

Approved Minutes, March 16th, 2021 Clear Lake Township Board Meeting Held at the Clear Lake Township Hall

Member's present were; Chairman: Gary Gray, Supervisor: Bud Stimmler, Supervisor: Ross Imholte
Treasurer: Paul Goenner, Road Engineer: T. Vander Eyk, Deputy Clerk: Gary Anderson, Clerk: Peggy Berger

Other's present were: Brent Benson, Tambra Benson, Mark Kolbinger

The meeting was called to order at 7:00PM by Chairman Gary Gray.

The Pledge was recited.

Board meeting minutes from the previous month were reviewed by the Board and approved.

Motion to approve payment of bills by Bud Stimmler. Second by Ross Imholte. Motion carried, all voting in favor.

SHERIFF'S REPORT: The Sheriff's Report was not received by the Town prior to the board meeting.

LIBRARY BOARD: Nothing to report

WATER ADVISORY TO REPORT ON: A Water Advisory Board member was recently replaced with a new member and may start up again in the near future.

FIRE DEPARTMENT ADVISORY BOARD: Nothing to report.

PARK & TRAILS REPORT: Bud Stimmler noted a new sign was installed at the park entrance noting the park is open from sunrise to sundown.

ROAD REPORT:

- Eyk requested board approval for a \$715.00 partial pay to Schendzielos & Sons for the Town septic system. Motion to approve partial pay by Imholte. Second by Stimmler. Motion carried, all voting in favor.
- Local Road Improvement Program (LRIP) funding announcement will be delayed until June-2021 due to an overwhelming response for state funding.
- Sherwood Shores bid letting scheduled for March 18. Eyk will request the contractor for a start date earlier than the July 6 date requested by the County.
- Gary Gray discussed Co. Rd. 53, asking for a meeting with Becker Twp, and the County to better understand the proposed changes to that road and how it would affect our Township.

OLD BUSINESS: Gary Gray discussed the Lion's Club picnic shelter, originally estimated between \$20,000 and \$25,000, that has an added cost of \$2,500.00 for architectural/engineering drawings. A request was also made to include costs for adding a parking lot and a land survey to determine the best location of the shelter.

NEW BUSINESS:

- Brent and Tandra Benson, for construction of a new home, requesting a variance in setback to 41st Ave right-of-way plus a variance in setback to Long Lake. Gary Gray will send positive comments to the County.
- Adhering to COVID-19 distancing practices, the Township Spring road tour will be limited to Eyk (plus Jeff Rhodes) and Bud traveling the town roads. They will bring recommendations back to the board.
- Gary Gray will create a new letter to the Sherwood Shores residents, inviting them to the rescheduled informational meeting set for April 14th and 15th regarding the Township road construction.
- Gary Gray announced Peggy Berger is leaving the Township for a full-time job after 2 years with the Township. Gary Anderson, current Deputy Clerk, will take the roll of the acting Clerk until a replacement Clerk is hired.

Ross made a motion to adjourn the meeting. Second by Stimmler. Motion carried. Meeting adjourned.

Mr. Gary Gray
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October 2, 2020

Mr. Gary Gray
Chair, Clear Lake Town Board
P.O. Box 305
Clear Lake, MN 55319

Dear Mr. Gray:

It is my understanding that an application for a very large solar energy project ("Solar Project") is before the Minnesota Public Utilities Commission ("PUC") and that a significant portion of the land upon which this project is to be located lies in Clear Lake Township. It is also my understanding that the PUC will be taking public comment regarding the potential establishment of this Solar Project within the Township and that the views of the Town Board, as an affected governmental unit, will be material to the PUC's decision on this issue. I also understand that two of the three Town Board Supervisors own land that will be leased by the developer of the Solar Project for use in the Solar Project.

Within this backdrop, the question has arisen as to whether the two Supervisors whose land is proposed to be leased as part of the Solar Project can vote on the question of the submission of comments from the Township to the PUC regarding the Solar Project.

Minnesota law generally holds that a Township Supervisor may not vote on an issue before the Town Board that the Supervisor has a pecuniary (direct and personal) financial interest in. Normally, the interested Township Supervisor would be required to abstain from voting on such an issue due to a conflict of interest on that particular issue. However, the law also holds that the prohibition on voting on an issue when a conflict of interest exists can be overridden in certain circumstances, particularly where the vote of one or more of the interested Supervisors is necessary in order for any decision to be made.

In this case, the Town Board consists of three Supervisors, two of whom have a conflict of interest on this issue. The one remaining Town Board member cannot both make and

second a motion, so at least one of the Supervisors needs to participate in the voting on this issue in order for the Township to make a decision one way or the other. Because both Supervisors have the same type of conflict, I believe that both can vote on this issue under the analysis of *Lenz v. Coon Creek Watershed*, 153 N.W.2d 209 (Minn., 1967).

In *Lenz v. Coon Creek Watershed*, the Minnesota Supreme Court held that while public officials are generally prohibited from voting on issues in which they have a direct financial interest in the outcome, there are five factors that must be considered when determining whether an interested official can vote:

- (1) The nature of the decision being made;
- (2) the nature of the pecuniary interest;
- (3) the number of officials making the decision who are interested;
- (4) the need, if any, to have interested persons make the decision; and
- (5) the other means available, if any, such as the opportunity for review, that serve to insure that the officials will not act arbitrarily to further their selfish interests.

In this case, the nature of the decision being made is essentially one of a recommendation from the Town Board to the PUC relating to the establishment of the Solar Project in Clear Lake Township. Because the Township will be directly affected by the placement of the Solar Project within its borders, the decision of the PUC will have a material impact on the Township in terms of land use and in terms of potential tax and electrical generation revenue the Township may realize from the Solar Project. Further, because it is only a recommendation to the PUC, the interested officers have no direct control over the outcome of the PUC decision, thereby reducing their ability to directly affect the final decision on whether the solar project should be approved. This issue would seem to favor the Township weighing in on the decision.

