

Eureka Township
Dakota County
State of Minnesota

Eureka Town Board Meeting of November 14, 2011

Call to Order

Chair Brian Budenski called the November 14, 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 item was removed from the agenda:

Lakeville Fire Department Contract

The following items were other changes to the agenda:

Highview Road Rebuild Project and Chub Lake Culvert Project were moved on the agenda to before Contractor Time.

Minutes: Motion to Preserve Meeting Recording was added.

The Sheriff Department- Noise & Nuisance Ordinance discussion was moved up after the Budget.

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

Public Comment Period

None

Treasurer's Report

Checking Account Balance: \$2,116.21. Outstanding Checks \$2,103.38. Savings Account Balance: \$278,457.07. CD Account Balances: \$67,167.58. The Ledger Balance is \$348,155.87.

A motion by Supervisor Brian Budenski: To accept the Treasurer's Report of November 14, 2011, as presented. The motion was seconded by Supervisor Nancy Sauber. 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 11/30/2011	\$9,465.50
MNSPECT	Inspection Services November 2011	\$830.64
Dakota Electric Association	Town Hall Electric	\$59.94
Frontier Communications	Phone Service Town Hall	\$111.63
Culligan	Water Softener Town Hall	\$23.51
Dick's Sanitation	Garbage Service Town Hall	\$45.81
T & C Commercial Cleaning	Clean Town Hall – October	\$42.85
Kelly & Lemmons	Legal Services thru 11/30/2011	\$1,566.25
TKDA	Windmill	\$280.16
PERA	Payroll Period 10/1/2011 to 10/31/2011	\$163.39
ECM Publishers	Legal Ads	\$56.00
MATIT	Insurance thru 11/01/2012	\$2,958.00
MN Department of Labor	Surcharge Report 3 rd Qtr	\$180.83
IRS	November Deposit 941	\$255.82
Al's Lock & Keys	New locks	\$118.00
Gold Mine Dezine	Newsletter	\$176.76
Yaggy & Colby Associates	Chub Lake Culvert	\$1,072.50
Safety Signs	Highview Project	\$123.00
MN Pipe & Equipment	Highview Project	\$2,270.77
Castle Rock Materials	Limestone Highview Project	\$8,030.45
Eureka Sand & Gravel	Gravel Highview Project	\$19,646.11
TKDA	Commercial Industrial Study	\$2,137.89
Castle Rock Materials	Limestone Highview Project	\$304.38
Pro Service Lawn & Landscaping	Lawn Maintenance- October 2011	192.83
Julie Larson	Mileage	\$48.96
Julie Larson	Payroll- Deputy Clerk	\$278.33
Carol Kelly	PC Recorder Payroll 10-1-2011 to 10-31-2011	\$56.61
Nanett Sandstrom	Clerk Payroll 10-1-2011 to 10-31-2011	<u>\$984.11</u>
Total Bills Presented		\$51,481.03

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

The affidavit for payment to Eureka Sand & Gravel was signed by Supervisor Kenny Miller, owner and operator.

A motion by Supervisor Nancy Sauber: To approve the Claims List and Net Pay Account Distribution for November 14, 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.

The following receipts were received in October:

• **Local Permits**

Dan Rogers - Permit ET	\$279.21	Westwind Ed. - CUP Review	\$25.00
NKN Construction- Permit ET	\$357.19	Wayne Hallcock- Lot Split Application	\$25.00
Window World- Permit ET11-020	\$105.00	Natalie Melhouse- Permit 11-13	\$150.68
Fireside Hearth- Permit ET11-021	\$70.00	Doug Mosley- Permit 11-14	\$946.31
Lou Ann Weflen- Application Fee	\$25.00	Dakota Electric- Utility Permit 2011-10-7	\$25.00
Rich Stevens- Lot Split Application	\$25.00	Hauling for Hope- Permit ET10-022 & 023	\$210.00
Westwind Ed.- Application Fee	\$25.00	Vermillion Kennels- Kennel License 2011	\$100.00

• **Other Receipts**

Ackermans - Newsletter Ad	\$125.00	MN Dept Finance- District Court	\$253.80
Maydelle Rose- Town Hall Rental	\$25.00		

TOTAL RECEIPTS AS OF OCTOBER 31, 2011 **\$2,772.19**

Supervisor Kenny Miller performed the internal check of the Clerk's books for August.

Supervisor Brian Budenski performed the internal check of the Clerk's books for September.

A motion by Supervisor Nancy Sauber: To approve the balance of the Financial Reports for November 14, 2011, as presented. The motion was seconded by Supervisor Kenny Miller. The motion carried by unanimous vote.

