

Rushford Town Board Minutes
Wednesday, June 7, 2017

The Town of Rushford June Board meeting was called to order by Chairman Thomas Egan followed by the Pledge of Allegiance. Roll call was taken with Thomas Egan, Jerry Schoonover, Pat Kafer, Kathryn Lewis & Peggy Hendricks present. Also present for all or part of the meeting: 12 additional persons per attendance record on file, though others were present who did not sign in.

Statement of Public Notice: Notice of this meeting and the May 10th meeting was posted on the Town hall door, the corner of K&E in Eureka, the Waukau Post office and the Towns website. In addition, liquor licenses applications were posted in the Oshkosh Northwestern.

Discussion with Sheriff's Department representative: A deputy was present to answer any questions.

Clerks Report & Minutes: *Motion by Schoonover, 2nd by Kafer, to approve the minutes as presented for the May 3 and the May 10th meeting. Motion carried.*

Treasurers Report was given by Kathryn Lewis. The balance at the end of May was \$188,458.63. The balance in the tax account was \$1,517.78 *Motion by Kafer, 2nd by Schoonover to approve the treasurer's report. Motion carried.*

Payment of invoices: Hendricks approved and submitted to the board the bills for June in the amount of \$46,615.11 from the general account for approval of payment. *Motion by Kafer, 2nd by Schoonover to pay the approved June 2017 bills. Motion carried.* Pat Schoonover asked for a copy of Friends bill and he would like to see the elected officers pay be broken down by pay, per-diems, mileage, etc

Public Input: Ann Poalson would like air quality tests from Blue Sky Gardens. She feels there is excess mold in the air. She would like to see 3 different samples. She feels compost piles should be 1 mile away from residences.

Kelly Domke asked what they can do as residents of the Town to stop this or make it so others can't start composting with the same material.

Larry Timm wanted to say a few words for he did not know he was listed on the agenda. Board of Review was held. There were 4 objectors. Small adjustments were made and they all seemed satisfied with the results. He completed the final assessment report. Larry lost the file that has all the photos of the homes in the Town. He will be re-taking photos of all the homes this summer. He requested that this notice be put on the website. Pat Schoonover asked Mr. Timm if he let the Town Board know if someone is zoned improperly or if there is a building code violation. Mr. Timm said that if he sees something out of the ordinary, he will let the Town Board know. He does not know what properties are zoned. He does let the Town Board know if he sees a change in the property.

Kelly Domke asked about hours of operation for businesses. Tom replied that certain businesses have hours, such as gravel pits. She was referring to Martys Blue Sky Gardens. She also asked if Attorney Blazel has come back with any information on dumping fees. She asked if there was some way from here on out that they can stop other people from doing this. Tom said if they know it is going to happen and if it is a business, it will be discussed. She asked about the definitions. She would like to understand why if the State, the County and the DNR defines composting as a solid waste facility – why the Town does not. Attorney Culp said the County has looked at Blue Sky Gardens and determined there were no violations. There was a complaint made to the County, they looked at it and determined there were no violations in their County ordinance. Each municipality has jurisdiction over various things. The County does not have jurisdiction over the property, so it falls on the Township. The Township does not define solid waste facility with respect to the zoning. He stated that as mentioned before, they all have full recourse though the courts. The information is out there, the people are out there. He said you generally do not want to take air sampling at the pile. You want to take air samples where it affects the people. That means where you are living.

Ken Basel thinks the whole issue is the zoning is not being looked at and it is wrong. He feels there are other properties in the Township with the wrong zoning. Attorney Culp said that zoning was never a consideration. Sara McClelland was wondering why the Town is putting the pocket book of one ahead of the needs and concerns of other residents. She also went over her health concerns that she previously explained.

Ann Poalson talked about her own health concerns.

Pat Schoonover asked why this does not fall under the Towns nuisance ordinance. Attorney Culp said he does not feel this is a Public nuisance according to the ordinance. Mr. Schoonover said 50 people signed the

petition. The Attorney said those 50 people said they “believe” there is a nuisance. A public nuisance is how it affects the community at large. Section 3.08 was discussed.

