

## EUREKA TOWNSHIP

Dakota County, State of Minnesota

### TOWN BOARD MEETING

January 23, 2024 – 7:00 P.M.

#### Call to Order

The Eureka Township Town Board meeting was called to order at 7:01 p.m. by Chair Barfknecht and the Pledge of Allegiance was given.

Supervisors Present: Lu Barfknecht, Tim Pope, Allen Novacek, Nancy Sauber, and Randy Wood.

Others Present: Liz Atwater, Mark Henry, Brian Ahern, and Kathleen Kauffman

Zoom Attendance: Carol Cooper, Bob Ruppe, Ralph Fredlund, Julie Larson

#### Approval of the Agenda

Vice Chair Sauber made the following additions:

- Closed meeting with the Attorney
- Reports
  - D- North Cannon River Water
  - E- Cannabis- Gilchrist
- Unfinished Business
  - D- Farmington Fire Contract
- New Business
  - D- Scotts Miracle-Gro Trees
  - E- Jake Braking Ordinance
  - F- 10135 235<sup>th</sup> Street W

*Motion:* Chair Barfknecht moved to approve the agenda as amended. Supervisor Novacek seconded the motion. *Motion carried 5-0.*

#### Public Comment

*\*The opinions expressed in public comments are those of the authors and may not represent the official positions of the Town Board. The Town Board does not control or guarantee the accuracy of information contained in the comments, nor does it endorse the views expressed.*

Chair Barfknecht opened the floor for public comment and reminded that if anyone has comment regarding any agenda items, now is your time to speak.

22506 Ipava Ave-Kathleen Kauffman

See page 7 for submitted comments.

Chair Barfknecht asked three times if there were any additional attendees who would like to make a comment. Hearing none, the floor was closed.

#### Reports

##### Road Report

Road Superintendent Henry is working on getting numbers for the road projects to present to the Board in February. He is working with the Road Committee to determine the quantity needed for

dust control. Mr. Henry is going to get a quote on trimming branches that are hanging into the right of way.

#### Dakota County Sheriff

Deputy Pauls and Deputy O’Hauser had nothing new to report. The Board did not have any questions for the Deputies.

#### Farmington Fire Department Banquet

Clerk Atwater reported she attended the banquet on January 12, 2024. Representatives from Empire and Castle Rock were also present. She recommended the Town Board to attend in the future.

#### **Closed Session with Attorney**

*Motion:* Chair Barfknecht moved to conduct a closed session for the purpose of the Town Board to engage in confidential attorney-client communication and litigation strategies related to the following under the attorney-client privilege pursuant to MN Statute 13D.05, subd. 3(b) with regards to the following litigation: Zoning Violation: Dan Heyda.

Vice Chair Sauber seconded the motion. *Motion carried 5-0.*

*Motion:* Vice Chair Sauber moved to reconvene into open session. Chair Barfknecht seconded the motion. *Motion carried 5-0.*

#### **Reports continued**

##### North Cannon River Watershed Management Organization

Vice Chair Sauber reported she attended the NCRWMO meeting. The end-of-year financials were approved. The water plan has been adopted and won’t have to be done again for 10 years.

##### Cannabis

Vice Chair Sauber reported she sent Attorney Gilchrist an email and has not received a response yet.

#### **Minutes**

*Motion:* Vice Chair Sauber moved to approve the minutes from November 28, 2023, December 12, 2023, and December 26, 2023, Regular and Special Meetings as a consent item. Supervisor Novacek seconded the motion. *Motion carried 5-0.*

#### **Treasurer’s Report**

Clerk Atwater shared with the Town Board that the check to Dakota County \$38,251.46 for crack sealing. Work was completed in September of 2022.

*Motion:* Chair Barfknecht moved to approve the sending out of those funds. Supervisor Novacek seconded the motion. Roll call vote: Lu Barfknecht – Aye; Allen Novacek – Aye; Tim Pope – Aye; Randy Wood – Aye, Nancy Sauber - Aye. *Motion carried 5-0.*

##### Net Pay and claims

The Clerk presented payroll in the amount of \$2,947.00 for payment.

Claims in the amount of \$9,850.84 were presented for payment. See page 8 for a list of claims.

*Motion:* Vice Chair Sauber moved to approve the net pay and claims as presented.

Chair Barfknecht seconded the motion. Roll call vote: Lu Barfknecht – Aye; Tim Pope – Aye; Randy Wood – Aye; Nancy Sauber – Aye; Allen Novacek- Aye. *Motion carried 5-0.*

### Bank Savings Accounts

Clerk/Treasurer Atwater explained that the Township has two commercial savings accounts that require a minimum \$25,000 balance and gets .20% interest. Treasurer Atwater recommended having one general savings account at .15% interest that requires a \$100 minimum balance. Then maintain a balance of \$5,000 in the savings account and move the additional funds into the ICS account that currently gets 3.5% interest.

