

Eureka Township
Dakota County
State of Minnesota

Eureka Town Board Meeting of August 15, 2011

Call to Order

Chair Brian Budenski called the August 15, 2011, Eureka Town Board meeting to order at 7:00 p.m. Members present were Supervisors Nancy Sauber, Brian Budenski, Dan Rogers, Pete Storlie and Kenny Miller. Clerk/Treasurer Nanett Sandstrom was present to record the minutes. Also present was Gayle Klauser 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 additions were made to the agenda:

Other Business: Remove from agenda: C. Lakeville Fire Department

Add: Scott Qualle Updates

Misc Updates add: D. Other

The agenda will be reviewed at 10:00 p.m.

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

Public Comment Period

The following correction to the July Minutes was noted: Page 4- Other Business C. Change to "Nelson" property

Treasurer's Report

Checking Account Balance: \$309.69. Outstanding Checks \$404.72. Savings Account Balance: \$382,976.06. Outstanding Deposits \$5,106.20. CD Account Balances: \$66,520.18. The Ledger Balance is \$454,507.41.

A motion by Supervisor Nancy Sauber: To accept the Treasurer's Report of August 15, 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.

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

Bills and Receipts

The Clerk presented the following bills for payment:

Henry's Excavating	Road maintenance thru 6/31/2011	\$5,579.00
MNSPECT	Inspection Services July 2011	\$2,811.34
Dakota Electric Association	Town Hall Electric	\$71.61
Frontier Communications	Phone Service Town Hall	\$112.07
Culligan	Water Softener Town Hall	\$23.51
Dick's Sanitation	Garbage Service Town Hall	\$46.36
T & C Commercial Cleaning	Clean Town Hall – August	\$42.85
Kelly & Lemmons	Legal Services thru 7/31/2011	\$1,735.00
TKDA	Commercial/ Industrial Study	\$84.96
PERA	Payroll Period 7/1/2011 to 7/31/2011	\$162.58
ECM Publishers	Legal Ads	\$84.00
Nanett Sandstrom	Expenses 7/1/2011 to 8/5/2011	\$1,625.38
Anderson Bobcat Service	Tree Removal	\$300.00
Safety Signs	Signs	\$238.80
Gold Mine Dezine	Newsletter	\$196.53
IRS	August Deposit 941	\$212.24
Minnesota Dept of Labor	State Surcharge Report 2 nd Qtr	\$18.00
Eureka Sand & Gravel	Class 5 Road Gravel	\$2,838.76
ProService Lawn	Lawn Maintenance July 2011	\$385.65
Castle Rock Materials	Limestone	\$22,073.68
Carol Kelly	PC Recorder Payroll 7-1-2011 to 7-31-2011	\$35.38
Nanett Sandstrom	Clerk Payroll 7-1-2011 to 7-31-2011	\$979.79
Cheryl Groves	Newsletter postage	\$89.00
Quality Propane	Dust Control	\$3,807.59
Malecha Trucking	Trucking Limestone	\$5,256.00
Castle Rock Bank	Loan Payment #14	\$26,446.19
MN Pipe & Equipment	Sales tax from Invoice 0268721	<u>\$6.41</u>
Total Bills Presented		\$75,262.68

A motion by Supervisor Nancy Sauber: To approve the Net Pay Distribution and Claims List for August 15, 2011, as presented. The motion was seconded by Supervisor Brian Budenski. 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 July:

<ul style="list-style-type: none"> • <u>Local Permits</u> 			
Bohn Well Drilling – Septic Permit	\$280.00	Bischel Buildings- Permit ET11-014	\$105.00
Andy Zimmer- Permit 11-05, 11-06, 11-07	\$3,985.00	Jo Lorentson- Application Fee	\$25.00
Charles Stuurop- Permit ET11-013	\$105.00		

- **Other Receipts**

C.S. Cooper Law Firm – <i>Newsletter Ad</i>	\$125.00	Mount Olivet- <i>Dust Coating 2010</i>	\$231.20
Dakota County- <i>First half taxes</i>	\$239,963.63	Eureka Sand & Gravel- <i>Newsletter Ad</i>	\$125.00
MN Dept of Finance- <i>District Ct</i>	\$499.94	Dakota County- <i>Delinquent Tax</i>	\$4,198.14
LaVerne’s Pumping- <i>Newsletter Ad</i>	\$125.00		

TOTAL RECEIPTS AS OF JULY 31, 2011 **\$249,767.91**

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 as presented August 15, 2011. The motion was seconded by Supervisor Dan Rogers. The motion carried by unanimous vote.