Kelly said even if you erase the health concerns, the smell is repulsive.

Melissa Klubertanz said then you would have to shut down all the farms.

Sara McClelland said that is a natural smell and has been here but this is newly brought in.

Melissa said he is running a business just like a farm is running a business.

Tom Jackson asked Attorney Culp what point does someone take action for obnoxious odor. Attorney Culp said there is no threshold or standard for odor. He said this is not a public nuisance issue. It may be a private nuisance issue. There is action a private land owner can take. There is a constitutional provision called equal protection under the law. Meaning if it is an obnoxious odor from a farm and people feel that is OK, but if it is from a nursery it is not OK – the law does not make those distinctions.

McClelland said there was a cease and desist order in 2014. She wonders what changed from 2014 to now.

Tom Egan said that a letter should have been sent to him after the property was looked at. The Board had called the DNR who said everything was OK. The County went out and did not find any problems. The Town Board and the zoning committee also went out. The concerns at that time were not the smell or health issues. Tom said he would take the blame that a letter was not sent out to Mr. Pomplun saying that the Board felt this matter was resolved.

Ken Basil said there was a legal precedent for building a home next to a farm. He said if you have a house and then a business puts a smell that is new, then that is a nuisance.

Attorney Culp talked about Rosendale Dairy. There was a lot of opposition about the smell and it was determined it was not a public nuisance.

Jack Klubertanz said he purchases compost from Blue Sky Gardens. He asked what the number of people in the Town of Rushford. He was wondering what the percentage of the Township signed the petition.

Hendricks stated that there are 1581 people in the Town of Rushford. She does not have a number for the population in the Village of Eureka or Waukau.

Attorney Culp said for a public nuisance, the courts look at it affecting the majority of the residents in the Township.

Communication & Correspondence: Tom Egan received a letter from Attorney Brantmeir, Jefferson, WI which contained a filed Summons and Complaint from the Jacob Case accident stating they have filed a lawsuit against the Town. This has been turned over to the Fire Departments attorney. Hendricks received the Winnebago County Sheriff’s Office 2016 annual report which is uploaded on the Towns website.

Old Business: Board discussion and action on Blue Sky Garden complaint:

Tom Egan said he was waiting to hear from a person who said they would have information on an air quality test. He has not heard any information on this. He had talked to a number of residents who signed the petition and a lot of them said it was because it was their neighbor – what was I to do? Tom told them they should come and express themselves. He is just stating things he has heard.

Jerry Schoonover asked the Attorney if the Town went to court, would we have a chance. The Attorney said the issues he gave advice on – he feels strongly in the opinions he gave. He would back up his position with evidence and legal authority to show the court that the opinions he gave would appease the court.

Pat Kafer said he had also talked to a couple of the people who signed the petition and they mentioned that they signed it, but they did not really have a problem with Blue Sky gardens.

Pat Kafer made a motion that the Board takes the advice of Attorney Culp, that the conclusion is that this is a private nuisance at this time. Jerry Schoonover 2nd the motion. Discussion: If something does come up it can be re-visited. Motion carried.

Action on Order to Discontinue certain streets & alleys in the Village of Waukau:

Hendricks read the amended order which includes the Commercial Street discontinuance along with the other streets and alleys which were approved at the March meeting. ***Motion by Schoonover, 2nd by Kafer to approve the amended Order to Discontinue Streets and alleys in Waukau. Motion carried.***

New Business:

Hendricks read the announcement of 2017 recycling grants to responsible units. The Town of Rushford was awarded \$2874.75.

Hendricks let the Board know that she received a letter stating that if the Town would wish to apply for a culvert project aid for 2018, the application will have to be in the Highway Commissioners office by June 24, 2017.

Motion by Schoonover, 2nd by Kafer to approve Class B liquor and Class B beer license for Phillip Rew – Starlight Inn, Jerry Olkiewicz – Bill & Stels, Robert Hessenius – Eureka Landings Bar & Grill LLC, Janet Davis – Farmers Daughter Country Kitchen LLC and Ron & Marilyn Fink – Trail Inn. Motion carried.

