

Eureka Township
Dakota County
State of Minnesota

Eureka Town Board Meeting of October 11, 2011

Call to Order

Chair Brian Budenski called the October 11, 2011, Eureka Town Board meeting to order at 7:00 p.m. Members present were Supervisors Brian Budenski, Nancy Sauber, Dan Rogers, Pete Storlie and Kenny Miller. Clerk/Treasurer Nanett Sandstrom was present to record the minutes. Also present was Mark Ceminsky as Planning Commission Liaison and Township Attorney Trevor Oliver. See attached attendance sheet for additional persons in attendance.

The meeting opened with the Pledge of Allegiance.

Approval of Agenda

The following items were removed from the agenda:

- Yaggy Colby will not be in attendance at the meeting. They sent a draft of their report. They are able to attend next month's meeting.
- VRWJPO will not be present at the meeting
- Wat Lao – Supervisor Dan Rogers has not been in contact with Wat Lao- no report.
- Buffington will be filed in the next 10 days.

A motion by Supervisor Dan Rogers: To approve the agenda as amended. The motion was seconded by Supervisor Nancy Sauber. The motion carried by unanimous vote.

Public Comment Period

None

Treasurer's Report

Checking Account Balance: \$1,289.93. Outstanding Checks \$1,616.04. Savings Account Balance: \$296,203.27. CD Account Balances: \$67,167.58. The Ledger Balance is \$363,044.74.

A motion by Supervisor Nancy Sauber: To accept the Treasurer's Report of October 11, 2011, as presented. The motion was seconded by Supervisor Dan Rogers. The motion carried by unanimous vote.

The Town Board reviewed the Claims List and Net Pay Account Distribution.

Bills and Receipts

The Clerk presented the following bills for payment:

Henry's Excavating	Road maintenance thru 9/30/2011	\$9099.00
MNSPECT	Inspection Services September 2011	\$954.96
Dakota Electric Association	Town Hall Electric	\$77.84
Frontier Communications	Phone Service Town Hall	\$111.00

Culligan	Water Softener Town Hall	\$23.51
Dick's Sanitation	Garbage Service Town Hall	\$42.85
T & C Commercial Cleaning	Clean Town Hall – October	\$43.29
Kelly & Lemmons	Legal Services thru 9/30/2011	\$1,737.50
TKDA	Commercial/ Industrial Study & Windmill	\$471.72
PERA	Payroll Period 9/1/2011 to 9/30/2011	\$130.48
Central Valley	LP	\$68.26
Anderson Bobcat	Tree Removal	\$100.00
Nancy Sauber	Expenses- Post card C/I Task Force	\$200.16
IRS	October Deposit 941	\$217.50
Dakota County Treasurer	Truth in Taxation	\$232.14
Darrel Gilmer	6 Septic Inspections	\$1,200.00
Dakota County Treasurer	6 septic systems	\$240.00
ProService Lawn	Lawn Maintenance September 2011	\$385.65
Jim Kaiser	Return of Escrow	\$500.00
USPS	Newsletter mailing	\$175.00
Julie Larson	Mileage	\$59.16
Julie Larson	Payroll- Office help	\$384.47
Carol Kelly	PC Recorder Payroll 9-1-2011 to 9-30-2011	\$70.76
Nanett Sandstrom	Clerk Payroll 9-1-2011 to 9-30-2011	<u>\$804.56</u>
Total Bills Presented		\$17,329.81

The \$168.75 for the Review of Leine lot of record verification request, “work on draft of letter,” from the September Kelly and Lemmons bill will be deducted from Oliver Leine’s escrow. The remaining of the escrow balance will be returned to Mr. Leine.

A motion by Supervisor Nancy Sauber: To release the balance of the escrow. The motion was seconded by Supervisor Brian Budenski. The motion carried by unanimous vote.

