be obtained that it was an expansion. Mr. Friedges and the neighbors were entitled to a public hearing according to the Ordinance, under non conforming use.

The impact on the neighborhood was then discussed. The new building would cover up what was already there, reducing noise and dust.

To clarify the decision: Friedges Landscaping is a Non Conforming Business. The addition of the pole building is not an expansion to the business, current activities are being moved inside. The property will be cleaned up. A second driveway will be installed. The property will be made aesthetically pleasing by planting trees.

The town board felt that what Friedges is asking to do will not have a negative impact on adjoining properties. They are not changing the existing business; they will be moving current activities inside, which will improve the aesthetics of the property.

Supervisor Gloria Belzer commented that in the State Statute, under non conformity: reasonable regulations to prevent and abate nuisances and to protect the public health, welfare or safety can be imposed by a local government. The permit should clarify what items that Friedges intends to comply with. (Increase size of burm on west side, landscaping and trees around building. All equipment will be moved inside. Number of employees will remain the same; operation time will remain the same- April to December) Gloria felt that these items should have been stated as conditions of the permit. Other board members felt that when a house is built, that conditions are not set for landscaping.

Public questions were taken at this time. A citizen asked if it was commercial site or non conforming. He asked for clarification to Dan Rogers comments about building permits.

Supervisor Dan Rogers explained that there is non conforming commercial and non conforming industrial. The building permit application stated a commercial building. Dan reread the portion of the Ordinance on receiving a commercial or industrial building permit application that a public hearing needs to be set. Ignoring the fact whether the business is non conforming, conforming or damaging to the neighborhood- in our process for administrating or issuing permits for commercial or industrial building permit a public hearing is required.

The town board did not look at this part of the ordinance when issuing the permit; they only looked at non conforming use.

The information the town board used to determine the permit was as follows: Building Inspector, Bob Hegner classified the building as an industrial plant, a factory, F2 low fire hazard operation, because of its size 21,600 sq ft it is put into a category of a structure that needs to be made out of steel and concrete. The town board's job is to determine land use associated with a permit, not the building. Since that meeting the building inspector has reclassified the building as an Ag. Related Business. It is still an F2 classified building.

Butch Hansen, Friedges Landscaping representative commented that he felt the above stated process was for new businesses, not existing non conforming businesses. Mr. Hansen felt that precedence has been set, neither Bachman's nor Cross Nursery had public hearings when their buildings were permitted. The board followed the same steps and procedures issuance of Friedges permit as Bachman's and Cross Nursery. Supervisor Dan Rogers reviewed the portion of the ordinance and said that it does not specify that it is for new use only; it is a general provision for all building permits.

The town board continued with clarification of how they came to their conclusion. In addition to the above stated reasons for issuing the permit, the board felt that there would be a reduction in the amount of noise and would not be hearing the machinery outside. It would be enclosed. The view- cleanup site, everything moved inside, landscape the site- the view would definitely be improved. Second driveway would enhance the safety and traffic control on Highview Ave.

Why Friedges is considered Legal Non Conforming.

The town board relied on the decision that was made on November 14, 2004, that the town board decided that Friedges Landscaping was Legal Non Conforming. After review of these minutes the town board was to obtain additional legal opinion, but never did. The issue in 2004 was whether Friedges Landscaping operation fell under the mining ordinance. The legal opinion and board's decision reflected that it was not a mining operation; Friedges hauls in outside materials, processes these materials and then removes the processed materials from the property. They were not using materials mined from the site.

On Friedges Non Conforming Use Registration submitted to the town board on December 30, 2004, the business consisted of Landscape, Soil, Landscape Supplies, Soil Preparation, trucking construction materials, construction equipment and etc.

Outside materials (Black dirt, etc.) are brought to the site, processed and moved off site.

The town board has not obtained any legal opinion on the status of Friedges Landscaping, whether it is a legal non conforming business or if proper procedures have been followed in the issuance of

this building permit. The town board needs to direct the chair to obtain legal advice. At this time direction by the board has not taken place.

The town board on November 14, 2004 determined that the Friedges Landscaping is a non conforming business. The town board used this decision made in 2004 as the basis for issuing this building permit.

How is this going to benefit the community?

Everything is going to be moved inside. The traffic will be routed in and out separate driveways- safety issue, less noise. Not creating any negative impacts.

Believes town board did not follow the ordinances

The town board believes that it did follow the ordinance. The town board received planning commission's advice; the town board did not feel it was commercial agriculture. The town board then moved into legal non conforming, because it was the use determined use for Friedges business on record. (November 14, 2004). With the information and facts that was presented to the town board that evening, the town board, to the best of its ability followed the ordinances using the information presented on the table that evening. With that information the town board voted 3 to 1 to approve the permit. Gloria Belzer felt with a legal opinion and a more research that the town board may or may not have come to the same conclusion, but she felt that the town board had more work to do.

Tim Kuntz felt that the town board did not come to the right conclusion. The town board decided not to issue the permit as commercial Ag, such as Bachman's or Cross Nursery permit. Friedges permit was determined to be a non conforming use. Mr. Kuntz commented that a registration is not recognition by the town that the business to be a "Legal" non conforming use at the time it was created. In 2004 the business was not determined whether it was legal in the time of existence, only that it was not a mining operation, it was non conforming. Under non conforming you need to determine if it is an expansion. Mr. Kuntz feels that the addition of the building is expansion. The board determined that a non conforming business can be altered, without a public hearing as long as there is no negative impact. Mr. Kuntz feels that the "alteration" was not used correctly under the ordinance.

Mr. Kuntz questioned the fact that the building official changed the building permit from Industrial to Ag related business after the town board determined it not to be an Ag business.

The process of issuing commercial or industrial building permits was overlooked, when issuing the permit.

Don Storlie commented you need to look at the operation today, how the business is being run by putting the business inside, which is better.

Butch Hansen commented on Friedges Landscaping non conforming business, it was determined in 2004 as a non conforming business. When Friedges applied for this building permit, Mr. Hansen asked the planning commission where the business fit in, Friedges applied for the permit according to the planning commission's recommendation. The town board did not feel that the business fell under commercial Ag. or Horticulture, that it was a legal non conforming use. The town board followed the ordinance in issuing the permit.

Supervisor Cheryl Monson received a call from Harlow and Caroline Wolkow, 9550 225th St W. his concerns are safety issues of trucks driving 70 miles an hours, the amount of trucks on 225th St and the dust and he had hoped that we considered all of those.

A citizen questioned if the soil was going to be bagged or hauled out by truck load. The town board said that the materials were going to be bagged, before leaving the premises. The route that trucks were going to use was also questioned. At the present time truck traffic on 225th St is intense. Georgia Molitor asked that the permit state that the trucks will enter the property on Highview Ave, exit on Highview Ave. The town board stated that was the purpose of the second driveway. A citizen asked what recourse they will have, if this procedure is not followed. They would need to come forward to the town board and issue a complaint.

Georgie Molitor asked that the town board meet with their attorney and get the legal definition of a non conforming use straight. Registering as a legal non conforming does not make you a legal non conforming. This needs to be addressed by the township attorney.

A motion by Supervisor Cheryl Monson: To adjourn. Motion seconded by Supervisor Gloria Belzer.

Meeting Adjourned at 8:50 pm.