

Eureka Township

Dakota County

State of Minnesota

Eureka Town Board Meeting
August 11, 2008

Call to Order

Chair Jeff Otto called the meeting to order at 7:00 pm. Members present were Supervisors Cory Behrendt, Brian Budenski, Jeff Otto, Carrie Jennings, Dan Rogers and Clerk/Treasurer Nanett Sandstrom, to record the minutes. Township Attorney Trevor Oliver.

The meeting opened with the Pledge of Allegiance

Audience Comment Period

There were no comments from the audience.

Approval of Agenda

The following additions were made to the agenda:

- Old Business: A. 4. MinnCan right of way easement
B. 7. NCRWMO
8. Northfield Highway Corridor
9. Dewatering Complaint
10. Hat Trick Investments
11. Progressive Rail

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

Minutes

The following corrections were made to the July 14th meeting minutes: Page 9- correct spelling of "counsel". Page 10 – Krapu- add: 10 feet "or greater". Hat Trick- add: compensation "required". Add: "4." Before **Unloading Facilities**. Page 11- In the first paragraph should read "Pat" Regan and economically "viable". Windmill Complaint- Supervisor "Jeff Otto" communicated.

A motion by Supervisor Cory Behrendt: To approve the Eureka Town Board meeting minutes of July 14, 2008 as amended. Motion seconded by Supervisor Jeff Otto. The minutes include the following attachment: Letter from Lawrence Harris regarding Sauber Family Trust, which was part of the discussion on Sauber Mine. A letter for Dakota County Conservation District related to Glory to Glory Christian Center and technical evaluation panel and a letter for Supervisor Jeff Otto to Brian Watson Dakota County Soil and Water. Supervisor Dan Rogers abstained from voting, he was absent from the meeting. Motion carried.

A motion by Supervisor Jeff Otto: To approve the Special Town Board Meeting Minutes of July 14, 2008 as presented. Motion seconded by Supervisor Cory Behrendt. Supervisor Dan Rogers abstained from voting, he was absent from the meeting. Motion carried.

The clerk briefly discussed the recording of minutes for closed meetings with the attorney he had commented that meeting minutes are not usual kept on the closed meetings. The clerk did not write or present meeting minutes of the closed portion of the meeting.

Treasurer Report

Checking Account Balance \$1,019.61. Savings Account Balance \$298,488.85
 CD Account Balances \$160,211.24. Total Account Balance \$459,719.70.

A motion by Supervisor Cory Behrendt: To approve the Treasurer’s Report of August 11, 2008 as presented. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

Bills and Receipts

There were two disbursements to Central Valley last month. The \$310.69 check was for delivery of propane to the Town hall. The second check for \$1,787.60 is for the prepay amount approved at the July 14, 2008 Town Board Meeting. At the July Town Board Meeting the prepay price was quoted as \$2.23. The actual contracted price is \$2.18.

The receipts register shows an annexation payment from Hat Trick Investments. The payment from The City of Lakeville will be an additional \$5,000. Payable to the Township by December 31, 2008. Lakeville is also delaying submission of the formal ordinance so that the Township will collect the 2nd half of the real estate taxes for this year.

The clerk presented the following bills for payment:

Otte Excavating	Services thru 7/31/08	\$15,624.00
MNSPECT	Inspection Services July 31, 2008	\$1,385.51
Dakota Electric	Town Hall	\$76.81
Frontier Communications	Phone service Town Hall	\$124.53
Culligan	Water softener rental	\$23.48
Dick’s Sanitation	Garbage Service July	\$40.45
Dubbels Lawn Service	Mowing thru June 2008	\$200.00
TDKA	Consultant Service- COMP Plan	\$3,150.31
TDKA	Brosseth thru June 28, 2008	\$3,030.27
Kelly & Lemmons	Legal Services thru 7/31/08	\$4,348.72
Dustcoating		\$2,736.00
Dakota County Treasurer	Truth in Taxation	\$230.25
Lewis Kirsh	Audit 2007	\$6,000.00
Mike Greco	Stamps- post card	\$162.00
Nanett Sandstrom	Expenses 7/2/08 to 7/31/08	\$31.87
Castle Rock Bank	Loan payment #8	\$26,446.19
MAT Agency	Hansen claim	\$1,041.41
IRS	Deposit August 2008	\$698.21
PERA	Pay period 7/1/08 to 7/31/08	\$313.00
Anderson Rock & Lime	Lime rock for Township roads	\$56,159.75
Nanett Champlain	Pay Period 7/1/08 to 7/31/08	\$1,814.81
Connie Anderson	Pay Period 6/1/08 to 6/30/08	<u>\$427.11</u>
Total Bills Presented		\$124,064.63