Additional Bill approved at Meeting	Ollie Leine- Return of Escrow	<u>\$331.25</u>
Total Bills for October		\$17,661.06

A motion by Supervisor Nancy Sauber: To approve the Claims List and Net Pay Account Distribution for October 11, 2011, as presented. The motion was seconded by Supervisor Dan Rogers. Roll call vote was taken on the motion: Kenny Miller-aye; Pete Storlie-aye; Brian Budenski- aye; Nancy Sauber-aye; and Dan Rogers-aye. The motion passed unanimously.

The Town Board reviewed the following financial reports prepared by the Clerk: Current Investments, Statement of Receipts and Balances, Cash Control Statement, Disbursements Register, and Receipts Register.

It was noted that Check numbers 6353 and 6355 are voided checks.

The following receipts were received in September:

• <u>Local Permits</u>			
Capstone Bros. – Permit ET-11-019	\$105.00	Dan Rogers- Application Fee	\$25.00
Jim Kaiser- Permit 11-10	\$745.84	Doug Mosley- Application Fee	\$25.00
Gary Weflen- Application Fee	\$25.00	Natalie Melhouse- Application Fee	\$50.00
NKN Construction- Application fee	\$25.00		
• <u>Other Receipts</u>			
Dakota County – DNR Payment	\$1,636.19	Castle Rock Bank- Interest CD	\$237.75
Castle Rock Bank- Interest CD	\$409.65	Castle Rock Bank- Interest Savings	\$1,368.47
TOTAL RECEIPTS AS OF SEPTEMBER 30, 2011			\$4,652.90

Supervisor Nancy Sauber reviewed the Attorney billing charges, and they are appropriate.

A motion by Supervisor Nancy Sauber: To approve the balance of the Financial Reports for October 11, 2011, as presented. The motion was seconded by Supervisor Pete Storlie. The motion carried by unanimous vote.

Budget

The Town Board reviewed the budget.

Contractor Time

Mark Henry reported on the Highview Ave. road improvement project. The mat is in place. The edges are marked with reflective markers and cone. The edges need to be backfilled. He did not open the road on his own and asked for the Board, as Road Authority, to decide this matter. Road Supervisors felt the road could be opened, and the rest of the Board agreed. Lime rock will be added to the road in a week or so, after the road bed has been packed down. Dust coating will not be applied to the road this fall. There were concerns with ice on the roadway this winter with so recent an application of dust control.

The culvert on Ipava has been installed.

The Road Supervisors will perform the sign reflectivity inventory for Township signs.

The roads will be graded once it rains again; this is the time to grade the roads- when they are wet.

The Sheriff, Fire Departments and Bus garages can call the Road Maintenance Contractor directly to report icy road conditions this winter. They will be provided with the Road Supervisors' cell phone numbers also.

Deputy Sheriff

Sergeant Tim Samuelsson of the Sheriff's Office was present to address concerns or issues in the Township. There have been periodical burglaries in the country. Make sure that you lock your house when leaving home. Do not put outgoing mail in your mailbox, especially bills.

Planning Commission, Land Use Permits and Related Items

A. Permit Requests

1. Gary Weflen, 8178 267th St. W., Ag. Building

Lou Ann Weflen was present to represent the application. The Weflens are requesting to build a 50'x87' pole building for agricultural use. The Agricultural Building Exemption Application was completed. The building is located in the North Cannon Watershed District. This building permit replaces a permit that was issued in 2009, and reorients the structure on the lot. The 2009 building was never built.

A motion by Supervisor Nancy Sauber: To approve Gary and Lou Ann Weflen's application for an Ag storage building for hay and equipment. The motion was seconded by Supervisor Kenny Miller. The motion carried by unanimous vote.

2. Doug Mosley, 7385 255th St. W., Pole Building

Doug Mosley was present to represent his application. He is requesting to build a 32' x 48' pole barn with 12' sidewalls. The pole building will be used for cold storage. Mr. Mosley operates a commercial/residential landscaping business from his home. No materials are stored onsite. They are delivered to the job site. His office is in his home. He has one truck, a dump trailer, a car carrier trailer, a three-axle trailer and a snowmobile trailer to store in the building.

The Township Attorney commented on home occupation and accessory uses under the Ordinances and how that applies to Mr. Mosely's situation.

