

Eureka Township

Dakota County

State of Minnesota

Eureka Town Board Meeting
December 11, 2006

Call to Order

Chair Cory Behrendt called the regular monthly meeting of Eureka Township to order at 7:02 PM. Present were Supervisors Cory Behrendt, Gloria Belzer, Dan Rogers and Clerk/Treasurer Nanett Champlain to record the minutes.

The meeting opened with the Pledge of Allegiance.

Approval of Agenda

The following additions were made to the agenda:

Planning Commission: Item E. Other Planning Commission Issues

A motion by Supervisor Dan Rogers: To approve the agenda as amended. Motion seconded by Supervisor Gloria Belzer. Motion carried by unanimous vote.

Audience Comment Period

Andrea Krapu asked if they are supposed to be notified if they are on the agenda. Chair Cory Behrendt, stated that he had asked the clerk to contact the Krapu's and inform them that they were on tonight's agenda. Chair Cory Behrendt stated that he was made aware only yesterday that the building permit was pending. If Krapu's were not present the item would have been tabled or dealt with differently.

Minutes

The Town Board tabled the approval of the November 2, 2006 Special Town Board Meeting minutes. The Planning Commission will review the minutes and forward comments to the Town Board. This meeting was a joint meeting with the Town Board and Planning Commission.

The following corrections were made to the November 13, 2006 Town Board Meeting minutes: Page 3, the amount transferred to the Road and Bridge Fund was \$7,441.96. Page 6, Supervisor Belzer referred "to" the ordinance and under complaint update- "Supervisor Gloria Belzer will work with the clerk to bring complaint issues up to date"

A motion by Supervisor Gloria Belzer: To approve the November 13, 2006 Town Board meeting minutes as amended. Motion seconded by Supervisor Cory Behrendt. Motion carried. Supervisor Dan Rogers abstained from voting, he was not present at this meeting.

Treasurer's Report

Treasurer Nanett Champlain reported that there is \$5,554.76 in checking, \$13,278.89 in the savings account and \$146,572.53 in CD investments. Overall total of accounts are \$165,406.18.

Motion by Supervisor Dan Rogers: To approve the treasurer report as presented. Motion seconded by Supervisor Gloria Belzer. The motion carried by unanimous vote.

.Bills and Receipts

Clerk/Treasurer Nanett Champlain presented the following bills for payment:

Farm Road Services	Road Maintenance- November 2006	\$3,796.00
Otte Excavating	Road Maintenance- November 2006	\$3,528.00
Dakota Electric	Electric Town Hall	\$80.54
Frontier Communications	Phone Service	\$114.39
Culligan	Water softener rent	\$23.38
Dick's Sanitation	December	\$34.13
Severson, Sheldon	Legal Services thru 10/31/06	\$1,576.15
MFRA	Consultant Services thru 11/14/06	\$2,180.79
Earl D Construction	Refund septic fees	\$280.00
ECM Publishers	Legal Ad	\$33.75
Nanett Champlain	Expenses thru 11/30/06	\$226.36
Greenvale Township	Hotel room- Duluth conference	\$81.36
IRS	941 Deposit December	\$961.33
PERA	Payroll period 11/1/06 to 11/30/06	\$278.45
Sharon Buckley	Planning Commission 4 th Qtr Payroll	\$207.79
Nanett Champlain	Payroll 11/1/06 thru 11/30/05	\$1,762.57
Kevin Flaherty	Planning Commission 4 th Qtr Payroll	\$110.82
Pat Fossum	Cleaning Town Hall November 2006	\$69.26
Mike Greco	Planning Commission 4 th Qtr Payroll	\$207.79
Dan Rogers	Town Board 4 th Qtr Payroll	\$277.05
Rich Stevens	Planning Commission 4 th Qtr Payroll	\$170.85
Gary Smith	Town Board 4 th Qtr Payroll	\$346.31
Cory Behrendt	Town Board 4 th Qtr Payroll	\$369.40
Cheryl Monson	Town Board 4 th Qtr Payroll	\$369.40
Total Bills presented		\$17,085.87

The following receipts were deposited in November:

- **Building Permits**

Terri Petter- <i>Zoning Permit Application</i>	\$25.00	Binder Heating- <i>Kuntz HVAC 06-11-022</i>	\$90.00
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- **Other Receipts**