The following receipts were deposited in July:

- **Local Permits**

John Strunk- 2 Septic Permits	\$560.00	Fmgtn Plumbing - Zimmer08-18	\$75.50
D & D Inspections- Application Fee	\$25.00	Voson Plumbing- Glory to Glory	\$433.49
Controlled Air- Papke 08-05	\$65.50	Jill Woehrle- Application fee	\$25.00
Ron Kveton- Ag permit 001005	\$25.00	Dakota Electric- Utility permit	\$25.00
Karin Grossman- Ag permit 001006	\$25.00	Jeff Grossman- Bld permit 08-17	\$1,122.47
Dakota Electric- Utility permit	\$25.00	Sauber Plumbing- Lane Septic	\$280.00
Pat Bohn- Deck Permit 08-18	\$616.29		

- **Other Receipts**

Dakota County-current tax	\$208,643.28	Castle Rock Bank- Interest CD	\$373.75
Laverne's Pumping- Newsletter Ad	\$125.00	Castle Rock Bank- Interest CD	\$599.70
Eureka Sand & Gravel- Newsletter Ad	\$125.00	Hat Trick Inv.-Annexation	\$15,000.00
Castle Rock Bank- Interest CD	\$354.58	Dakota County- Delinquent tax	\$1,994.11

TOTAL RECEIPTS DEPOSITED IN JULY 2008 **\$230,518.67**

Supervisor Carrie Jennings reviewed the TDKA bill for the Brosseth Mine permit review. The bill seemed to be in order. The payment for this bill comes out of the escrow account.

Supervisor Cory Behrendt reviewed the attorney bills, Supervisor Jeff Otto was asked to review the attorney bill because most items pertained to items he was working on.

Mount Olivet Retreat Center received a dust coating application on their driveway as part of the road dust coating application. They will be reimbursing the Township for the dust coating material.

The MAT claim #845 relating to Hansen is a 10% of the costs over the \$10,000 covered by the deductible.

A motion by Supervisor Cory Behrendt: to approve the bills and receipts as presented. Motion seconded by Supervisor Carrie Jennings. Role call vote was taken on the motion. Supervisor Carrie Jennings- Aye, Supervisor Brian Budenski- Aye, Supervisor Jeff Otto- Aye, Supervisor Cory Behrendt- Aye and Supervisor Dan Rogers - Aye. Motion carried by unanimous vote.

Budget

The Town Board reviewed the budget.

Planning Commission, land use permits and related items

Permit Requests

- 1. Mike & Jill Woehrle-24215 Idalia Ave.** requested a permit to build a 44'x 80' Pole Building. (Property ID#13-24660-020-03).

A motion by Supervisor Cory Behrendt: To approve the application for Mike & Jill Woehrle 24215 Idalia Ave for an accessory pole building as presented. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

Hoefft Complaint- The Town Board addressed the complaint against Mr. Hoefft's property. The Town Board had received his Hoefft's response to the complaint. Mr. Hoefft has taken measurers to address issues in the complaint.

The Town Board is satisfied that with the cleanup that has taken place and the additional structure being built to house items address in the complaint that no further action by the Town Board is necessary.

The clerk was asked to send a letter to the complainant along with Mr. Hoeft's response letter.

- 2. Jim Hoeft-** 6035 235th St W., Farmington requested a permit to build a lean-to the existing pole building. (Property ID# 13-01100-010-30). Mr. Hoeft started construction of the lean to prior to obtaining a building permit. Mr. Hoeft apologized for building without a permit. He did not realize a permit was required for a lean-to on an existing building.

A motion by Supervisor Brian Budenski: To approve the building permit for Jim Hoeft 6035 235th St W. Motion seconded by Supervisor Cory Behrendt. Motion carried by unanimous vote.