Home Occupation: A home occupation office is in the home by itself and people are not coming to the office. It is used strictly to take calls and keep books for designing jobs. A home occupation is limited in that it is not supposed to be based out of or heavily use an accessory building.

Accessory Use: A business that has large vehicles parked at a house because it is more convenient to park at the home than dropping it off at a central site has been judged in the past to be okay. Storage of the equipment as a matter of convenience, rather than a matter of necessity for the business, is of importance. It shouldn't change the character of the property as a residence. It should not be obvious that it is a business. It has been treated as an accessory use.

A use beyond an Accessory Use would be: 1.If there is a volume where vehicles and equipment are not fitting into the building. 2. Where the business is relying on the accessory building as a necessity for the business.

The Town Board determined that the proposed building itself fits within the parameters of an accessory building. The office is a home occupation. The landscaping business as described is an accessory use. If the business expands onsite at all, a Conditional Use Permit would be required as a Horticultural Service Business.

A motion by Supervisor Kenny Miller: To grant the permit to Mr. Doug Mosley of 7385 255th St. W., Farmington, for his building. The motion was seconded by Supervisor Dan Rogers. The motion carried by unanimous vote.

3. Natalie Melhouse- 9812 250th St. W.

Dick Martin was present to represent Melhouse's application for a 12' x 20' accessory building. The VRWJPO did not require a permit for this project as there is no ground disturbance. The building will be anchored to the ground. The Planning Commission had expressed concern over the anchoring shown on the plans. The Building Inspector will assure that the anchoring is sufficient. Dick commented that Natalie's anchoring plan is the same that he had used on a similar building a short while ago.

A motion by Supervisor Nancy Sauber: To approve Natalie Melhouse's application for an accessory building 12' x 20' at 9812 250th St. W., Lakeville, as presented. The motion was seconded by Supervisor Brian Budenski. The motion carried by unanimous vote.

B. Land Use & Zoning Issues

2. Rich Stevens- Lot Split

Rich Stevens was present to represent his request for a property split of parcel 13-02400-01-011 consisting of 76.5 acres. The request is to split off 1.89 acres per survey dated July 15, 2011 by Halverson Land Surveying, LLC.

A motion by Supervisor Kenny Miller: To approve the lot split as presented for Rich Stevens of 25301 Denmark Ave. The motion was seconded by Supervisor Brian Budenski. The motion carried by unanimous vote.

C. Other Business

Westwind Education- CUP Review

Tom Chellberg and Scott Blair were present to represent Westwind in their CUP Review. Documents demonstrating their compliance with all applicable Minnesota state reporting requirements for nonpublic schools for the previous year were provided. The school is incorporated, as they have been since they came to the Township. They maintain a 501(c)3 tax status. They are MN Code-compliant. Their curriculum is based on the Cambridge International Examinations. They also have campus requirements that are required by Sterling Education, an International Schooling System. All their teachers are licensed. They have medical and CPR training, which covers all the bases for the safety and welfare of the children.

The physical examination of the building is new. An over-the-counter permit was issued this year to refurbish the basement. No structural changes were made. The sliding door was replaced with a swinging door. Elementary classes were moved to the basement.

They currently have 18 students, compared to the 14 they had in the past. This year they took on grades 3, 4, and 5.

The floor was open for public comment. There were no public comments or complaints received. A motion by Supervisor Nancy Sauber: To approve the review of the CUP for Westwind Education at 8215 240th St. W. The motion was seconded by Supervisor Dan Rogers. The motion carried by unanimous vote.

Citizen Business

None

Other Business

A. Farmington Fire Department Contract

Tim Pietch, Farmington Fire Chief, and Dave McKnight, Farmington City Administrator, were present to discuss the Farmington Fire contract. The most recent Fire Contract was from 2000. The formula used to figure the Township percentages is outdated, they said. A few years ago, when working with Castle Rock Township, they got rid of the formula and went with a set fee for the base year with a 3% increase each year for 3 contracted years. The base year fee was a 22% reduction over the previous year.