*Motion:* Chair Barfknecht moved to move forward with the suggested change. Supervisor Wood seconded the motion. Roll call vote: Lu Barfknecht – Aye; Allen Novacek – Aye; Tim Pope – Aye; Randy Wood – Aye, Nancy Sauber - Aye. *Motion carried 5-0.*

### CD Recommendations

GF2023-02 Genisys CD matures on 2/12/2024.

*Motion:* Supervisor Pope moved to renew the CD at Genisys at 5.4% for 7 months. Chair Barfknecht seconded the motion. Roll call vote: Lu Barfknecht – Aye; Tim Pope – Aye; Randy Wood – Aye, Nancy Sauber – Aye; Allen Novacek- Aye. *Motion carried 5-0.*

### **Board of Audit**

See attached report on pages 9-10.

### **Task List**

The Town Board reviewed the task list of the following items:

- 250<sup>th</sup> Speed Study- Clerk Atwater
- Ploog- MPCA
- Identify Illegal Signs and Remove them- Road Superintendent Henry
- Signs removed need to be documented.
- Cannabis Moratorium- Vice Chair Sauber and Attorney Gilchrist

### **Unfinished Business**

#### 245<sup>th</sup> Closed Road

Nothing was discussed.

#### 9235 Upper 240<sup>th</sup> Street W- Oien Property Inspection

Clerk Atwater will email the settlement agreement to Supervisor Novacek and Chair Barfknecht so they can complete their report on the status of compliance.

#### Trash and Debris- Dumpster Quotes

Clerk Atwater presented the quotes for dumpsters to the Town Board. The Town Board agreed not to move forward at this time with getting additional dumpsters or trash receptacles.

#### Farmington Fire Contract

Chair Barfknecht stated she spoke with Attorney Ruppe. The Attorneys have spoken with the City Attorney and are working on language changes.

### **New Business**

### Rural Solid Waste Abatement Grant Program

Clerk Atwater will reach out to Dakota County to get more information about the grant program.

### General Application Instructions

The Town Board made the following addition to the document.

General Requirements

4 A. At least 10 ft. from the property line *or more depending on drainage.*

*Motion:* Chair Barfknecht moved to approve the General Application Instructions as amended. Vice Chair Sauber seconded the motion. *Motion carried 5-0.*

### Legal Concerns

Supervisor Novacek explained his concerns in the two documents presented and in the packet to the Board.

Vice Chair Sauber read the email that was emailed to the Town Board and requested the minutes show the following from MAT Attorney Steve Fenske.

"I ask that this be placed in the because it is in contradiction of what was submitted to us as part of the packet." The email is attached on page11.

Vice Chair Sauber "There is a difference between a special meeting and a closed meeting. He said specifically, you should not share information from a closed session of the Board."

Supervisor Novacek "Please pay particular attention, and please note that I am the one who asked those questions and sent that on so everyone could view. There is nothing hidden there. Please note the words 'largely' and the word 'should'. In our ordinances if they have the word 'may' or the word 'shall', completely different meanings and that comes into play here. Steve Fenske, MAT Attorney, who I called about this, in our verbal conversation, when I listed in the document, I do not put anything in parentheses, because it is not exactly what was said. In our verbal conversation, he interjected into my conversation when I was asking him the question and said, you can tell anyone you want what goes on in a closed meeting, special meeting."

Vice Chair Sauber "Wait, that's the distinction, Al."

Supervisor Novacek "Let me finish."

Vice Chair Sauber "Yeah, well, that's the distinction I am pointing out."

Supervisor Novacek "Okay. He said no law is violated. He said, however, it is very unadvisable to do so because there is Attorney-Client privilege. So obviously he was talking about a closed meeting if he was mentioning Attorney-Client privilege. Let me finish."

Vice Chair Sauber "Yeah, I'm waiting for you."