Budget

The Town Board reviewed the budget.

Planning Commission, land use permits and related items

A. Lot Split-Joretta Lorentson

Joretta Lorentson, 22459 Dodd Blvd. , requested a split of .74 acres from PIN #130060003022, creating Parcel A consisting of 3.38 acres as identified in the presented survey dated 5/7/2007. The property is buildable from a cluster agreement of November 13, 2000.

The Planning Commission reviewed the application and forwarded it to the Town Board for approval. The Town Board reviewed the application. Nancy Sauber noted that if the split were to take place as requested, Parcel A will become 206.53 feet wide at the road (widest dimension of lot). For a lot to be buildable, the lot width at the dwelling must be 250 feet. Parcel A would not be a buildable lot under current ordinances.

Joretta does not want to lose the buildability of the lot; she will reconsider the lot split before proceeding.

B. Julie Bixby-Lot Verification

Julie Bixby submitted a Pre-1982 Lot of Record Verification Request for property owned by her parents, Lawrence and Barbara Bixby. The property is located on Granite Path and 257th St. W., PIN#130210078012.

All documents needed for verification of a Pre-1982 Lot of Record were provided. The Bixbys purchased the lot in 1978. The configuration has not changed since the lot was created.

The Town Board verified that the Lot is a Pre-1982 Lot of Record and is buildable under current Ordinances.

Other Citizen Business

A. Dave Willmott 23744 Fairgreen Ave., Radio-controlled Airplane noise complaint

Dave Willmott was present to address a noise complaint about flying radio-controlled airplanes on his property. Dave explained to the Town Board that he purchased the property in the fall of 2010. Before purchasing the property, he spoke with the Planning Commission about creating a park for a model airplane club. He was informed that under current Ordinances, a model airplane club charging fees is not allowed. He could create a grass strip to fly airplanes with friends. (5-6 friends share the hobby with him.) This is his hobby. He does not charge a fee. The weather is a factor in flying. For about a week in July there was consistent activity. He spoke with a neighbor who had some complaints over that activity and made some concessions. On weekends they do not fly before 9:00 am. During the week they seldom fly in the morning, usually after work. If a neighbor is having a party and feels the noise will disturb it, he is willing to not fly during that time.

The Town Board received a petition signed by 10 neighboring landowners who feel that this activity is a nuisance. The petition suggests what they would be willing to live with. A copy of the petition with the names redacted was given to Mr. Willmott. He was asked if he might agree to their suggested guidelines. Mr. Willmott was not sure that he would agree to the suggested guidelines. He has made some concessions already. The Town Board asked if he would suggest a plan and then it could be determined if the neighbors could live with *his* suggested guidelines. The Town Board asked that he talk this over with the landowners, some of whom were present at the meeting, and try to work out some kind of solution to the noise complaint. Those present and involved met in the small conference room to attempt to do so.

B. Building and Shooting complaint follow-up

Supervisor Kenny Miller met with Chris Nielsen and Dave Schonning and inspected the property where the building in question is and the shooting is taking place. The building is 8'x8' on 10' stilts. It is a deer stand. The shooting is taking place into a 15' to 20' high face of a bank, possibly from an old gravel pit. It looks like it is over 500' from the nearest house.

The complainant commented that in the last week of April, three young individuals were shooting in the field for about a half hour without the property owner's permission. The same week the structure was erected. It is approximately 800' from the structure to his place. The experienced hunter has been increasing his hunting to a year-round activity. The complainant has a record of times this has occurred. They have hunted within 400' of his barn and 200' from two houses. This is an Ordinance violation. Shooting has taken place weekly throughout the summer. He submitted documentation on dates and times of shooting. He also submitted documents on eagle protection and guidelines. The complainant has discussed the shooting with the property owner, Merlyn Schonning. Currently, shooting has ceased. The building is located on the border of the property.

Town Board Ordinances require the building to be placed 30 feet from property lines. If it is under 120 square feet, it would not require a building permit. A landowner (or his guest by express invitation) may shoot or carry a firearm upon lands owned by him, provided that no shot, bullet, or ammunition component used shall pass beyond the boundaries of his property, nor shall any discharge of a firearm occur within five hundred (500) feet of any building on adjoining property or an occupied residence, nor in any event create a nuisance or danger to other persons.