When asked for an explanation as to why the cost for fire protection from Farmington is significantly higher than that from Lakeville, Chief Pietch stated that part of the increase was due to a resident in the Township who had 7 false alarms last year. Calls in Eureka are 2-4% of all Fire calls. They also had significant increases in Relief Association costs. Overall, when asked further by the Board, they had no explanation for the dramatically increased costs. They will break down the cost to share with the Town Board.

When asked by the Board to comment what fire contracts should be based on, the Township Attorney commented that capital costs are not usually included in Fire contracts. It is not practical. If it is included, it implies joint ownership of materials and equipment. The contract should not explicitly include capital costs, so that the contract fluctuates based on it. Capital decisions are made by the leadership of the host Fire Department and are direct economic decisions that the Township has no say in and has not been consulted about. The contract should be on service-based fees.

The Town Board asked that the City put together a proposal for a new contract. The Farmington Fire Contract will be placed on the agenda for the November Town Board meeting.

At 8:10 pm the Town Board took a 10-minute recess.

B. Planning Commission Update

Planning Commissioner Mark Ceminsky was present as the liaison to the Town Board. The Planning Commission presented the Town Board with an addendum to the Building permit application. It has additional information that they would like to see on the application. They would like this information to be added to the Zoning, Building, Conditional Use and Variance Applications. The Town Board will review the addendum for next month's meeting.

The Planning Commission asked for direction and better communication between the Town Board and the Planning Commission. They understand they are an advisory committee to the Town Board, but they do not feel that the Town Board is taking their recommendations. They question if they are doing their job. The Town Board commented that the Planning Commission is inexperienced, though with training and additional experience they will be able to learn what questions might come up on applications so the Town Board may not need to address these issues, or in as much detail, after the Planning Commission recommends approval on a permit. The Town Board makes the final decision on an application and needs to make sure all bases are covered before issuing a permit. The responsibility to do so rests with the Board. Further discussion on this issue will be addressed at the Roundtable Meeting.

Mark commented that he noticed the Petter building does not look like the same building as the permitted building. It is taller and it appears that it is not positioned as it was proposed. He questioned if changes were made at the Town Board level that the Planning Commission is not aware of.

C. C/I Task Force

C/I Task Force Chair Jim Sauber was present to briefly discuss the C/I Task Force meeting. A meeting is scheduled for October 24th to go through information received at the August 22nd Meeting and to finalize the report for the Town Board to consider at their November Town Board Meeting.

D. Scott Qualle- MNSPECT- 9:00 pm

1. Charles Liane- 9020 235th St W.- trailer moved onto property.

Scott contacted the County. The Liane property is not in the Floodplain, but is in Shoreland. Dakota County sent Mr. Liane a letter stating a building permit is required. A Dakota County building permit application was included with the letter.

2. Memo About On-site Office Time

MNSPECT is offering to hold on-site office time at the Town Hall for an hour each month. Citizens could come and meet with an inspector and have questions answered. The Town Board agreed to have an inspector present at the Town Hall once a month on a trial basis for 3 months. This will be done on the Tuesday 12 days before Planning Commission's meeting, from 5:00 to 6:00 pm.

3. Terri Petter- Use of Ag-permitted Building

A plumbing permit is required. They are installing two accessible bathrooms on the main level (Men's and Women's) and a floor drain and mechanical room. Upstairs there are two bathrooms, a bar sink and washer box for laundry. They are also putting in in-floor heating. If the building is being used for the public, the building plans must be submitted to the State. Scott looked at their website. It states that there are tours for the public. Scott does not feel this is an Ag building. It does not meet the definition of an Ag building. This building is not being used exclusively for Ag purposes.

Attorney Carol Cooper was present to represent Terri Petter. Carol commented that Terri wants to get the building finished and do it lawfully. There have been changes made. The building is smaller than the originally proposed building. The location of the building is also different. The building has plumbing. The original building did not. When Terri was told that a plumbing permit was required, she submitted an application. She can't disagree with the statement that the building won't be used exclusively for Ag purposes unless Terri changes her plans for the building. She doesn't see any place in the Building Codes that it has to be used *strictly* for Ag purposes. It will be used for food storage, skinning, some young animals in the building, and on the second floor there will be quarantined animals and freezers. All of those fall into definition of Ag use under the Building Code Statute.

