



REGULAR MEETING  
WEDNESDAY AUGUST 28, 2019 - 7:00PM

The Orrock Township Board met in regular session, on Wednesday August 28, 2019, at the Orrock Town Hall, 26401 – 180th St. NW, Big Lake, Minnesota.

In attendance were Chair Corrie Silverberg, Supervisors Bryan Adams, Paul Ellinger and Eric Peterson, Clerk Brenda Kimberly-Maas, Treasurer Gary Goldsmith. Also in attendance were Mike Nielson – Town engineering firm, Darryl Waletzko – Town Contractor and seven audience members. Supervisor Bob Hassett was absent.

A quorum was present, the meeting was called to order by Chair Silverberg, at 7:00PM and the Pledge of Allegiance to the United States of America was recited.

#### Meeting Agenda Approval

Motion/Second to accept the presented agenda by: Peterson/Ellinger. All present Supervisors approved. Motion prevailed, and the meeting proceeded in accordance with the presented agenda.

#### Approval of Meeting Minutes

Confirmation of two revisions – typing errors, was done.

Motion/Second to approve the July Regular Minutes by: Ellinger/Adams. All present Supervisors approved. Motion Prevalled.

#### Open Forum

There were no residents present who wished to speak with the Board during Open Forum.

#### Clerk's Business

##### Pro-Forma License Agreement

Supervisor Adams addressed the Board. He informed the Board that he and Supervisor Peterson had called their insurance companies to inquire on the ability for a resident to add insurance to their homeowner's policy which would cover damages to a road caused by the failure of SSTS pipe or equipment. Both supervisors learned that \$1.5 million liability insurance with Orrock as additional insurer is not available. Many of the Board members were of the understanding that a general liability policy with an umbrella for the additional coverage, was available to fulfill the requirement of the License Agreement. However; Homeowner insurance policies only cover incidences on the property. Because in this case the damaged sewer line under the road is not on the homeowner's property, but on public road R/W, the liability insurance will not cover this case. This information confirmed comments received by residents who had previously applied for license agreements. Supervisor Adams stated, the Township's request to have the additional insurance in these cases, is to ensure damaged private sewer line, road and any possible environmental damage be repaired as soon as possible and at no cost to the Township. He noted that even if an insurance policy was available to the homeowner, there is no guarantee the homeowner would keep this policy current. He also reminded the Board that the Township has the authority to do the necessary repair work, bill the property owner or assess the cost of repairs to the property, if the property owner does not pay for them. The road committee felt it is the better option to remove the language requiring the property owner to have a \$1.5 million insurance policy for the equipment. If damage occurs the Town will make the necessary repairs and bill the

property owner. The cost of repairs would be assessed to the property if payment is not made. The Town's Attorney, Bob Ruppe, agrees with this approach.

The current license agreement also requires the homeowner to remove the sewer line upon a 30-day notice. It was suggested that "for just cause" language be added to the agreement. The Town's attorney, Bob Ruppe does not recommend this approach for it invites disagreements as to the interpretation of "just cause". Adams stated that while in the utilities industry, all the right of way utility agreements in which he had been involved, contained a removal cause upon notice, at the equipment owner's cost. Those agreements had no "just cause" language. However; the reason equipment would ever need to be removed, would be if there was a change to the roadway. Such as moving it, rebuilding it to a different depth, etc. In those cases, the equipment could be relocated, instead of removed. Changing the language to have the SSTS equipment "relocated" instead of removed, is language that Bob Ruppe also felt was appropriate. The current language in our license agreement will be modified to state the homeowner shall relocate the equipment upon a 30-day notice. No additional language will be added in this clause.

The current license agreement also contains language a trace wire be installed per MN Rural Water Specifications. This trace wire is used to locate the underground utilities, in this case a sewer line. Gopher State One Call requires utility companies to locate their underground utilities when notified that excavation construction is taking place in the area of their utilities. It is unlikely that private property owners would be notified of pending excavation construction, because they are not in the Gopher State system. It is important that SSTS equipment is located prior to excavation construction, but it should not be the Town or County responsibility to do so, as the lines are private property. Supervisor Adams made the request of Bob Ruppe, to add language to the pro-forma license agreement stating it is the property owner's responsibility to do locating of their SSTS equipment.

Discussion about revisions that were presented by the Road committee was made and the Board decided to move forward with the recommendations.