Supervisor Novacek "So, that caught me off guard. So, when he said that, then there is an open door. Everyone single one of us, in my opinion, and apparently in his opinion that we can. Now let me give an example, it is a far fetched example. Like I gave the one today in the special meeting we were in. The example was, when an attorney applies for a warrant, what if the attorney goes into the judge,

who's deciding if he can have the warrant and says this guy is running a sex house or a sex thing is going on here. When that's not it at all. Well of course he might be granted the warrant under the false pretenses. Now that's an extreme, that's not the case or near the case here. But when you have an extreme then you have the gray area. In this situation I was in the gray area and I made my best decision. As it says in here, each one of use are going to be obligated to do that. Nothing was done hidden. Nothing was revealed that was sensitive to this case. Now, none of you'd know that. But, none of us know what has been said about closed meetings to other people by any one of us. Because, unless someone brings it in, and says, well this person said this. I am the one pointing out what I said. No one is accusing me of anything. I am the one pointing it out. I'm pointing it out for the benefit of something right didn't happen here and I don't want it to happen again. That's all. There is no way, and there would be, as matter of fact, there's a statement in here that I would not be in favor of us just going out and sharing all kinds of information from a closed meeting. Unless there was something unjust going on. And that happens unfortunately, that doesn't mean Ruppe is doing anything wrong. I am not trying to draw him into that. But that happens in this world and anyone who can't see that happening right now in the world we live in is blind. So, I am done Nancy."

Vice Chair Sauber "Madame Chair I would like to further say, Yes, Alan did do this and he asked the Clerk to send it out, and I was surprised that he did. Not that there was anything wrong with doing that, as you like to say, Al. But what Steve Fenske wrote here does not support your contention. I don't think you're understanding his email and I think we need to go by what he put in writing to respond. He says it in so many words, you should not share information."

Supervisor Novacek "Should"

Vice Chair Sauber "Should not. He's telling, he's, this isn't an ordinance. Shall and may apply to the ordinance language.

Supervisor Novack "It applies to everything."

Vice Chair Sauber "It does not apply to Fenske's language."

Supervisor Novacek "Yes it does."

Vice Chair Sauber "No I don't believe it does, Al."

Supervisor Novacek "Okay, well then..."

Vice Chair Sauber "And what he's telling you is don't talk about confidential stuff from a closed meeting. We have a special meeting, we moved to go into a closed meeting. Then we move to come out of the closed meeting, and we adjourn the special meeting. They are, we had a special meeting tonight about the annual presentation. That you can talk to anyone about. But we've said it in our closed meetings before. In case anybody has any problem with it, remember you're not supposed to discuss this. This is a closed meeting. And, the whole thing about had you come to the Board and asked the Board and the Attorney, and all that kind of stuff, can I go talk to Dan or whoever it might be you want to talk to. Then it becomes a Board decision with Attorney advice. It's not, that's what Steve Fenske is saying here. I don't, I really truly don't believe that you understood what he wrote to you, because this does not coincide with this. And I would like those comments of mine to be in the minutes please."

Jake Braking Ordinance

Clerk Atwater to send to the Sheriff's office. Chair Barfknecht to work with Road Superintendent Henry to get the number of signs needed into the Township to get a quote.

Scotts Miracle Gro Trees

Vice Chair Sauber shared that some of the Scotts Miracle-Gro trees look like they may be dying or unhealthy. Per the settlement agreement they are required to have screening of trees. If a tree dies, they will need to replace it.

10135 235<sup>th</sup> Street W- letter sent to Board.

Clerk Atwater was instructed to add this to the next meeting's agenda and include the letter in the packet.

**Clerk Matters**

Clerk Atwater stated that the Audit will take place on February 5<sup>th</sup>, 2024.

Clerk Atwater reported that the furnace is making a noise and there is water on the piping. The Board agreed to have a vendor come out to check the furnace.

Special Meetings will be held at 6pm on February 13 and February 27 to finalize proposed levy and annual meeting presentation.

Board of Canvass will be March 13, 2024, at 2pm at the Town Hall.

**Adjournment**

*Motion:* Chair Barfknecht moved to adjourn the meeting. Vice Chair Sauber seconded the motion.

*Motion carried 5-0.*

The meeting adjourned at 10:15 pm.

Respectfully submitted,

Liz Atwater, Town Clerk

Minutes Officially Approved By:  
Town Chair

Date

on: 2-13-24

Liz, I will not attend this evening, but I ask that this statement be placed in the record as my public comment.

When I was a Supervisor I was the Attorney Contact along with the Chairperson. In the Spring of 2023, we were both tasked with resolving the complaint against Mr. Heyda for multiple ordinance violations. We were authorized to act without further approval of the Board. The matter had been pending for over a year. The facts, law, and Counsel's advice were well known. We expected the matter to either resolve by settlement or result in litigation within a few months. The Board trusted we two Supervisors to consult with the Township Counsel and decide between a possible settlement agreement or filing a complaint. I resigned from the Board in the Spring once most of my open projects were closed. This assignment was not closed but I expected it to close shortly. It has not. I do not know what has happened, nor do the other citizens of the Township, although a one-sided narrative is circulating.