Supervisor Kenny Miller will talk to Steve Sutter, Director of the Raptor Center, and the DNR. He will talk to Merlyn Schonning about the location of the building and the distance from which the shooting is taking place relative to neighboring buildings. He will also check to see if the persons shooting have permission from the property owner.

C. Complaint 26110 Ipava Ave. - Charles Roberts

The complainant was present to discuss the complaint with the Town Board. Charles Roberts has had three parties this year. The complainant submitted pictures of the latest party. Party participants included Hell's Angel groups. They had a live band and alcohol. Music could be heard two miles away. At 2:40 am, they set off fireworks, waking the complainant. The complainant then called the Sheriff's Dept., after 2:40 am. He was told this was the 4th trip by the Sheriff Department to the property that evening.

Both Supervisor Dan Rogers and Supervisor Nancy Sauber drove past the property during the party and confirmed that there was a party with loud music. Nancy reported that she drove by after 11:00 p.m. and that there 15-20 vehicles parked on the road, a bonfire, and loud music. In addition to the noise issues, this raised the question of whether an Outdoor Assembly permit was required or obtained, and whether a fire permit was obtained.

The Town Board questioned why the Sheriff Department allowed the party to continue after several complaints had been received. Supervisor Dan Rogers will arrange to have a Sergeant attend the next Town Board meeting to address this issue.

Variance Ordinance

The Town Board discussed the proposed Variance Ordinance. The Planning Commission recommended approval with one possible change: Posting notification from 1,000 feet to 1,500 feet. The statutory requirement is 350'. In the past, it had already been changed to a greater distance to reflect the rural character of the Township. The Town Board decided to leave it at 1,000 feet.

A motion by Supervisor Nancy Sauber: To adopt 2011-04, An Ordinance Amending the Town Zoning Ordinance to Revise Standards for Considering a Variance. The motion was seconded by Supervisor Pete Storlie. The motion carried by unanimous vote.

A motion by Supervisor Nancy Sauber: To approve the Summary Publication for Ordinance 2011-04 as presented by Attorney Trevor Oliver. The motion was seconded by Supervisor Pete Storlie. The motion carried by unanimous vote.

Public Hearing for the Jim Kaiser Variance Request

Jim Kaiser explained to the Board the reason for his variance request. The building will be used for personal storage. The building is on higher ground. There would be a more natural water flow down and around the hill if placed in the proposed location 90' from the road. He could set it lower and bring in fill to locate the building at a 100' setback.

Nancy Sauber had communicated with Travis Thiel, VRWJPO Watershed Specialist, and had an e-mail reply dated August 11, 2011. The JPO is not "recommending" the location as stated on the application, but they have no problem with the proposed location.

Written letters were submitted by Mark Ceminsky, August 8, 2011, and Allen Alwin, July 25, 2011. There were no public comments from the audience.

The Town Board reviewed and discussed the letters. Mr. Kaiser verified that the building would be for personal storage only: his boat and so on. It will not be used for any business purposes. The building is shielded in part from view from the road by deciduous trees. When asked whether he couldn't have a building that was less deep and meet the setback from the centerline of the road, he stated that he would have liked an even bigger pole shed to store his property, but that would have required an even greater variance than that he had requested. There will be no driveway to the road; there is already gravel to drive on near the proposed building site.

When questioned by the Board regarding any setting of precedent as raised in one of the letters, Trevor Oliver advised that there is no precedent set and that the Board should not take that into consideration either for or against any applicant for a variance. Each case is judged on its own facts.

Planning Commissioner Gayle Kaiser reported on the Planning Commission findings. The Planning Commission recommended not approving the Variance request. The primary reason is that they felt it did not meet the criteria in Amendment 2, Section 16, Item A., and especially Item 4.b: "The plight of the landowner is due to circumstances unique to the property, not created by the landowner". Looking at the flow map, it did not appear to the Commission that the flow would be impeded if the building were moved back 10 feet. The Planning Commission was concerned about setting precedent. They were unclear about the practical difficulty. The 90' measurement is measured from the center of the road. Jim Kaiser was asked to initial the measurement on the survey.

Hearing no more comments, the Public Hearing was closed.

When asked by Chair Budenski regarding those comments made by Mark Ceminsky, Trevor stated that those comments were Mark's opinions, but there was nothing there that should affect the Board's decision.