Pat Schoonover asked why Peggy Hendricks did not need a liquor license. She explained it is because she has all her permits through the Federal and State government. Hendricks Family Distillery is a manufacturer and all drinks are served free of charge and only the product produced is served. Legally though the State of Wisconsin, manufacturers can offer their own product.

Motion by Schoonover, 2nd by Kafer to approve Class B Wine Only and Class B beer license for Shane & Laurel Coombs – Rushford Meadery & Winery LLC. Motion approved.

Motion by Schoonover, 2nd by Kafer to approve picnic license for Flying Mane Riding Club and Waukau Community Center. Motion carried.

Discussion on Town hall maintenance/needs: Hendricks did not know if the 4-H was going to plant the pots in front of the hall again this year. Kathy Lewis said she would ask Rick Gehrke if he could mow the piece by the hall.

Discussion on Town Maintenance: Tom said last month a motion was made for Dr. Jenson on Hiwela Trail to be built according to Jonathan Groths recommendations which was the pavement be 18' - 22' in width, 2' gravel shoulder and the pavement depth would be 4" minimum (2" binder and 2" surface). Dr. Jenson would also like to know for a cul-du-sac. Jon recommended a 90' radius to turn around. **Motion by Kafer, 2nd by Schoonover for Hiwela trail to have a 90' radius turn around. Motion carried.**

Tom Egan asked the clerk to send this information to Dr. Jenson. This is under DAK Reality.

Sara McClelland said her street was always Spring St and now the sign says Spring Road. She was wondering what it is. Tom Egan said he would check it out at the County.

Tom Egan received the road survey along with the cost estimates. A special meeting of the Board should be called next week to go through the costs. The culvert aid will also be discussed at this meeting.

Hendricks said the pavement ratings are due this year.

Animal Report: Chuck Mier took one dog to the Green Lake shelter.

Assessors Report – Larry Timm: Larry wanted to add that there would not be a charge to the Town for taking all the photos of the Towns homes and buildings.

Building Permits – Tom Egan:

Mary Merk, 7260 Meadow Ridge, Waukau
Concrete sidewalk and steps
Rocks Concrete Services, Green Lake
\$2350.00 May 3, 2017

Kenneth Mulvey, 8509 Liberty School Road, Omro, 920-658-3438
Siding and Sunroom
\$4700 May 13, 2017

Shoot to Thrill LLC, 3077 Saffron Ln, Neenah, WI 54956 920-841-8070
New Single Family For 9239 Eureka Lock Road
Built by Berhoff Homes, 3077 Saffron Lane, Neenah
\$400,000 May 17, 2017

Laura & Jason Kralovetz, 7317 Old Mill Road, Omro 920-279-1931
12 x 34 deck built by Randy Peterson, 7311 Meadowridge Dr, Pickett
\$3000 May 18, 2017

County Report by Tom Egan: The County is still discussing the airport. There will be a joint meeting on July 12th. They are counting all the County buildings. The Health department is growing. All of Winnebago County is in except for Menasha. There are continued talks on the Exposition Center if it should be a race track or if they should build a permanent stage for LifeFest.

Pat Kafer said he was suppose to go and help put ATV signs up and was wondering if it was alright with the County. Tom said he would call him

Attended Meetings/workshops:

- Tom Jackson - Workshop for Local Planning & Zoning Officials, May 22nd. Tom said the meeting consisted of how to handle meetings, posting of meetings, what you can do in closed session and subdivisions. With the zoning committee making a decision, they have to weigh both sides evenly of whatever the meeting is for. He also talked to Seth from the gas company and they are working on the finishing grade of the gas lines.
- Dan Stokes - Farmland preservation meeting – Dan said they met last week. They were going to map the A-1 and A-2 land for the state plan and they decided not to do that. They were still going to send out 1300 letters who had 39 acres or more. They will have an informational meeting tomorrow.

Motion by Kafer, 2nd by Schoonver to adjourn at 8:25. Motion carried.

Respectfully submitted by Peggy Hendricks, Clerk