Bill Sather- <i>RASP Sign</i>	\$11.63	Janet Geif- <i>RASP Sign</i>	\$11.63
Charles Roberts- <i>RASP Sign</i>	\$11.75	Mount Olivet- <i>In Lieu of taxes</i>	\$1,350.00

TOTAL RECEIPTS DEPOSITED IN NOVEMBER **\$1,500.01**

A motion by Supervisor Gloria Belzer: To approve bills and receipts as presented. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

Transfer of Funds

The 2nd half of 2006 tax levy was received from Dakota County. The following transfers were requested by the clerk to bring funds back to corrected balances:

Transfer from Road and Bridge Fund into the General Fund: \$38,465.85

Transfer from the Road and Bridge Fund into Bridge Fund: \$7,441.96

Transfer from General Fund into Consultant Fund: \$3,382.27

Money transferred into the Town Hall Fund from the General Fund will remain in the Town Hall Fund to correct short falls in the levy to cover Town Hall Loan payments.

A motion by Supervisor Gloria Belzer: To accept the transfers in 2006 to balance funds. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

Budget

The Town Board reviewed the budget.

Road Contractor Time

Chris Nielsen, liaison to Otte Excavating, current road contractor was present to discuss road maintenance issues. A truck load of carpet had been cleaned up on 257th St.

Supervisor Gloria Belzer asked for a report every two weeks on grading of Township roads. Chris Nielsen felt that this request could be met.

Chris Nielsen had contacted a County Engineer in regards to the Cross Nursery request later on the agenda. The County Engineer has not reported back to Chris on his findings. Chris Nielsen felt that the County could issue Cross Nursery a farm permit to use Highview Ave. in the spring for truck deliveries.

Planning Commission

Bachman Nursery- lot split

Todd Bachman represented Bachman's Inc. Township location: 21003 Cedar Ave., Farmington (Property ID 13-01000-012-27) Bachman's Inc. asked permission to split Parcel B consisting of 63.56 acres from Parcel A consisting of 629 Acres in Sections 10,11,3 and 2. The 63.56 acres of land contains no buildings and is used entirely for agricultural field production. The property will stay under the same ownership.

A motion by Supervisor Gloria Belzer: To approve the Bachman lot split as presented. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

Cross Nursery request to raise Load limit

Cross Nurseries Inc. located at 22953 Highview Ave, Lakeville asked the Town Board to consider raising the Load Limits in the early spring on portions of 225th St and portions of Highview Ave. to 9 ton as opposed to 5 ton limits. *See attached letter of request*

Costs for reconstruction and road improvements to Highview need to be explored. Supervisor Dan Rogers will work with Chris Nielsen, road contractor liaison on obtaining projected costs of the road improvement.

The Planning Commission had previously recommended reducing weight limits and speed limits on 225th St. The Town Board is in agreement with this recommendation and will not pursue increased weight limits on 225th St.

Discussion will continue at the January Town Board Meeting.

Terri Petter- Ordinance Compliance

The Planning Commission received a building permit request from Terri Petter, 10132 235th St W. Lakeville, (Parcel ID# 13-00700-011-50) last month for a building to house exotic animals. The Town Board reviewed the Current ordinance relating to the keeping of exotic animals. (Pages 72-73). Ordinance 3, Chapter 7, Section 3. B. prohibits the keeping of exotic animals. Section 3. C. 5. states exceptions for preexisting legally permitted exotic animals.

Mike Greco, Chair of the Planning Commission in his report to the Town Board indicated concerns of an ordinance violation in the keeping of exotic animals by Ms. Petter. Supervisor Gloria Belzer referred to Ordinance No. 3, Chapter 7, Section 3, Exotic Animals B. 1 & 2 and C.5. and the Planning Commission Minutes of November 2006 stating that Ms. Petter has admitted that she has full blooded wolves.

The ordinance states that if Ms. Petter possesses them legally that they can be grandfathered in.

Supervisor Gloria Belzer stated for the record that she has no animosity towards Ms. Petter, no financial interests in any issues regarding Ms. Petter, she has no conflicts with Ms. Petter that would prevent her from following State Statutes and local ordinances in making decisions relating to Ms. Petter. She has no conflict of interests with Ms. Petter's issues and will not recuse herself from any issues regarding Ms. Petter.

