

Town of Duluth
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Town Board of Supervisors
Regular Board Meeting June 11, 2015

Attendance: Don Sitter, Mary Anne Daniel, Wendy Gustofson, Travis Stolp, Dave Edblom

1. Call to order
 - a. Pledge of Allegiance
2. Approve Minutes
 - a. May 14, 2015
 - b. Mary Anne Daniel made a motion to approve the minutes, Wendy Gustofson seconded. Motion passed unanimously.
3. Approve Agenda
 - Move Emergency Operations down below Cemetery on the agenda.
 - Wendy Gustofson made a motion to accept the agenda, Travis Stolp seconded. Motion passed unanimously.
4. Finances
 - a. Treasurers Report

Beginning Balance	\$1,108,609.81
Deposits	\$ 1,993.10
Expenses	\$ 22,526.62
Ending Balance	\$1,088,076.29

 - Mary Anne Daniel made a Motion to transfer \$200,000.00 from General Fund into Capital Improvement Fund, Dave Edblom seconded. Motion passed unanimously
 - i. Review Claims List for Approval: Question about Emergency Response Solutions; Drug Forfeiture State of Minnesota and St. Louis County Attorney and anySite Hosting.
 - ii. Approve Bills:
 - Sign Payroll Net Pay Account Distribution: signed
5. Public Comment: None at this meeting
6. Department Reports
 - a. Police: Nothing major
 - b. Emergency Operations
 - Mary Anne Daniel made a motion that in the event of a significant disaster, natural or otherwise, wherein the Emergency Operations Center (EOC) is activated, that the Emergency Management Director (EMD) or their chain of command, as designated, is authorized to spend up to \$10,000.00 to keep the command center functioning, pay contractors and vendors or any other essential entities to assist town officials Wendy Gustofson seconded. Motion passed unanimously.
 - Do we need board approval to update the Emergency Operations Manual with Nims information? No it is a living document and regular maintenance updates were expected.
 - c. Fire
 - The pager update person at Duluth/Superior Communications is going to talk to St. Louis County to see if they can't assist in resolving our pager issues. The repeater is in everything is set however we are still not getting clear pages, some get tones some don't some get words others don't. It is very inconsistent.

- We have recently downloaded apps to our smart phones that will allow us to be paged out on our phones. It would give us the time of calls and will basically be in addition to our pagers. Cost to the fire department is \$300.00 a year with a trial period of the first two months which is where we are right now. We hope this helps us with our calls until St. Louis County and Duluth/Superior Communications can resolve the pager issue.
 - Generator: Mary Ann Sironen has a generator she no longer needs. Bob Engelson is looking into one for the Township. Tabled for more information.
- d. Planning and Zoning
- i. Storm Water: Annual report is due at the end of June. There will be a hearing at the Planning Commission meeting this month on storm water ordinance revisions. 7:00 p.m. June 25th, Town Board to attend. Question: Does the Town fall under the MS4 before this ordinance is passed? Yes MS4 has been in process for a few years. We are creating an ordinance to follow those requirements.
 - After the Stormwater meeting in May Travis was given a GPS and some blank forms, Travis was wondering if there is something he needs to be doing? Val Brady and Jo Thompson have already programmed the GPS with all of the township culverts but give Jo Thompson a call to clarify their instructions.
 - ii. Directors Report
 - Tax Forfeit Land: The Town Board is going with the Planning Director's recommendation.
 - Brochures have been printed, spent roughly \$600.00.
 - iii. Trails Steering Committee: So far those interested in being on the committee are; Roger Beck, Paul Vogue, Wayne Dahlberg, Wendy Gustofson and Carol Idso-Eling. We will need to see if there is anyone at the school interested in being on the committee.
 - Old Nokimus site Planned Unit Development: marketing process is beginning.
- e. Recreation
- Combined Rental Coordinator/ Custodian Job description: Travis has made a few additions to the Job Description but would like the rest of the Supervisors to review the document and make any additions they would like to see before returning the document to NSCS. Are we all on board with the concept? Don would like to get this posted as soon as possible. Discussion: This would be a part time person to assist Aaron, they would report to Aaron. The school will bill the township quarterly for their portion of the position. Kevin is paid to the end of June, once Kevin is done at the end of June Travis will fill in until the new combined Rental Coordinator/Custodian position is filled.
 - Equipment: None of the equipment has been sold as of this meeting.
- f. Legal