Other Business

A. Planning Commission Update

1. The Planning Commission asked if there is an update on the Consultant Engagement Policy
2. The Planning commission has scheduled two public hearings on the 19th of August. Hearings will be held on the 2030 Eureka Comprehensive Plan Update and the Rural Collaborative Local Water Plan (Which is referenced in the Comp Plan). The Township will not be using the Dakota County Collaborative Plan.
3. The Planning Commission recommended that two Board members or the building inspector check the use of Mr. Hoeft's pole building, to see if the use is appropriate. Building Inspector Scott Qualle was on site and spoke with Mr. Hoeft.
4. The Planning Commission asked if a board member has contacted MAT on reserved housing rights? Supervisor Jeff Otto has been assigned this task. He has not completed this task.
5. Double building permit fee Hoeft building permit.
6. Waldron and Associates have made some suggested changes to the building permit application forms. Waldron will be asked if they are able to update the word file with the information they wish to include.
7. Planning Commission member Kenny Miller reported on a new regulation on septic system installation. The statute came in effect June 8, 2008. A compliance inspector needs to complete a Second Verification of Soils. The current building inspector service would not be providing this service and has suggested hiring an outside source as a compliance inspector. Kenny Miller contacted Mike Rutten at Dakota County. It is the Local Government Authorities responsibility to hire a compliance inspector.

A motion by Supervisor Cory Behrendt: To appoint the Planning Commission to interview and propose a recruit for a septic compliance inspector and in addition giving the Planning Commission the authority to work with an interim inspector that may be needed until a full time inspector is appointed. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

Old Business

B. Misc. Updates 6. Chub Lake Road- DNR

The DNR Offered to build a boat launching site in the middle of the causeway on Chub Lake Road. The Town Board expressed concerns if the enhanced launching site would attract more boating traffic, which may create more congestion on the road. Safety concerns, such as keeping open access through the roadway were discussed. Benefits of the launch site were discussed: getting the launching of the boats off the road and reduced maintenance issues of the embankment. The Township is required by State Law to allow public access to the public waterway from our road. The Town Board felt an alternate

approach to adding an enhanced facility would be to do restoration work to the embankment to reduce the amount of wear and sluffing of the shoulders.

Diana Regenscheid, DNR was present to discuss this issue. The project would be funded by capital bonding. Capital expenditures would be used for the new facility and it would be maintained by the DNR.

The Township is interested in receiving compensation towards additional maintenance costs to maintain the public access. The DNR has funds for capital improvements for facilities, but they do not have a mechanism to provide for direct reimbursement of maintenance costs.

Town Board options include: Do nothing, continue adding material to the shoulder. Commission the Township engineer to provide a recommendation (estimated cost \$2,000). Send a letter to the DNR to see what extent they might be able to participate. Go with the DNR Proposal.

Diana Regenscheid commented that the DNR preference is the original proposal. There is funding for continued maintenance of the launch site. The launch site is only advertised on the DNR Site under the WMA (Wildlife Management Area), it is not a public lake access that is administrated by the Trails and Waterways Division. The funds Diana has available can not be used to repair the shoulder.

The Town Board's position stands to pursue restoration of the shoulder rather than the installation of an enhanced facility. Supervisor Cory Behrendt will write a letter to the DNR to ask them to contribute funds to restore the embankment that is being degraded because of access to the public waters.

Supervisor Cory Behrendt asked Diana who the Township needs to talk to about the culvert replacement at Chub Lake. Diana commented that Division of Waters would issue a permit. You are usually ok if the culvert size is not changing, and the flow rate will not change from the original installation. There is a public wetland area on the other side of the road. You may be working with the Conservation Wetland Act, Brian Watson SWCD.

Supervisor Carrie Jennings is concerned with the "big picture". She would like to restore the wetlands.

Road Contractor Time

The Town Board questioned the gravel spreading bill on 225th Street. Lime rock was spread from Cedar to Flagstaff- (1 mile). The Township was charged for 9.5 hours on July 14th, 9 hours on July 15th, 9 hours on July 16th and 4.5 hours on July 17th. (37 hours over five days) The invoice shows an additional 5 hours of spreading gravel on July 28th for the same stretch of road.