Other statements made concerned those comments about not being in keeping with the Comprehensive Plan because of setbacks. However, there are no setbacks in the Comp Plan. It was felt that the structure does not change the essential character of the neighborhood as there exist homes and accessory buildings there, which are permitted by the Ordinance. Also, stating that the use did not require a variance because it was already an allowed use doesn't fit with the concept of variances. Variances are always about measurement, not use. The Board cannot grant a use variance if it wanted to; they are not allowed in Minnesota.

The Town Board reviewed the criteria for granting a variance as outlined in Township Ordinance 3, Chapter 2, Section 1. (C.) A pole shed for personal use is permitted. It is in harmony with the general purpose of the Zoning Ordinance in general. It is consistent with the Comprehensive Plan. The Zoning Ordinance requires a hundred foot setback; a variance must be requested for a ninety foot setback. The property is being used in a reasonable manner. The drainage issue was not created by the property owner. The drainage flow is unique to the property. Granting of the variance does not affect the essential character of the property. The building will not be seen

from the road, because of the tree cover. The Town Board determined that all criteria had been met to issue the variance.

A motion by Supervisor Brian Budenski: To approve the Land Use and Zoning Request Application for 23645 Jersey Court, Lakeville, MN, Jim Kaiser. The motion was seconded by Supervisor Pete Storlie. Supervisor Nancy Sauber offered a friendly amendment: That a condition be placed that any tree that it is not necessary to remove for construction of the building or any driveway shall remain in place as long as it is healthy; that is, it has not come down in a storm, or become diseased, or died. Supervisor Brian Budenski accepted the friendly amendment. Supervisor Pete Storlie did not accept the friendly amendment, stating that Mr. Kaiser had shown himself to be a “good steward” of the land. Vote was taken on the motion. Motion passed on a 4 to 1 vote, Supervisor Dan Rogers voted against the motion.

Mr. Kaiser was instructed to attend the September Planning Commission meeting for the Building Permit Application.

Contractor Time

Road Contractor Mark Henry was present to discuss road issues. The brush mower will be available this week. Forty hours is approved.

He will try and get Chub Lake Road open on 8/16/2011. Supervisor Dan Rogers has verbal permissions. The four overflow culverts will be replaced. This will allow the road to be opened to traffic. The main culverts still need to be replaced.

A culvert collapsed 1/10th mile north of 267th on Ipava. The damage was marked and the Sheriff Department contacted. Gravel was placed in the collapsed culvert to fill the hole. The culvert needs to be replaced.

There was discussion on the amount of grading that is being done monthly. The contract allows for approximately 100 hours of grading per month per the schedule.

Supervisor Pete Storlie asked the road contractor his opinion if the roads need to be graded according to the schedule. He does not want to say it is ok to spend the money, just because it is in the contract, if the roads do not need to be graded.

The road contractor commented that a lot of money was put into dust-proofing the roads, and once dust-proofed, they should not be graded on a regular schedule. Grading of potholes should be done only when the roads are wet. This time of the year when the roads are dry, he puts in a couple days of maintenance grading, cleaning up intersections. Roads are graded according to use. Highview is graded every week. Roads with a new lift of gravel do not need to be graded. Half the roads are dust-proofed and should not be graded. There is a point when dust-proofed roads can be graded, but they need to be wet. He drove the roads tonight. Most of roads are in good shape, considering the dry weather.

Kenny Miller commented that the roads need to be graded to the schedule. The schedule is there for a reason. When the roads are wet, they should be graded.

Supervisor Dan Rogers commented that he gets road calls. The intersections need to be graded regularly. We may not need 100 hours per month.

Supervisor Nancy Sauber commented that if the grading is not needed, then why grade just because the schedule says it. She suggested that the schedule should be taken as a suggestion, if conditions are good for grading- follow it. If conditions don't call for it, then the schedule should be adjusted. If we have an experienced road contractor, we should ask his opinion.

The Town Board asked the Road Supervisors to review the grading schedule and update it.

Supervisor Dan Rogers and Mark Henry will perform the new sign survey.

At 10:15 pm, the Town Board reviewed the agenda for items that will be reviewed at this meeting and items that will be moved to the September Meeting.

Other Business

A. Planning Commission Update

Gayle Kaiser was present to present a summary of Planning Commission business. The Planning Commission tabled a recommendation on the Jim Anderson Building Permit Application for a residential garage until after legal input. There are two statements in Ordinance 3 that seem to be conflicting. One states that all residents must have a minimum 22'x 22' garage. The other states the maximum total area of all accessory buildings is 200% of primary structure area.