Budget

The Town Board reviewed the budget.

Nancy Sauber asked for an explanation of why the gravel in gravel hauling budget shows a deficit. Road Supervisors explained the deficit is a due to fixing soft spots in the road this spring and a coating of limestone that was applied to 235th St. from Dodd Blvd. half-way to the Scott County line. The winter was a hard winter and there was a lot of damage to the roads. The July and August expenditures were for graveling that was on the schedule to do, and that put the budget line in a deficit of roughly \$12,000. Road Supervisors will prepare a detailed report of money spent for graveling this year for explanation at the Annual Meeting.

Sheriff Department- Noise & Nuisance Ordinance Discussion

Sheriff Dave Bellows and Sergeant Scott Durdall were present to discuss the Ordinance with the Town Board. In 2011, there were eight calls associated with noise complaints. Before citations are issued, investigative steps are taken to make sure the proper steps are taken. When a noise complaint is received, the Deputy assesses the situation before taking action. Also, the Sheriff's Department tries to educate the public; persons are often unaware of the Ordinance the first time.

Sheriff Bellows will check with his staff to see if a log of noise complaints can be sent to the Township periodically. This was requested so that, should a citizen complain to the Board and not to the Sheriff, the Board would have some idea of the history of the site.

Highview Road Rebuild Project

The road re-build project came in slightly below projected costs. The County Road/ Bridge Rebuild form needs to be completed and sent to Dakota County Highway Department for their share in the cost of the project. The form needs to be signed by the Chair.

Chub Lake Culvert Project

Yaggy & Colby Associates submitted reports on the proposed project. The water has stabilized in the culverts at midpoint in the culverts that were installed this summer. The water has stopped flowing. There is consensus by the DNR and Dakota County Soil and Water that the road is not controlling the water level. The culverts installed this spring are adequate. The situation will be reassessed in the spring before closing the project completely.

A lift of gravel was applied to the road to bring it back to the correct level. The road tends to sink each year. The Clerk was asked to check with Yaggy & Colby to see if all the bills have been received for the project.

Contractor Time

Road Contractor Mark Henry was present to discuss road issues. The Road Supervisors, Dan Rogers and Kenny Miller, are in the process of completing the reflectivity portion of the sign survey. They will organize the plan to deal with the signs going forward. The plan is due in 2012.

Mark Henry briefly outlined his tentative snowplowing route for this winter.

Planning Commission, Land Use Permits and Related Items

A. Permit Requests

1. Gayle Schleif, 8995 280th St. W., Driveway

Gayle Schleif was present to represent her application. The application was to place a driveway on Iberia Avenue on property that is owned by the applicant. The current driveway serving the parcel is not owned by the applicant. This driveway will be abandoned. The new driveway will be placed 10 feet from the property line in accordance with Township Ordinances.

A motion by Supervisor Kenny Miller: To grant this request for a driveway permit by Gayle Schleif, 8995 280th St. W. The address to the property will need to be changed. The motion was seconded by Supervisor Nancy Sauber. The motion carried by unanimous vote. The Clerk will issue a new property address.

B. Land Use & Zoning Issues

1. Wayne Hallcock- Lot Split, 27139 Denmark Ave.

No one was present to represent the application. Wayne Hallcock requested to split 3.95 acres from parcel ID number 130360001010. The split will separate the homestead from the acreage. The property split does not affect the Ag Preserve status of the property.

A Supervisor Kenny Miller: to approve the land split as submitted by Wayne Hallcock and Candice Hallcock of 5795 280th St. W. Motion seconded by Supervisor Brian Budenski. The motion carried by unanimous vote.

C. Ag Preserve Application- Christiania Lutheran Church

Jeff Otto was present to represent the Ag Preserve application. Christiania Lutheran Church is requesting to place 79.11 acres in Section 29 into Ag Preserves.

A motion by Supervisor Kenny Miller: to accept the application for Christiania Lutheran Church at Range 20 S1/2 of SE1/4 into Ag Preserve. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

D. Zoning Ordinance and Options for State Mechanical Building

Dan Sheridan, Sheridan Law Firm, and Bruce Lundeen, Realtor, were present to represent Judy Heintz of State Mechanical. Due to the death of her husband, Mrs. Heintz no longer desires to operate the business and would like to sell the property. The tentative buyer, Bob Wilson, was also present along with Judy Heintz. They are seeking guidance on options that are available for the property. The tentative buyer of the property would like to operate an automotive restoration business on the property.