Motion/Second to have Bob Ruppe, Town's attorney, remove language requiring property owners to carry \$1.5 million liability insurance, naming the Town as additionally insured; remove the need to have a tracer locate wire installed next to SSTS lines under Town roads and within the right-of-way; add language stating the Town will make necessary repairs and perform environmental cleanup, should a defective line cause damage to the road or right-of-way. Those costs will be billed to the property owner, through direct billing or property assessment, if needed; add language stating it is the property owner's responsibility to locate the SSTS equipment when excavation construction work is being done on the road or within the road right-of-way; to the Town's pro-forma license agreement by: Adams/Ellinger. Approved by Adams, Ellinger, Peterson and Silverberg. Motion Carried.

#### Permanent Structures installed on 253 ½ Ave. NW

Supervisors Adams and Silverberg informed the Board an 8" x 8" wooden post had been installed within the road right-of-way on 253 ½ Ave, along the Warnke's property line. A letter had been sent to the Warnke's by Clerk Kimberly-Maas, requesting the removal of the post. The letter included statute information pertaining to permanent structures within road right-of-ways. After the letter was sent, the 8" x 8" post was removed, but additional metal "T" posts had been erected within the ROW. The Warnkes were present with their legal counsel, Jim Nielson. Mr. Nielson addressed the Board, stating the Warnkes had their property surveyed and the location of the "T" posts is on the Warnke's property line, not the defined road easement and the Warnke's were within their rights to install the T posts. Supervisor Silverberg noted the Town has acquired the land in question, by adverse possession. Some of the "T" posts were installed right next to the bituminous and others were within 10' of the pavement. These posts are within the area used to store snow and by statute, this area is considered right-of-way. Mr. Nielson requested the Board cite cases where these statutes were upheld. Clerk Kimberly-Maas stated that she and the Board knew that Mr. Nielson had been in contact with Bob Ruppe and was given the information of where he could research court cases. Mr. Nielson requested the Board determine the distance from the bituminous edge, which is used to store snow, so his client could erect a fence, which would be considered outside of the right-of-way. The road committee will discuss this further and report back to the Board with recommendation.

#### Catch Basin Cleaning – Quote Review/Award

Two (2) quotes to clean the eight (8) catch basins were received. Schlomka's Vac Truck Service, Inc. in the amount of \$1,765.00 and Nelson Sanitation at the rate of \$245/hr – billing time would begin when the equipment left their shop and end when the equipment returned. Schlomka's has performed the work in the past.

Motion/Second to award catch basin cleaning to Schlomka's Vac Truck Service, Inc. to clean the Town's eight catch basins, for a total cost of \$1,765.00 by Adams/Peterson. Approved by: Adams, Ellinger, Peterson and Silverberg. None opposed. Motion carried.

#### Right of Way Trimming - Quote Review/Award

One (1) quote to trim the areas defined by the RFQ was received. Darryl Waletzko, LLC quote in the amount of \$30,000.00.

Motion/Second to award trimming contract for areas defined by the 2019 Trimming RFQ to Darryl Waletzko, LLC, for a total cost of \$30,000.00 by Adams/Peterson. Approved by: Adams, Ellinger, Peterson and Silverberg. None opposed. Motion carried.

#### Review/Adopt Application and Escrow Release Forms

The Board was presented with a revised Driveway Permit Application and a new License Agreement Application and their respective Escrow Release Request forms. The Driveway Permit Application was modified to reflect the change of having the inspections done "in house". The License Agreement Application is a new document which will assist property owner's and the Town's Clerk and Treasurer with processing License Agreement requests. Escrow reimbursement/release forms were also created to assist with the process of refunding escrows. The driveway application language was modified to reflect the applicant is paying both the permit fee of \$250 and the escrow of \$3000 to the Town – one check can be issued. The other changes are to include contact information for the inspector, inspection checklist, driveway specifications, Town Driveway Ordinance and ROW statute (160.2715) to the packet. Supervisor Ellinger wondered if the language of escrow forfeiture was allowed. Clerk Kimberly-Maas informed the Board the original driveway application was written by the Town's attorney and included the forfeiture clause. The original driveway application was used as the template for the License Agreement application and the forfeiture clause is also in that document. There were no other concerns with the applications and release forms.

Motion/Second to adopt the presented Driveway Permit Application, License Agreement Application, and Escrow Release Request forms by: Ellinger/Silverberg. Approved by: Adams, Ellinger, Peterson and Silverberg. None opposed. Motion carried.

#### Review/Accept Couri & Ruppe, PLLP 2020 Rates

The Board was presented with the Attorney's 2020 rates, for review. Effective January 1, 2020 Couri & Ruppe, PLLP, will charge \$210.00/hour, for general legal work and \$230.00/hour for plat/development work. The cost of the work done for plat/developments would be charged back to the developer and recovered through the developer fees/escrow. Supervisor Ellinger asked if the Town would be better off having the attorney on retainer, rather than paying on an hourly basis. The Board did not know if the retainer option was available and was not sure it was cost-effective to go this route.