The nature of the pecuniary interest is direct—the two interested officers will leasing their land to the developers of the project. This issue would seem to argue against the interested officers participating.

Two of the three Township Supervisors who would vote on recommendations to the PUC are interested. As a majority of the Board, this on the one hand would provide an argument against the interested officers being allowed to vote.

However, since two of the interested officers make up a majority of the Board, their abstentions would mean that the Township would not submit any comments or recommendations to the PUC and would deprive a governmental entity that will be directly impacted by the Solar Project from having any voice in this issue before the PUC. The need to have the interested officers participate is absolute if the Township is to

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COURI & RUPPE, P.L.L.P.

Attorney at Law
360 Central Avenue East

have any voice in this issue at all. This would argue strongly in favor of the participation of the interested officers so that the Township can take a position on this issue before the PUC.

Finally, since the final decision will be up to the PUC, the PUC stands as an intermediary between the interested officers and the final decision affecting their financial interest. Essentially, the PUC can act as a check on any tendency of the interested officers to advance their own interests over those of the Township. This issue would argue in favor of allowing the interested officers to vote.

On the whole, after weighing the five factors from *Lenz v. Coon Creek Watershed*, it is my belief that overall the factors favor the participation of the two interested officers such that they would be allowed to vote on this issue so that the Township can express its preferences and concerns to the PUC as part of the PUC's decision making process.

I recommend that before voting on this issue, the two interested officers publicly identify their financial interest in this issue, and inform the public that they have consulted the Township's attorney regarding their potential vote and that it is the Township's attorney's opinion that they may vote despite their financial interest in this issue.

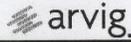
Finally, it should be noted that neither of the interested officers are required to vote. If either feels uncomfortable voting, they each have the right to abstain due to the conflict of interest discussed above. While I believe that *Lenz v. Coon Creek Watershed* authorizes the two officers to vote on this issue, it does not require that they vote.

Please feel free to contact me if you have any additional questions regarding this issue.

Sincerely,

Michael C. Couri
Couri & Ruppe, P.L.L.P.

LETTER OF AUTHORIZATION



Customer Name / Business Name: CLEAR LAKE TOWNSHIP
 Physical Address: 7684 1ST AVE. W.
 City, State, ZIP CLEAR LAKE, MN 55319
 Mailing Address: P.O. BOX 305
 City, State, ZIP CLEAR LAKE, MN 553191

This letter authorizes Arvig to act as our communications representative and/or agent and represent the above-mentioned customer to obtain information and/or copies of all of our network services. We also authorize Arvig to issue orders for disconnection, reconnection, reconfiguration and installation of services authorized below:

Local Service Outbound Interstate Long Distance
 Outbound Intrastate Long Distance

Authority to Release Customer Service Records

Provider/s: FRONTIER COMMUNICATIONS is/are hereby authorized to release pertinent information to Arvig and for following Arvig's instructions with respect to any changes to or maintenance of the undersigned's telecommunications service(s). You are requested to release to Arvig any customer proprietary network information concerning the undersigned's services as may be required by Arvig in connection with its furnishing of services to the undersigned. You may deal directly with Arvig on all matters pertaining to our telecommunications service(s) and you should follow Arvig's instructions with respect thereto. This authorization will remain in effect until modified or rescinded in writing by the undersigned.

Authority to Release Customer Proprietary Network Information (CPNI)

The undersigned hereby designates _____ (Agent) as its authorized telecommunications representative(s) and agent to act on its behalf in the procurement and maintenance of its network telecommunication services. Arvig is hereby authorized and requested to provide all information requested by Agent as it pertains to call detail records, contracts, configuration and service information. This authorization will remain in effect until modified or rescinded in writing by the undersigned.

CHANGE IN LOCAL SERVICE PROVIDER

This letter authorizes Arvig to act as our agent for purposes of ordering changes in and/or maintenance on our telecommunications and related services. This authorization includes, without limitation, the removal, installation, addition to, or reorganization of our local access services, as well as equipment interconnected to our telecommunications service(s).

Provider: FRONTIER COMMUNICATIONS Current Provider Acct#/pswd: 320-743-2472-052097-2
 Telephone Numbers Converting to Arvig:

320-743-2472				ACCT #320-743-2472-052097-2
				PIN/PASSWORD 5850

CHANGE IN PRIMARY LONG DISTANCE CARRIERS

This letter authorizes Arvig consistent with the above general authorization and FCC requirements, to act as our agent to change our primary interexchange carrier from our current service provider for each of the telephone numbers listed on the service agreement and any supplement to this authorization. (We understand that only one interexchange carrier may be designated as our interstate primary interexchange carrier for any one telephone number, and we further understand that any primary interexchange carrier change made on our behalf may involve the imposition of a charge by local exchange carrier that we are responsible for paying.) If any jurisdiction allows for the selection of additional primary exchange carriers (e.g. for local, intrastate, or international calling), then Arvig is hereby authorized to change our primary carrier for those services from our current service provider for each of the telephone numbers listed on the service agreement or any supplement to this authorization.

Provider: FRONTIER COMMUNICATIONS
 Telephone Numbers to be PIC'd to Arvig:

320-743-2472				
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Customer Authorized Representative (Print Name) Gary D. Anderson Date 11-13-2020
 Signature *Gary D. Anderson* Date 11-13-2020
 Clear Lake Township Deputy Clerk.
 Job Title (business customers only)