The Township Attorney was asked to comment on Ag use. It doesn't need to be used exclusively for Ag Purposes. The question is whether the building, or a substantial portion of the building, is to be used for people other than the owner, lessee, and sub-lessee of the building and members of their immediate families, their employees, and persons engaged in

the pickup or delivery of agricultural produce or products. This is the list from Statute of whom is acceptable for a building intended to be exempt from many of the structural requirements of the Building Code. When third parties or the public are using the building, it is no longer exempt from the Building Code. Handicap bathrooms separated by gender is the biggest thing. That is not usually part of a building that is just family-used. How the property is being presented to the public is questionable. Where inviting people to see what a fur farm looks like and crossing that line from being acceptable as an accessory use. When does it become a central purpose or primary use of the property? The website makes it seem like it is a heavy purpose as an educational or interpretative center or used for public viewing. As presented, it is no longer an Ag building because it seems substantially purposed to serve members of the public or at least not persons included in the list of people for whom the Ag exemption is permitted. Parts of the building are being built to serve guests. The regular building permit requirements are to protect members of the public.

Scott Qualle commented that the Ag exemption is for buildings *designed, constructed and used* to house farm implements, livestock, or agricultural produce or products. From the website and the construction they have seen, clearly it appears to be used by the public.

Carol Cooper commented that assumptions are being made from the website, that this is the only business that Terri Petter is carrying on. She does not market to buyers of her pelts through the website, although it is something she does. The website is designed specifically for people who are interested in tours and buying things online. Most of the animals are going to remain outside, just young animals and quarantined animals and perhaps horses will be in the building. Tours will be primarily of outside animals. There will be a space inside that she has designated to be a public space. Terri wants to do this legally.

The Township Attorney commented that to move forward with constructing the building, Terri needs to submit a building permit without claiming the Ag exemption, to submit the plans required for Building Code compliance and to go through the inspections required. The question of the use of the property remains. Fur farming is an acceptable use as are facilities that relate to the fur farming. What are controversial are the tours and the educational or interpretative center. The Board came to a consensus last year that this is not an accessory use to a farming operation. This use was also ruled out as being an agricultural service. Charging admission or organizing regular tours would not be an accessory use. What are still out there are the "occasional" tours. It can't be set up and advertised as "our Lakeville facility." Educational tours as a regular use is not an acceptable use under current zoning codes. She can build the building, but there is still the lingering question of how the property is used, what uses are acceptable and which ones aren't. The use as understood is not allowed under the zoning code; they could propose an amendment to be publicly discussed.

Carol Cooper does not believe that the tours are a regular occurrence. Since the barn burned, no tours have taken place onsite. Terri does take animals to various locations. She believes the tours are not a regular occurrence, but have been going on for some time.

A building permit is required because part of the building will be used for the public. The building itself does not present any zoning issues as an accessory building. The use is a question. How often do tours take place? How many people? What is the traffic impact?

Carol commented that Terri asks for donations; she does not charge admission. When asked by the Board if a donation rather than a fee makes a difference, Trevor replied that “it helps.”

The Attorney suggested obtaining some accounting of the types of groups that have been coming in: size of groups, largest group anticipated, how often. The Town Board agreed that this information should be obtained.

Scott felt that issuing a permit is an urgent issue. So far, the framing and footings are in place. Issuing the permit would take a week to 10 days. Since the permit was issued under zoning compliance, a penalty would not be assessed as long as the permit is submitted and paid for in a timely manner. With cooperation, a stop-work order will not be posted.

The use and building permit process can take place at the same time. Trevor did not feel the need to revisit the zoning compliance. The building size has been downsized, setbacks should be met. The VWRJPO process might need to be revisited, since plans have changed. The use of the building is still a concern.

Scott suggested a deadline of a week from Thursday, October 20th by 6:00 pm. The permit should be picked up and paid for on the first Township Office business day after notification that it is ready. (This could be 2 to 4 weeks from now.) There is some issue of proceeding at her own risk. If construction does not meet Codes, it will need to be corrected. He can't inspect something he can't see. The framing cannot be covered.