The road contractor commented that there were 4 trucks hauling gravel. The blade needs to be present when they dump the gravel. The road grader operator may have been grading other roads on down time between spreading loads of gravel. The lime rock comes from Randolph. When gravel bids are placed the Town Board should specify the minimum of 8 belly dump trucks. The gravel would be delivered faster and it would save on grader time.

The Town Board asked that the road contractor go back and check their records to see if the billing statement accurately reflected work performed.

Other road graveling projects were discussed. 235th St is a limestone road. (Highview to Dodd- 1 ¾ miles) Gravel is scheduled to be applied to this road. Graveling of this road was stopped today. The

material being applied is being tested. Kenny Miller commented that the material being removed from the pit is too wet and should not have been applied to the road until it had a chance to dry out.

Road signs were ordered. Supervisor Dan Rogers will call the county on the replacement of the street sign at 243rd St.

Supervisor Jeff Otto has spoken with Dust Coating to have the newly graveled roads dust coated once graveling is completed.

Other Business

C. Dakota County Ordinance 51 update- Uniform Street naming and Addressing System

The Town Board asked the Planning Commission to review and consider for Ordinance update.

The Town Board took a 5 minute recess

Old Business

C. Attorney Updates

1. **Prairie Creek School-** The Township attorney had sent out a draft Development Agreement about 2 weeks ago for the transfer of the land and the bond issue. The signed agreement has not been received. Supervisor Carrie Jennings will call Caroline Jones, Director for Prairie Creek Community Schools.
2. **Friedges-** The attorney feels that he is ready to move forward. Friedges would be the lead case in illegal non conforming uses in the Township. They have been the primary concern over the past couple of years, of the uses in the same category the highest traffic and public safety concerns. This use has never been legal or an approved permitted use.

The Town Board is not intending on doing a class action suit against all non conforming uses. This one situation happens to be in this class. They are trying to fix one situation.

Supervisor Carrie Jennings reported to the Town Board that the MPCA has made a second inspection. The MPCA looks at a sight to see if it is violating a discharge permit. Friedges does not have a discharge permit, because they are not a permitted facility. The MPCA can't enforce our ordinances.

A motion by Supervisor Carrie Jennings: Attorney Trevor Oliver to write a cease and desist letter to Friedges, based on the response negative or non response to proceed to file civil action to enforce the Ordinances. (File injunction) Motion seconded by Supervisor Jeff Otto. This course of action could lead to a civil case possibly a 6-9- months to trial. Committing to a suit and the costs involved. If the Township sues, they pay for the costs. If there is a counter suite, the insurance picks up the costs (land use defense case). The Township would be filing a law suit granting an injunction asking Friedges/ Country Stone to stop.

Supervisor Carrie Jennings amended the motion to allow the number of days to allow for Friedges response before the next Town Board meeting. The attorney will report back to the Town Board before moving forward. Supervisor Jeff Otto accepted the amendment. Vote was taken on the motion. 4 supervisors voted in favor. The motion carried. Supervisor Cory Behrendt abstained from voting, due to a possible conflict of interest.

3. **Petter Kennel-** Trevor Oliver has drafted a letter to Ms. Petter's attorney. He acknowledged the receipt of the animal list. The Township is asking for contingency plan/ emergency management plan and further explanation of the actual end use of the animals.

If this animal operation is going to be accepted from the exotic animals' part it is going to be because it produces fur products. It will not qualify as a livestock operation. Ms. Petter will be asked to reply prior to the next Town Board meeting.

The Township attorney still needs to get the 2008 DNR filings of animals. There are huge discrepancies in the number and types of animals in the 2007 list. The animals need to be accounted for.

This is an on going use, but is different from Friedges, misdemeanor citations might be more appropriate.

4. **MinnCan-** The outcome of the eminent domain action: The Township was not given compensation in disturbing their interest in the Ag Preserve. Dealing with the right of way is non controversial, they need to pay the same right of way disturbance as any other utility service and need to restore the right of way.

B. Misc. Updates

1. Northrup Complaint

Last month the Town board received Mr. Northrup's response which included clean up of the property. Supervisor Brian Budenski and Supervisor Dan Rogers will inspect the property if Mr. Northrup is agreeable. Supervisor Jeff Otto will contact Mr. Northrup.