Motion/Second to accept Couri & Ruppe, PLLP 2020 hourly rates of \$210.00/hour, for general legal work and \$230.00/hour for plat/development work by: Peterson/Adams. Approved by: Adams, Peterson and Silverberg. Opposed by: Ellinger. Motion carried.

\*\*\*Supervisor Ellinger requested a Town legal expense report be generated for the past 2-yr expenditures and the question of annual retainer be posed to the law firm. If Annual Retainer is an option, he would like to know what the cost would be for the retainer and hourly rate beyond general legal questions.

#### Fireproof File Cabinet – Update

Clerk Kimberly-Maas informed the Board that the fireproof file cabinet had not been received. There was an additional charge for the installation of the wheeled base, which had been approved, but the charge had not been made to the Town. She had not heard back on her correspondences approving the additional charge. Treasurer Goldsmith stated he had also called the company to confirm the additional charge was approved, as it would not bring the total higher than was approved by the Board. Gary and Brenda will work with the company to ensure the order is fulfilled and delivery of the file cabinet is scheduled.

### Deputy Clerk – Update

Clerk Kimberly-Maas informed the Board that Chris Weber has agreed to work as her Deputy Clerk. They have talked about hourly compensation and agreed that for the time being, Chris will receive an hourly rate of \$25, while in training. Brenda presented the Board with the Certification of Deputy Clerk. Brenda also requested the Board authorize funds to purchase a laptop, for the Deputy Clerk position. Discussion of the cost of a dependable laptop was made where the consensus was \$800.00 would be enough to purchase a laptop. Gary noted he does not use the Office 365 license dedicated to the Treasurer position, so it could be used for Chris.

Motion/Second authorizing \$800.00 to be used for the purchase of a laptop, which will be used for the Deputy Clerk position by: Peterson/Adams. Approved by: Adams, Ellinger, Peterson and Silverberg. None opposed. Motion carried.

### 229<sup>th</sup> Ave. NW – Ongoing Maintenance Agreement

The Board received an electronic copy of a possible maintenance agreement for the on-going maintenance of 229<sup>th</sup> Ave. NW – the town line road between Orrock and Big Lake townships. The Board felt the agreement language is appropriate for the ongoing maintenance of the road. The Big Lake Road Committee and Board had not yet reviewed the agreement. She will present the maintenance agreement to the Big Lake Road Committee for review and comment. Updates will be presented as they are received.

### Roads

#### SPRA Grant Project

- 233<sup>rd</sup> Ave. Trimming & Brushing

Trimming within the right of way on 233<sup>rd</sup> Ave. was done. However; Supervisor Adams would like to have additional trimming done. This will be accomplished by the Town at a later date – likely in 2020. The vendor who did the trimming and brushing, hit a Windstream monument. A damage claim has been created and \$2000.00 has been retained from the full payment to the vendor until the claim is settled.

- 233<sup>rd</sup> Ave. & 168<sup>th</sup> St. Construction & Overlay

Mike Neilson informed the Board curb and gutter work was done a week prior to this meeting. The leveling course was done during the day of the meeting (8/25/2019). The wear course is scheduled for Friday this week (8/27/2019) The striping will be done afterward, as will the shouldering. Mike asked to have the Board authorize Darryl mow the shoulders on 233<sup>rd</sup> Ave. and 168<sup>th</sup> St. as soon as possible, so the shouldering material could be spread more easily. The Board agreed to have Darryl mow those areas right away.

- Easement Descriptions

Mike has not heard back from the DNR surveyor on the discrepancy between the written easement description and physical location of the road. When he speaks to Martha Vickery, he will also inquire on the easement description for 233<sup>rd</sup> Ave. commencing at 168<sup>th</sup> St. NW and terminating at the Livonia border.

FOLLOW UP IN SEPTEMBER

### 189<sup>th</sup> St. NW

Supervisor Adams addressed the Board on the matter of 189<sup>th</sup> St. on Eagle Point. He noted there is a resident whose driveway accesses 189<sup>th</sup> St. NW. But their mailbox is on 234<sup>th</sup> Ave. The resident called Bryan with concerns about potholes on 189<sup>th</sup> St. and 234<sup>th</sup> Ave. (both of these roads are gravel/crushed bituminous). Supervisor Adams was informed the Town doesn't maintain 189<sup>th</sup> St. His concern is can the Town legally have a road and not maintain it without taking formal action. This matter was directed to the Road Committee for research and reporting to the Board with findings.