The Township Attorney advised the Town Board in a memo that the proposed use is not allowed under current Township Ordinances. State Mechanical has a nonconforming business registration on file from 2004. The only business that would be allowed would be a similar use. Any new use would need to conform to Township Ordinances. If State Mechanical has not been operating for more than a year, then the non-conforming use route is not available or has lapsed. The property can only be used as provided for in the zoning ordinance. The only option to deal with a use not in the Ordinance is to propose a Zoning Text Amendment.

Mr. Sheridan commented that currently the business is within the 1-year grace period. It will expire in the spring.

A Zoning Application would need to be submitted for a continuance of an existing Nonconforming Use on the property.

Other Business

D. Planning Commission Report

Planning Commission member Mark Ceminsky was present as liaison to the Board. The Planning Commission performed their annual Township road review on November 11, 2011. A written report on the road review was submitted to the Town Board.

Citizen Business

Sauber Trust Complaint- Reimburse Township for 50% of costs

The complaint stated that no action was taken. This is not correct. The Township Attorney did draft a letter to the Sauber Trust. Supervisor Kenny Miller abstained from discussion on this matter and excused himself from the room.

The Ordinance in effect when the mining permit was issued deemed the landowner as the responsible party. Under the current Mining Ordinance, the operator is the responsible party. Based on this, the costs were split down the middle rather than applying it entirely to the landowner, the Sauber Trust.

A response to the Attorney's letter was received on May 17, 2010, from the Sauber Family Trust's Attorney stating that they are not obligated to pay any amount to Eureka Township in

relation to the mining permit. The Township decided at that time that it would not be a good use of Township resources to pursue this. It would be on the list of obligations that need to be paid before any new permits are issued for the property.

It is the Attorney's opinion that Sauber Trust is responsible for ½ costs incurred by the Township in resolving the reclamation of its property. At the time the permit was issued, the landowner was the responsible party for costs incurred. The Town Board asked the Attorney to draft another letter to the Sauber Trust.

The Town Board took a short recess. The meeting resumed at 8:55 p.m.

Terri Petter Exotic Animal Complaint

Terri Petter and Butch Hansen were present to speak with the Town Board about the complaint. The Town Board received a complaint from a citizen against Terri Petter.

Miss Petter commented that there are exemptions in the Minnesota State Law that does not make it illegal to keep exotic animals. She commented that she is not a wildlife sanctuary, and that she raises fur-bearing animals. She is licensed by the DNR and USDA. She commented that she has an emergency plan. Terri brought a current copy of her USDA license and her fur farm registration. She disputed the claim that there was no inventory for Forever Wild. She stated she was out of town when the inspection took place, and Danny did not know where the records were kept. Some animals are USDA-registered and some are DNR-registered. As of January 2011, she had 32 wolves. Prior to January 2011, the wolves were classified as dogs until DNR proved they were wolves.

The Township Attorney questions where cougars fit into the picture. The cougar was not listed on the list submitted to the Township in 2008. Terri has a DNR exhibition license. A lot of this is covered by State and Federal laws. If there is enforcement to be done, it would be done by the County Attorney or, in the case of any violation of the DNA exhibition license, by the Attorney General by request of the DNR. Trevor recommended pursuing questions through those channels.

Terri commented that the cougar has always been on the Eureka Township property. It was not listed in the USDA license because it is a fur farm. Cougars are protected fur-bearers, but not native to Minnesota.

Terri Petter holds an exhibition license. How does this affect Eureka Township? Eureka Township does not have animal exhibition as a permitted use. The Attorney commented that land use as a separate issue. To respond to the complaint is a matter of seeing that the license is in place. The issues addressed in the complaint are covered by state license and these issues would be handled by state agencies. Terri Petter commented that she would submit copies of all her licenses to show that they are all current.

Other Business

F. Terri Petter- Ag Building Issues

Terri Petter commented that she does not need plumbing or HVAC permits for her agricultural building. She said she was told this by Doug Nord, State of MN. Terri commented that the building is a barn. It is an agricultural building.

Building Inspector Scott Qualle commented on the need for plumbing permits. Scott spoke with the State Plumbing Department. They confirmed that plumbing permits are required for Ag buildings. He spoke with Doug Nord after Terri had told him that a permit was required. Doug commented to him that there are conflicting opinions at the State whether plumbing permits are required for Ag buildings. In reference to the building being a barn, he has yet to see a barn that has four restrooms, two of which are handicapped accessible. Scott has not received a plan indicating how the building is being constructed or what the use and occupancy classification will be. Blueprints would be required for the structure. The building is well over the 3,000 square feet that is the limitation for not needing an architectural or design professional. Scott sent a letter by certified and by regular mail indicating that work should be stopped immediately until the matter is resolved. The Clerk received the certified letter back today in the mail marked "refused."