3. Windmill Complaint

Berm- Kenny Miller commented that the original berm met all the requirements of the permit. (8-20 feet high) He has made verbal agreements with the property owner to raise the height of the berm. This has not been completed. It is an ongoing project. He intends to complete it (in the next 2 weeks) and seed it this fall. (Middle of September)

The complaint addresses an asphalt entrance. The interim use permit does not mention an asphalt entrance. This would be something that would be required by the county, not the Township. The Town Board is unaware of any requirements for an asphalt entrance.

The complaint also addresses that mining is taking place within 700 feet of his house. Kenny Miller commented that the stock piles that are within 700 feet of his house are part of the accessory use, blending of soils. All mining activity takes place 1,000 feet from his house (not from his property line). The wash plant is 1200 feet from his house.

4. Sauber Mine

Kenny Miller commented that his engineer and attorney have responded to everything that Sauber's have asked. It is growing green, it is draining and the retention pond is working.

Supervisor Carrie Jennings commented that there are concerns if the reclamation matches the revised plan. Concerns include the seeding cover, top soil 3" depth, slope/ contour.

Kenny Miller commented that Saubers were concerned with the seeding, the slopes and the retention pond. Sundae Engineer confirmed the slopes are correct according to reclamation plans. The retention pond is adequately sized for the 23 acres that the Sauber property drains to. The Maddens were not comfortable with sharing a retention pond, so the size was reduced to be on the Sauber property only with room for a fence. The current reclamation plan being used was agreed upon between the Sauber, their attorney, Mr. Miller and his attorney. The Town Board was not involved with these changes. The plan that the Town Board approved was filed with the Town Board as part of the revised mining ordinance.

The Township needs to verify the items in question. The Town Board has a proposal form TKDA to provide services. They would meet with Mr. Miller and a Township Supervisor, perform a topographical survey, check the depth of soil in ten locations and compare the information to a reclamation plan that is agreed upon. They would prepare a letter defining inconsistencies. The Town Board informed Mr. Miller that his letter of Credit will be used.

Kenny Miller commented that if TKDA is going to be involved and his line of credit is going to be used for payment then he reclamation plans submitted to and approved by the Town Board in 2002 should be used to verify compliance, not the reclamation plans agreed upon between the two parties in the past few years. The berm between Barton's pit and Saubers will be removed. The water will sheet drain into Barton's pit and the elevation will be raised 4 feet. Kenny Miller is not sure that he wants to use the bond to take care of the costs. TKDA proposed a cost of \$7,200.

Supervisor Carrie Jennings will meet with Sauber's and make a visual inspection of the property.

5. CapX2020 power line

Supervisor Jeff Otto is drafting testimony on his own behalf. The deadline to file written testimony on the need has been extended to September 26th. He will share the draft with the Town Board, they may come on Board with submitting the testimony if they choose to do so.

CapX2020 representatives have invited Township officials to meet with their representatives. Tentative date of the meeting is Monday, August 25th. Planning Commission Members Sharon Buckley and Nancy Sauber have agreed to attend the meeting. The latest map of routing options includes Hwy 70 corridor in Lakeville.

7. NCRWMO

Supervisor Jeff Otto attended the quarterly meeting of the NCRWMO. Discussion on the sample ordinance language was tabled until their next meeting. Their next meeting on November 20th will be at the Eureka Town Hall.

8. Northfield Highway Corridor

Supervisor Jeff Otto attended a meeting on the Northfield Highway Corridor. The proposal that affects Eureka is a scenario that comes due north into Eureka Township and makes an "S" curve to tie in with the existing Galaxie Ave. (Eliminates stop signs). This piece of the plan is 15 years out. The easement is based on a two lane highway. Not four lanes. The plan will be done in phases starting in Northfield.

A second scenario was discussed that would be located south of Eureka Township. This scenario would disrupt wetland areas.

9. **Dewatering Complaint**

Supervisor Carrie Jennings reported on the dewatering complaint. She did a site inspection, took pictures and sent a power point of the flooded area to DNR waters and others. First Park of Lakeville has reached some agreement with property owners for compensation. This area will be flooded for 6-7 weeks. The dewatering is taking place to dig a retention basin onsite to hold floodwaters. The trespassing issue has not been resolved. Surface water discharge is between landowners. No government entity needs to get involved to create a wetland, only in destroying wetlands.