### 189<sup>th</sup> St. north of CSAH 4 – Hidden Ponds

Supervisor Peterson received a call from a resident with concerns about sink holes in the right of way of 189<sup>th</sup> St. NW, north of County State Aid Highway 4, in Hidden Ponds. The resident was present at the meeting and stated he has been doing what he can to fill the holes, but they keep forming. Peterson thinks there may be some stumps buried in the right of way, from which were felled when the road was constructed. The sink holes are quite large, a liability and jeopardizing the roadway as they continue to expand. Peterson would like to employ Darryl to dig out the area to find out the cause and make corrections to the area.

Motion/Second authorizing up to \$10,000.00 to have handyman, Darryl Waletzko, perform exploratory digging in the right of way on 189<sup>th</sup> St. going into Hidden Ponds, take corrective measures and restore the area to Town standards by: Peterson/Adams. Approved by: Adams, Ellinger, Peterson and Silverberg. None Opposed. Motion carries.

#### Treasurer's Business

##### Claims Approval – Routine, Individual and Payroll

Claims and payroll presented for payment, were electronically made available for Board review, and were available as hard copy, during the meeting, for public review. There was one addition, which were presented to the Board prior to the meeting.

- Routine Claims – including Driveway Escrow refund:

Motion/Second to approve routine claims by: Ellinger/Peterson. In favor: Adams, Ellinger, Peterson & Silverberg. Opposed: none. Abstained: None. Motion Prevailed.

- Payroll Claims - August 2019:

Motion/Second to approve payroll claims by: Ellinger/Peterson. In favor: Adams, Ellinger, Peterson & Silverberg. Opposed: none. Abstained: None. Motion Prevailed.

##### Cash Control Statement

Treasurer Goldsmith presented the Board with the Cash Control statement. Ending cash balance after reconciling the books with the bank statements: \$1,497,282.45 This amount included 4M fund balance information.

Motion/Second to accept the July Cash Control Statement: Peterson/Adams. Approved by: Adams, Ellinger, Peterson and Silverberg. Opposed: None. Abstained: None. Motion Prevailed.

##### Treasurer's Report

Town Funds balances as of July 31, 2019:

General Fund: \$ 58,157.40	Road & Bridge: \$ 1,000,030.97
Fire: \$81,093.43	Capital Reserve: \$195,373.68

The escrows were unchanged

Motion/Second to accept the Treasurer's Report date ending 07/31/2019 by: Adams/Silverberg. Approved by: Adams, Ellinger, Peterson and Silverberg. Opposed: None. Abstained: None. Motion Prevailed.

##### Treasurer Action Items

###### Resolution regarding Allocation of Real Estate Tax Penalties & Interest

Treasurer Goldsmith presented to the Board a Resolution to authorize the distribution of payments received for Real Estate Tax Penalties and Interest to the Road and Bridge Fund, instead of breaking those payments out to each fund in the percentages of the current years levy. The question on whether this can be done or if there is a statute that requires the funds be split between funds was raised. Gary will research the answer and return with the information in September.

###### Informational Items

Safe Deposit box has been opened at the Becker location of Sherburne State Bank. Chair, Vice-Chair and Clerk need to go to the bank and sign the signature documents to allow for check writing and access to the safe deposit box. The second CD has been purchased.

Supervisor Ellinger requested the Finance Committee meet to review the Budget information and then present their recommendation to the Board in September. The Finance Committee will schedule a meeting time.

Announcements

Clerk Kimberly-Maas announced the delivery of the NOT A THRU street sign a day or so before the meeting. The Sign will be installed by Darryl Waletzko in the next couple of days, on the end of 183<sup>rd</sup> St. in the Eagle Lake Springs Addition.

Resident was present with 34 pair of gopher feet for reimbursement. The Board decided to authorize the claim at the meeting, so the resident didn't have to wait until the September meeting.

Motion/Second authorizing payment of \$68 for 34 pair of gopher feet by: Ellinger/Silverberg. Approved by: Adams, Ellinger, Peterson and Silverberg. None Opposed. Motion carries.

Adjournment

Motion/Second to adjourn regular meeting by: Silverberg/Peterson. All present approved. Motion Passed, adjourning the Regular Monthly Meeting, on Wednesday August 28, 2019 at 8:25PM.

Respectfully Submitted,  
Brenda Kimberly-Maas  
Town of Orrock, Clerk

Accepted this 25<sup>th</sup> day of September, 2019 by the Orrock Township Board of Supervisors.

\_\_\_\_\_  
Corrie Silverberg, Chair

Attest: \_\_\_\_\_  
Brenda Kimberly-Maas, Town Clerk