When the matter began, the Board conducted the business under the protection of Attorney-Client privilege. It was the Board's right to do so, just as it is the Board's right to waive the protection of that privilege at any time it decides it is in the best interest of the Township so to do. I request that the Township consult with the Township Council and decide whether to waive the privilege so it can provide citizens with a description of Mr. Heyda's violations, as well as the chronology of negotiations with Mr. Heyda. It should also disclose the correspondence between Mr. Heyda and the Township. I also request the Board ask our Counsel to speak at an open meeting on the risk and cost to the Township of being sued for failing to enforce its ordinances as it was with Fur-ever-wild. I make this request both because I think after two years the citizens are entitled to the information, and because I believe the facts cloaked in privilege may be being misrepresented by others so that the privilege is hurting the Township rather than protecting it.

Further, I request the Board invite two expert speakers to the second February meeting of the Board. The first speaker would be a member of the MET counsel to address the Counsel's limitation on the use of Eureka land and the consequences of exceeding those limitations. The second speaker would be an expert appraiser to address the impact on land value when light industrial use or other uses in violation of our ordinances are randomly mixed into a block with existing residential housing of either average value or high value or open land that might be converted to such a use.

Kathleen Kauffman

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Total</u>
01/23/2024	Payroll ending 1/15/2024	<b>11219</b>	Payroll ending 1/15/2024	\$ 2,014.22
01/23/2024	Payroll ending 1/15/2024	<b>11220</b>	Payroll ending 1/15/2024	\$ 932.78
01/23/2024	MN Department of Revenue	<b>11221</b>	4th Quarter State Income Tax	\$ 654.81
01/23/2024	Benafica, LLC	<b>11222</b>	2024 January HRA	\$ 530.50
01/23/2024	Couri & Ruppe	<b>11223</b>	Legal Services December 2023	\$ 2,062.50
01/23/2024	Dakota County Financial Services	<b>11224</b>	2023 Election Equipment Maintenance	\$ 548.60
01/23/2024	Dakota County Township Officers Association	<b>11225</b>	2023 JPA Pump Maintenance	\$ 1,566.00
01/23/2024	Dakota County Property Taxation	<b>11226</b>	Truth in Taxation Notices	\$ 189.82
01/23/2024	JTN Communication	<b>11227</b>	February 1-29-2024 Internet	\$ 199.00
01/23/2024	JTN Communication	<b>11228</b>	Final payment for Broadband Expansion	\$ 3,829.61
01/23/2024	Metro Sales	<b>11229</b>	1/1/2024-2/09/2024 Copier	\$ 120.00
01/23/2024	T & C Commercial Cleaning	<b>11230</b>	January Cleaning	\$ 150.00
				<u>\$ 12,797.84</u>



# Board of Audit Financial Report 2023

## January 24, 2024

Supervisors Present: Lu Barfknecht, Tim Pope, Allen Novacek, Nancy Sauber, and Randy Wood.

Clerk/Treasurer Atwater presented the following documents for Board review:

- 2023 Disbursements Ledger
- 2023 Receipts Ledger
- Schedule 1
- Cash Control Statement
- 2023 Bank Statements