Steve, a building inspector from the MNSPECT, inspected the building. He reported the building is very large; it is almost done. He told Terri that she would need to sign a document attesting to or indicating that she was going to be in compliance with the Ag exemption requirement. Scott drafted such a letter and presented it to the Town Board and to Terri Petter for Terri to review and sign. The Town Board supported the Building Inspector on this issue; the letter needs to be signed by Ms. Petter.

Terri refused to sign such a document because it is in the permit application what she is going to use the building for. The application is for an Ag building. She filled out an Ag Exemption form. She commented that there is nothing on the Ag Exemption form that is not Ag. Terri commented that there is one bathroom and two kitchens and an office. Three other bathrooms are roughed in, but there will be only one working half-bathroom.

There was a discussion of the ag exempt form as number seven was not answered "yes" or "no," but "ag sales" was written in. It was questioned what that meant. Everyone else who has applied for an ag building has been required to fill out and sign a *completed* ag exempt form. Terri's form is not complete because number seven is not answered by checking a box.

There are numerous changes to the plans. The building constructed is completely different than what was submitted to the Planning Commission and Town Board for approval. The building was to only have a water hydrant, no indoor plumbing (no bathrooms or kitchens.)

In reviewing the letter: Terri commented that the bathroom inside the building will not be used by the public. She has port-a-potties on-site for public use. She has volunteers on-site that will occupy the building. No one will be living in the building. Ag sales will take place in the building. Persons purchasing fur pelts will enter the building. There will be no tours inside the building.

The Attorney commented that this is a Building Code issue. The decision is made by the Building Official. The line of challenge after this is to appeal to the Department of Labor and Industry. If we cannot come to a resolution, the Building Official will issue a stop work order and an appeal can be filed with the Dept. of Labor and Industry.

Scott Qualle stated that if Terri signs the letter with the nine points, he will declare the building an Ag building and walk away from the issue. If she does not sign the letter, then he will assume she will not comply with what is in the letter. As a result, a building permit will be required.

The Town Board has the right to inspect the building at any time to make sure its use fits within Township Ordinances. The public will not be entering the building for purposes other than agricultural purchases which could include incidental Ag sales. (Incidental means occasionally, once in awhile, not as a regular course of business.) Incidental Ag sales are not considered public. (It would be people engaged in the pickup and delivery of produce and other Ag products)

The Town Board agreed to take item number four off the letter.

Terri commented that she will not sign the letter until she has a chance to talk to her Attorney. Scott agreed to give Terri until Friday to turn in a signed copy of the letter. If she does not submit a signed copy by Friday, he will post the building as "Do Not Occupy" and a stop work order will be placed on the building.

E. Resolution to Formally Adopt the Comprehensive Plan

A draft resolution was presented by the Township Attorney.

A motion by Supervisor Nancy Sauber: to approve Resolution 2011-7, thereby formally adopting the Comprehensive Plan for Eureka Township. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

G. Response to Commercial / Industrial Task Force meeting of 9-26-2011- Requests

At the meeting, some citizens asked to be contacted by the Board. The citizens should be e-mailed and told to come to the December Town Board meeting. The final recommendation of the Task Force will be presented to the Board at this meeting. Their concerns can be addressed by the Town Board and Sherri Buss of TKDA.

H. Use at 225th St. W. & Highview Ave. / Culvert Permits

The Clerk was asked to send a letter to Progressive Rail asking if they are still using the property as a rail transfer yard. Depending on the answer, another letter may need to be sent to Hat Trick, LLC regarding the use.

Driveways were installed at the rail transfer yard, but driveway permits were not obtained. An application for the driveways was submitted, but too late for the Planning Commission deadline for the November 2010 meeting. Representatives never subsequently attended the Planning Commission or the Town Board meeting for approval and obtaining a permit. The Clerk was asked to send a letter informing them the permitting process needs to be completed for these driveways.

Other Business

A. Farmington Fire Department Contract

Farmington Fire Department submitted a proposal for a new fire contract. The high end includes capital costs. The proposed contract brings the dollar amount in line with Lakeville's Fire contract. Supervisor Brian Budenski will contact Farmington's City Administrator and ask him

to draft the final contract. Once it is received, it will be forwarded to the Township Attorney for review.

Terri Petter Follow-up: The Clerk was asked to draft a letter to Terri Petter affirming the fact that the Town Board has the right to inspect the property at any time to ensure compliance with Township Ordinances. Supervisors Nancy Sauber and Kenny Miller will review the letter before it is sent.

A motion by: Supervisor Brian Budenski: To adjourn. Motion seconded by: Supervisor Nancy Sauber.

Meeting adjourned at 11:04 p.m.