To have a use, such as regularly scheduled tours, an interpretative/educational center or to render this as a non-issue, an amendment would need to be made to the zoning ordinance. At this time, some level of use is acceptable. To render it a non-issue, or if they want to upscale the use, an amendment would need to be made.

The third issue is the chapel building that was moved onto the property last spring. The Building Inspector is seeking a resolution to this issue. Township Ordinances require a move-in permit as well as the Building Code permit when one moves a building within or into the Township. It needs a permanent destination.

E. Noise & Nuisance Ordinance

The Town Board discussed the proposed Noise and Nuisance Ordinance. Questions on its content were discussed.

A motion by Supervisor Nancy Sauber: To approve Ordinance 2011-05: A Sound Ordinance as presented by the Attorney. The motion was seconded by Supervisor Dan Rogers. Supervisor Nancy Sauber amended the motion: Noise and Nuisance Ordinance. Supervisor Dan Rogers accepted the amendment. Vote was taken on the motion; four Supervisors voted in favor of the motion. Supervisor Pete Storlie voted against the motion; he felt the Ordinance should have been reviewed by the Dakota County Sheriff's Department for input before adopting the Ordinance.

Minutes Approval (while Mr. Oliver wrote the Ordinance summary)

A motion by Supervisor Nancy Sauber: To approve the Eureka Town Board Minutes for the Meeting of September 13, 2011, as presented. The motion was seconded by Supervisor Brian Budenski. The motion carried by unanimous vote.

A motion by Supervisor Nancy Sauber: To approve the minutes for the Eureka Town Board Minutes of the September 13, 2011, Meeting, continued on October 6, 2011, as presented. The motion was seconded by Supervisor Dan Rogers. The motion carried by unanimous vote.

Summary of Ordinance 2011-05: Ordinance 2011-05 incorporates state noise standards and adopts complementary standards for the enforcement of nuisance noise standards. Certain types of noise from domestic power equipment, construction, music playing and gatherings are prohibited between 10pm and 7 am. The Ordinance allows the Town Board to approve noise exception permits upon request.

A motion by Supervisor Nancy Sauber: To approve the Summary as Trevor presented it. The motion was seconded by Supervisor Kenny Miller. The motion carried by unanimous vote.

Additional comment on Terri Petter accessory building: Per Township Ordinances, accessory buildings are allowed one (1) half-bathroom facility.

F. Newsletter

The Town Board reviewed the fall Newsletter.

Old Business

A. Misc Updates

1. Windmill Mine Inspection Report

The Windmill Mine Inspection report was submitted to the Clerk. Copies of the report were given to the Town Board for their review. The items covered were acceptable.

2. Mahoney Inspection Report

The Mahoney Inspection report was submitted to the Clerk. Copies of the report were given to the Town Board for their review. Supervisor Kenny Miller reported that Mr. Mahoney has cleaned up much of the property. A second inspection will take place when Mr. Mahoney returns from overseas.

3. Country Stone

Country Stone has cleaned up the yard. One stockpile has been removed. They are working on removing the other stockpile. They have started bagging for next spring, and there will be a lot of beeping. OSHA will be coming out and will check on using white noise alarms instead of the back-up beepers, as detailed in the settlement agreement. The Township has not yet received a copy of their SWPPP.

New Business

A. Method to track and report action items over time

Supervisor Nancy Sauber suggested that a spreadsheet be developed that would track action items 30 days, 60 days, 90 days, and 120 days out. This spreadsheet would be part of the monthly packet. This would help to keep track of outstanding items without it falling to any one Supervisor to keep reminding the Board of what is yet left unresolved.

B. Fire Fighting Agreement, Yaggy Colby, and VRWJPO items will be placed on the November agenda.

Clerk/Treasurer Presentation

The Clerk requested that locks be changed on the Clerk's Office and the File Storage. The Clerk was given permission to have the locks changed.

Meeting adjourned at 10:44 p.m.