A motion by Supervisor Gloria Belzer: To contact the Township attorney or the attorney that would represent the Township if the Township attorney would not be allowed to represent the Township in this issue and have him send a letter to Ms. Petter requesting the number of exotic animals, that are not permitted under our ordinance, at this time that she is in possession of and had prior to the adoption of the new ordinances. To include documentation of dates that she had possession of these animals. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

RT Manufacturing- presentation on road repair

John Arliby of RT Manufacturing, manufactures of lightweight fill (tire chips) presented the Town Board with information on their product. It is an alternative to using sand for road problems such as frost heaving or swampy roads. The cost of the product is comparable to the cost of sand.

Krapu Building Permit

Krapu's submitted their plans to Bob Hegner, the building inspector for their dog kennel. The building inspector reviewed the plans and calculated the building permit amount. The Town Board reviewed the application. Their conditional use permit allows a kennel building 36' x 96'. The application shows a building 36' x 100'. The actual kennel area is 36' x 92'. The additional length of the building noted on the application is overhang on the west side of the building, over the exercise pen. This is not kennel area. The lean to area shown on the drawing is not kennel area. The site plan and building specification remains the same as presented to the Planning Commission. Some of the outside kennel area will not be built at this time. Septic plans have been submitted and approved by the building inspector. The kennel is located out of the Shoreland area, as indicated by Dakota County Soil and Water.

A motion by Supervisor Cory Behrendt: To approve the building permit as presented. Motion seconded by Supervisor Dan Rogers. Motion carried. Supervisor Gloria Belzer abstained from voting on this issue.

Building Permit #06-11-024 was issued for \$7,386.45

Krapu's did not pay the permit fees at this time.

Planning Commission Update- Chair Mike Greco

The Planning Commission is updating permit forms. They are hoping to have the forms ready for Town Board approval in January.

The Planning Commission submitted a list of suggested ordinance changes and or corrections. They have scheduled two Special Planning Commission meetings to discuss ordinance changes. They would like to schedule a public hearing late in January on proposed changes. Simple clarifications will

be identified for immediate correction; more complex issues will be tabled for later discussion and review.

The Planning Commission recommended that the Township retain Bill Weber, MFRA to work as a Township planner on an as needed basis for assistance in zoning ordinance revision, providing advice on Planning and zoning issues.

The Planning Commission asked if they could provide draft minutes of permit items to the Town Board for their meeting, rather than minutes from the entire meeting. It is difficult for the recorder to compile the meeting minutes in such a short period of time. Complete minutes would be available before the next Town Board meeting. The Town Board agreed to this arrangement.

The Planning Commission felt that there were a number of issues in the past 12 months that would have benefited from input from a professional much earlier than what one could be involved. Generally townships and cities have a planner and or attorney available for consultation on issues before items are before the Planning Commission.

The Planning Commission is proposing to have the attorney present for the permit portion of all Planning Commission meetings. This time averages about one hour. Another option would be to give the Planning Commission the ability to request on a case by case basis that the attorney or Planning consultant review an application and if necessary be present at the Planning Commission meeting to provide council and guidance. The Town Board felt that they would need to check further into costs, procedures and availability of the attorney before making a decision. Supervisor Cory Behrendt will check with the Township attorney and Supervisor Gloria Belzer will check with Bill Weber, MFRA and report back at the next Town Board meeting.

Mike Greco reported to the Town Board a possible ordinance violations, the possession of exotic animals by Terri Petter.

Old Business

South Cedar Greenhouse

South Cedar Greenhouse contacted the clerk after receiving their letter stating permit fees owed for their sign permit. Al Lipinski, owner of South Cedar Greenhouse is refusing to pay the permit fees and stated that he will bring his attorney to a Town Board meeting to discuss fee owed. He did not feel that he would be at the December meeting, most likely at the January 8, 2007 Town Board Meeting. The permit information will be sent to the Township attorney. Upon confirmation that South Cedar's attorney will be present, the Township attorney will be asked to be present.