Supervisor Carrie Jennings requested a meeting. It is on August 13th, Lakeville City Hall at 9:00 am, it is being set up by DNR Waters. Those in attendance will include the City of Lakeville, Eureka Township (Supervisor Carrie Jennings and Planning Commission Member Nancy Sauber), Elizabeth McCarthy- DNR dewatering, Brian Watson- Dakota County and Vermillion Watershed. They will discuss the whole corridor broadly, future plans, geology, use of the land area, current state of the water, surface and groundwater issues and discussion on where we see things going.

Supervisor Brian Budenski was notified by Jeff Cross that they can not enter their property, because of flooding. He purchased a culvert that they will be installing. Supervisor Carrie Jennings was given Jeff's contact information and will get in touch with him.

10. **Hat Trick Investments**

Supervisor Cory Behrendt questioned the attorney bill on the 25th, 28th & 29th with Regans and their attorney. The meeting was on May 30th. The meeting was requested by the Regans. Supervisor Jeff Otto will check with Mr. Kelly on whose responsibility for costs incurred for this meeting. The Township did not feel a need for the meeting.

11. **Progressive Rail**

Supervisor Cory Behrendt questioned the attorney billing on Progressive Rail. Township Attorney Trevor Oliver commented that they did the work as part of a follow up on Progressive Rail's representative's statement that they had blanket authority to do this. They stated that this was a two year project. If it turns not to be it is important to know what we could do about it. They do have the right through leases to use land next to rail site for this.

C. Brosseth Level 3 Mining IUP

Supervisor Carrie Jennings reported that the LAP was cancelled for today on Brosseth Mine. Brian Watson thought it makes more sense to do it after the EAW.

D. Jacobson Resolution

Supervisor Jeff Otto took this item off the table.

E. Pederson Resolution

Supervisor Jeff Otto took this item off the table. Items in the resolution are recorded in the minutes for future reference.

New Business

B. Butch Hansen- CUP review 2nd dwelling

Butch Hansen was present for his CUP review of his 2nd dwelling. Supervisor Jeff Otto asked three times for public comments. Hearing none the public portion of the meeting was closed. The Township is still working through this issue. The review fee of \$25 was paid to the clerk.

A motion by Supervisor Cory Behrendt: To recognize the review of the 2nd dwelling CUP for Mr. Hansen that was completed on August 11, 2008. Motion seconded by Supervisor Brian Budenski. Motion carried by unanimous vote.

Butch Hansen stated that he has dropped the lawsuit. The attorney handling the case for the Township will not return his phone calls or address his letters. Butch will not work with him any more. Butch responded to the agreement that was sent to him.

A. Appoint Election Judges

The clerk requested that the following persons be appointed to be election judges for the election: Marlys Shirley, Jody Armen Jones, Cheryl Schindeldecker, Marlene Swantek, Julie Larson, Mary Ann Michaels, Pat Fossum, Elaine Swedin, Mike Greco, Gloria Belzer, Earl Schindeldecker, Cindy Hansen, Alternates- Julie Pflaum and Mary Lou Ruh. Mike Greco and Cheryl Schindeldecker will share the head judge position.

A motion by Supervisor Cory Behrendt: To approve the election judge list as provided by the clerk and any additional judges needed to complete a full roster. Motion seconded by Supervisor Dan Rogers. Motion carried by unanimous vote.

Clerk/ Treasurer Presentation

This Week Newspaper has changed the publication date to Friday. Legal notices requiring 10 days notice may now be held on Mondays.

Reinstating Local Board Powers- The clerk checked with Gloria Pinke, Dakota County Assessing Service on reinstatement of the Local Board of Equalization. Gloria never received the Boards Resolution. The clerk could not find a signed copy of the resolution on file in her office either. Supervisor Dan Rogers signed a new copy of the Resolution No. 61 adopted September 10, 2007. A copy will be sent to Gloria Pinke. Supervisor Dan Rogers is the only Town Board member currently trained. He will be off the Town Board in March.

A motion by Supervisor Cory Behrendt: to adjourn. Motion seconded by Supervisor Brian Budenski.

Meeting adjourned at 11:27 pm.