Fund	Beginning Balance	Receipts	Sale of Investment	Transfers	Disbursements	Purchase of Investments	Transfers (C)	Ending Balance	Investment Balance	Total Balance
General Fund	347,293.67	341,370.30	0.00	5.00	279,753.57	150,000.00	42,605.00	216,310.40	150,000.00	366,310.40
Road and Bridge	369,298.89	460,834.22	0.00	0.00	416,486.88	90,000.00	66,000.00	257,646.23	90,000.00	347,646.23
Rev	1,500.00	1,000.00	0.00	0.00	1,500.00	0.00	0.00	1,000.00	0.00	1,000.00
Permit Escrow - R&B	5,000.00	5,000.00	0.00	0.00	0.00	0.00	0.00	10,000.00	0.00	10,000.00
Petty Cash	100.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00	0.00	100.00
Covid 19 - ARPA	158,312.57	0.00	0.00	0.00	143,757.39	0.00	10,725.57	3,829.61	0.00	3,829.61
Building Permits -										
Building Official	1,804.24	57,614.22	0.00	0.00	57,880.02	0.00	0.00	1,538.44	0.00	1,538.44
Fire and Rescue	4,473.60	85,831.83	0.00	10,725.57	90,003.40	0.00	0.00	11,027.60	0.00	11,027.60
Kelly Aggregate										
Engineering Fund	3,240.74	0.00	0.00	0.00	0.00	0.00	0.00	3,240.74	0.00	3,240.74
Professional										
Services Fund	41,285.85	920.68	0.00	25,500.00	5,359.15	0.00	0.00	62,347.38	0.00	62,347.38
Fund	15,200.00	0.00	0.00	0.00	0.00	0.00	15,200.00	0.00	0.00	0.00
Asphalt/Hard										
Surface Fund	218,996.45	1,934.64	0.00	55,000.00	0.00	150,000.00	0.00	125,931.09	150,000.00	275,931.09
Road & Bridge										
Capital Imprvmt	20,600.00	385.72	0.00	5,500.00	0.00	0.00	0.00	26,485.72	0.00	26,485.72
Town Hall Capital										
Improvement Fund	23,721.22	45,471.91	0.00	32,300.00	50,189.42	50,000.00	0.00	1,303.71	50,000.00	51,303.71
Fund	15,100.00	304.43	0.00	5,500.00	0.00	0.00	0.00	20,904.43	0.00	20,904.43
Night to Unite	0.00	565.00	0.00	0.00	478.28	0.00	0.00	86.72	0.00	86.72
<b>Total :</b>	<b>1,225,927.23</b>	<b>1,001,232.95</b>	<b>0.00</b>	<b>134,530.57</b>	<b>1,045,408.11</b>	<b>440,000.00</b>	<b>134,530.57</b>	<b>741,752.07</b>	<b>440,000.00</b>	<b>1,181,752.07</b>

### Review of 2023 receipts

The Board selected the following receipts for review:

#138357 from City of Lakeville in the amount of \$8,255.90 for 2023 tax. The Board reviewed the receipt documentation and found it to be in order.

#138299 from Rahn Home Services in the amount of \$101.00 for a mechanical permit. The Board reviewed the receipt documentation and found it to be in order.

#138337 from Edward Mueller in the amount of \$1,762.45 for roofing permits. The Board reviewed the receipt documentation and found it to be in order.

### Review of 2023 disbursements

The Board selected the following check numbers for review:

#10858 payable to Dakota Electric Association in the amount of \$17.46 for electric for the shed. The Board reviewed the invoice and check stub and found them to be in order.

#10980 payable to the Couri and Ruppe in the amount of \$625.00 for legal services May 2023. The Board reviewed the invoice and check stub and found them to be in order.

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#10725 payable to Grossman Companies in the amount of \$18,042.00 for 1-2023 December snow removal. The Board reviewed the invoice and check stub and found them to be in order.

Approve the findings of the Board of Audit

*Motion:* Chair Barfknecht moved to approve the findings of the Board of Audit. Supervisor Novacek seconded the motion. *Motion carried 5-0.*

## Eureka Township Clerk

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**From:** Allen Novacek  
**Sent:** Wednesday, January 17, 2024 2:19 PM  
**To:** Eureka Township Clerk  
**Subject:** Attorney response to questions related to the Heyda dilemma I request the Clerk to distribute this to all Board members

### Allen Novacek

to sfenske

1. Is it legal for a town Board Supervisor to speak with accused residents about rectifying the issue at hand and even to share some elements of a special or closed meeting especially when the intention is to bring the resident into compliance?
2. Please provide all the details of what must be included on an administrative warrant request.

Al respectfully request an answer as soon as possible  
Allen Novacek  
952 693 5940

S

### Steve Fenske

to me

Hi Allen,

1. I do not know of any statute explicitly prohibiting a town officer from sharing information from a board meeting. However, you should not share information from a closed session of the board, or that is otherwise deemed confidential. Your access to that information is based on the assumption you're acting in the best interest of the town. Supervisors may disagree about what that interest is, but it is largely resolved by the vote of the town supervisors on the matter. If a majority vote to maintain a confidence, you should respect that vote.

Furthermore, you should not do anything against the advice of your town attorney. If you want to speak to the resident, you should pose your intent to the attorney and the board. They may decide its worthwhile to have your contact the resident. They may decide against it, and if that is the decision, you should respect it despite any disagreement you may have personally.

2. I have no experience with administrative search warrants, so your town attorney remains the best source of information on this topic. As described in a 2017 Minn. Supreme Court Case, *City of Golden Valley v Wiebesick*, the burden to seek an administrative search warrant is lower than the burden for a criminal warrant. The court describe that an administrative search warrant must be supported only by probable cause, and not individualized suspicion. The administrative search warrant is more limited in nature than a general warrant in that the administrative search warrant is related to finding if there is compliance with a code or law. The court points out this would not authorize a general rummaging through the personal belongings of the person named in the warrant, that allows a search to the extent needed to verify compliance with the city code.