Ripley Variance

The Town Board considered the Planning Commission's recommendation from the November 30, 2006 Public Hearing, correspondence from Township Attorney Jim Sheldon dated November 10, 2006 and information provided at the Minnesota Township Association Legal Seminar October 2006.

A motion by Supervisor Gloria Belzer: To deny the variance request by the Ripley's, legal description of the property 13-00800-020-50, site address: 9460 235th St W, Lakeville, MN 55044.

Based on:

1. The letter from Mr. Sheldon, Township Attorney dated November 10, 2006 (*Include letter in the minutes*)

2. Information from MAT Legal Seminar 2006 on their legal opinion on when a variance can be granted: A variance concerns the physical character of a property, such as setbacks, frontage or appearance. A variance cannot be granted regarding the use of the property.
3. The variance public hearing of November 30, 2006 for the Ripleys.

Attorney Jim Sheldon commented that the motion of denial needs to include findings:

1. Section 14. A. 1. The proposed use is prohibited in the zoning district; the zoning district allows one on forty unless you have a buildable lot.
2. Hardship- it is a financial hardship. To the Ripleys it is a personal hardship. It is not a physical hardship.
3. Property can be put to reasonable use. It is part of a building site now, it is vacant land. It is an appropriate use of land: green space.
4. It does not meet the requirements of section 14.
5. It is not a buildable lot.
6. A variance from use is not an appropriate application of the variance mechanism. It is spot rezoning as applied for.
7. The situation was created by a previous owner.

To deny the Ripleys application for the request for a variance for the following reasons:

1. Ordinance 3, Chapter 3, Section 14 the first criteria says "The proposed use is not prohibited in the zoning district in which the subject property is located." The proposed use is prohibited in this zoning district; one house is permitted per 40 acres unless you can show you have a buildable lot.
2. The hardship in question here does constitute simply a personal financial hardship to the Ripleys and not a hardship as defined in Eureka Township Ordinance 1- page 21 that it must be a "hardship because of physical circumstances unique to the parcel of property under consideration."
3. It is a situation that was created by previous owners: It doesn't meet another definition of hardship: "The plight of the landowner is due to circumstances unique to the property, not created by the landowner or a previous landowner" In this case, the previous landowner Eugene Pearson filed a contract for deed and recorded it with the county as a single parcel, at that point it created a situation that this was not a buildable lot.
4. It doesn't meet the definition of hardship: Section A. "The property in question cannot be put to reasonable use if used under the conditions allowed by this ordinance" In this case, the land can be put to reasonable use; it is currently part of an existing residential parcel. It can be used for Agricultural land, consistent with agricultural zoning in the Township.
5. It is not a buildable lot based on the last lot of record, recorded for this parcel and based on the research provided by the Township attorney dated November 10, 2006.
6. This request is a variance from a use which is not an appropriate use of a variance as defined by our ordinance. The Ordinance states "waiving the literal provisions of these Ordinances in instances where the strict enforcement would cause undue hardship because of physical circumstances unique to the parcel of property under consideration which are not created by the owner of the variance"

Motion seconded by Supervisor Dan Rogers. The motion carried by unanimous vote.

The Town Board then considered the Planning Commission's recommendation that the Town Board work with the Ripleys and our legal counsel to explore avenues to allow the Ripleys to build on this lot, based on the fact that they have presented a solid and reasonable case and because of past record it is reasonable to believe that this was the original intent and therefore the Town Board should try and find a way to accommodate it and to also look at the ramifications for all those alternatives as well as how they apply to other lots in the Township.

A motion by Supervisor Gloria Belzer: That the Town Board engages our attorney in a discussion with Ripley's Attorney in finding options or ways that are workable to allow Ripley's a buildable lot for their request and that the ramifications of the options are explored. Motion seconded by Supervisor Dan Rogers. The motion carried by unanimous vote.

Charles "Butch" Hansen vs. Eureka Township

No new information. The lawsuit is in the fact finding stage.

MinnCan Update

Supervisor Cory Behrendt has not received an attorney opinion on the road issues.

The Township received a letter from Randy Duncan, Natural Resources group. This letter addresses wetland issues- The Natural Resource Group Inc. feels that the MinnCan project is exempt from the Minnesota Wetland Conservation Act and is requesting a certificate of exemption.