The Attorney has been contacted on this issue. His written comments will be sent to the Planning Commission. It is not a matter of one part of the Ordinances "trumping" another part. Trevor commented that Mr. Anderson needs to apply for a variance from the 200% requirement to build the garage. The Clerk was asked to contact Mr. Anderson.

B. Review RFP's for Chub Lake Road

Yaggy Colby Associates and TKDA submitted clarification to their proposals for the Chub Lake Culvert project. The Town Board reviewed the proposals. There was brief comment.

A motion by Supervisor Pete Storlie: To select Yaggy Colby as engineer for the Chub Lake Project. The motion was seconded by Supervisor Kenny Miller. Vote was taken on the motion. Four Supervisors voted in favor, one opposed. The motion carried. Supervisor Nancy Sauber asked the following reason for her opposing vote be entered into the minutes: TKDA is a known entity; they are the Township Engineer. They have always done a good job. She doesn't see a reason to change. Their personnel have the same or more experience than Yaggy Colby presented in their proposal. TKDA personnel includes a MNDOT-certified construction observer, which she feels more comfortable with, especially with this particular road. The Board asked for quotes, even though this is not a contract under the Municipal Contracting Law because it a professional service. Even if it were covered by the law, a quote allows the Board to not have to go with the lowest bidder; the Board can consider other things. In her opinion, she would have preferred to go with the known entity. TKDA is a very well-respected firm, based on over 100 years of service, and this is a very reasonable fee coming from them.

Road Supervisors Dan Rogers and Kenny Rogers will move forward working with Yaggy and Colby on the Chub Lake project. A representative from Yaggy Colby was present at the meeting.

One of the Town Board members had a conflict on the September Town Board Meeting date. The date of the September Town Board Meeting was set for Wednesday, September 14th at 7:00 p.m.

C. Road Maintenance Contract Bids

The Town Board discussed the Road Maintenance contract. Discussion included whether to use sealed bids or quotes. To use quotes, the summer and winter contracts would need to be bid separately to meet the dollar requirement. Pros and cons of quotes vs. bids and year-long service vs. summer/winter were discussed. The Town Board decided to continue using the sealed bid process for the Road Maintenance Contract. It will be bid as one contract which will include Summer and Winter Maintenance. The contract will run for one year.

The Attorney updated the contract with the subcontractor information. The Clerk will publish the Bid notice in the Newspaper.

The following corrections were made to both the summer and winter contracts: Under Automotive Liability “at” was changed to “as” (that afforded.) Both “above mentioned” and “lower tier” should be hyphenated.

New Business

Clerk/Treasurer Presentation

A. Office Help

Currently the Clerk has a family medical situation that may make her unavailable to hold the regularly scheduled office hours. The Deputy Clerk has been helping with office hours. This fall, the Deputy Clerk will be unavailable to hold office hours due to a conflict with her full-time job. Julie Larson has volunteered to help out in the office if the Clerk is unable to hold office hours. Julie will also be able to fill in when the Deputy Clerk is not available.

The Town Board approved having Julie Larson work in the office. Pay will be \$10 per hour.

Starting in September, the Clerk will have Julie Larson work office hours on Tuesdays and Thursdays from 4:00 pm to 6:00 pm, so the office hours are covered if the Clerk is unavailable.

B. Planning Commission Recorder- Laptop

The laptop that the Planning Commission Recorder is using is not functioning correctly. The Clerk checked with Cory Behrendt, and he said that he should be able to put something together.

The Clerk found an error in Claim #1644 for TKDA. The Claim was submitted as \$336.80. The correct amount of the bill was \$84.96.

A motion by Supervisor Kenny Miller: To authorize the change. The motion was seconded by Supervisor Nancy Sauber. 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 Bills and Receipts (in minutes), Total Disbursements for August (on Treasurer's Report) and Total Claims List for Approval were updated to show the correct amounts.

Minutes Approval

The following corrections were made to the July 11, 2011, Town Board Meeting minutes: Page 4- Other Citizen Business, A. Weed Complaint- third paragraph change "complaintant" to "complainant"

C. Shooting complaint- should read "Nelson" not "Mark Nelson"

A motion by Supervisor Brian Budenski: To approve the Town Board minutes for July 11, 2011, as amended. The motion was seconded by Supervisor Nancy Sauber. The motion carried by unanimous vote.

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

Meeting adjourned at 10:59 p.m.