Complaint Update

Supervisor Gloria Belzer drove through Eureka Estates, she reported that the properties in question have made improvements, the improvements look good. Supervisor Gloria Belzer talked to the complainants and they did not feel that further legal action was necessary at this time.

Country Joe Racing- update

No update

24185 Denmark Ave. Lackore tree cutting

Supervisor Dan Rogers and Chris Nielsen, road maintenance contractor liaison will try to coordinate a meeting with the Lackores this week.

Sauber Family Mine

Final report for reclamation will be presented in January. The Town Board will make a decision based on the report on completion of the reclamation and any further requirements needed to complete the process. Mining operations are reviewed in February.

Phillipe property use verification

Jeffrey and Jerome Phillipe were present to address citizen concerns of the use of their property located near Jamaica Ave and 280th St W. (Property ID#13-03100-011-52) There are several mounds of dirt and concrete type structures on the property. Phillipe's stated that this is organic materials for personal use. They are starting a tree farm. The excavating equipment is only used on the property. They are registered as a non conforming business. They feel the property is conforming to uses and conforming to current ordinances.

Friedges property

Friedges Landscaping, refused receipt of the certified letter sent to them by the clerk.

A motion by Supervisor Gloria Belzer: To have the Township attorney, Jim Sheldon contact Friedges attorney, Mr. Duffy with information and to respond to our request.

Mail Slot for Township Office

Mike Greco presented the Town Board with information on installing a secure mail slot in the Town hall. The Town Board tabled this item to the annual meeting in March.

Cross Nursery Sign

It was brought to the Town Boards attention that the sign on the Cross Nursery property located on the corner of 225th St and Highview Ave. has not been removed as agreed to by Don Cross when he applied for a permit for his new advertising sign. The clerk will contact Mr. Cross and ask him to remove the sign.

New Business

New Contract ALF Ambulance

A motion by Supervisor Cory Behrendt: To accept and approve the ALF Service Agreement for service January 1, 2007 to December 31, 2007. Motion seconded by Supervisor Gloria Belzer. Motion carried by unanimous vote.

Farmington COMP Plan Amendments

The Town Board received 4 proposed amendments to the Farmington COMP Plan. These proposals were made available to the Town Board for review prior to the Town Board meeting. The Town Board did not feel that these amendments would impact the Township. Chair Cory Behrendt signed off on the amendments.

Supervisor Cheryl Monson resignation

The Clerk received a letter from Supervisor Cheryl Monson dated November 13, 2006 that she will be resigning from the Town Board as of March 23, 2007.

A motion by Supervisor Dan Rogers: let it be resolved that the Town Board of Eureka accept the resignation of Supervisor Cheryl Monson effective March 23, 2007. Motion seconded by Supervisor Cory Behrendt. Motion carried by unanimous vote.

Posts for RASP Signs

The clerk purchased RASP Signs directly through the sign company. Posts are available for purchase also. The Town Board felt that individuals may purchase posts, when ordering signs.

Republican Party Meeting at Town Hall- March 10, 2007

The Republican Party is requesting the use of the Town hall for a delegate meeting from 9:00 am to 1:00 pm on Saturday, March 10, 2007. Phil Cleminson a Eureka resident is the contact person. Supervisor Dan Rogers will supervise the meeting. Supervisor Gloria Belzer will be back up.

Legal Services Agreement

Supervisor Cory Behrendt submitted a copy of the proposed legal service agreement for review by the Town Board. The agreement is for legal services provided by Kennedy and Graven Law Services. This law firm will be used by the Township for issues relating to Terri Petter. A motion by Supervisor Dan Rogers: To accept the professional services agreement. Motion seconded by Supervisor Gloria Belzer. Motion carried by unanimous vote.

Clerk/ Treasurer Presentation

Businesses reported to County

The Clerk was asked to check on tax status of a business in the Township. Upon talking to an assessor she was informed that the Township should inform the County of all businesses that are operating under CUP's and Non Conforming Use. The county will compile a list of commercial taxed properties in the Township for the Township, if requested. The Town Board request that the clerk obtain this information and they will review the list. This list will be compared to known CUP's and registered businesses.

A motion by Supervisor Gloria Belzer: To adjourn. Motion seconded by Supervisor Dan Rogers.

Meeting adjourned at 9:47 pm.