ABC request for funding support: Phil Strom spoke on the request, the Joint Use Agreement, Community Center expansion, new greenhouse, art lab, safety of children, removing the portable classrooms and the space exposed by the removal of the classrooms. The request is for approximately 8.5% of the Community Center Fund for expanded use of the facility by the community.

Don Sitter: We have a funding support request process in place that helps to determine the cost and use to the community.

Phil Strom: There is some subjectivity to attaching a financial value. That suggests that the town is willing to participate.

Don Sitter: I guess we are more project specific why would we not allow the Joint Use Committee to review the project requests?

Phil Strom: Because the Supervisors will be the ones making the decision in the end.

Wendy Gustofson: I would love to keep that money right where it is but when I look at and read back at the 2003 resolution for what that money was intended for and why that money is there. I feel we have a moral and fiscal fiduciary responsibility to give it to ABC. An art room, meeting rooms, bathrooms. . . I would like to make a motion:

Whereas: The Duluth Township Attorney has clarified, in writing, that three questions must be answered legally to release funds from the Community Center Fund to ABC.

Whereas: Question 1, from the Duluth Township Attorney, "... does the existing improvement benefit the Town in its role as a user of the community center property"? Yes. The new addition, at a cost of 3.5 million dollars by ABC, does provide a benefit the Township residents as a community center property. It enables the Township residents access to use two conference rooms, four classrooms, one greenhouse, one art room and a new his/her bathrooms in a safe, state of the art facility.

Whereas: Question 2, from the Duluth Township Attorney, "... is there factual basis showing that the contribution is an amount roughly commensurate with the benefit conferred by the existing improvement"? Yes. The amount of \$300,000.00 is eight percent of the total cost of the 3.5 million dollar project of the new addition. The Township residents reap the full benefit of the 3.5 million dollar project with only an eight percent investment.

Whereas: Question 3, from the Duluth Township Attorney, "... then as a policy matter, does the Town Board believe the contribution is appropriate and justified"? Yes. The contribution of \$300,000.00 to ABC is appropriate as it serves a community public good and it is justified as it is a community benefit enabling the Township residents access to and use of two conference rooms, four classrooms, one greenhouse, one art room and a his/her bathrooms in a safe, state of the art facility thereby offering the Township full benefit of the 3.5 million dollar project with only an eight percent investment

Be it resolved that I, Wendy Gustofson, move that Duluth Township turn over \$300,000.00 from the Community Center Fund to ABC on or before July 30, 2015.

Travis seconded the motion.

Tim Strom: Wendy has taken parts from my e-mail; you have to be careful how you spend money. To expend township funds you need statutory authority, the town does have power to spend its money on a community center. Does it benefit the town in the role of the community center? You need to be careful of this; I would encourage you to take more time than tonight to think about this. What the Town Board needs to know is what the benefits are as a user of the community center.

Wendy Gustofson: I can stand in front of any judge and say I believe \$300,000.00 funding can be used by the community I wouldn't have a problem with that at all.

Mary Anne Daniel: We have a use agreement that the Town Board, ABC and North Shore Community School signed and I don't see anyone from North Shore Community School at this meeting. The use agreement is ignored constantly, it is a legal document and we are not following it. It explicitly discusses how the community center is to be used, we are trying to get some value out of the school we can use it only weekends, evenings, summer and when I say we I mean the residents. Don Sitter and I were invited on a tour, at the open house we were told the Art room would not be available for township residents to do projects the greenhouse would not be available because there is no space.

Wendy Gustofson: The art room is available from 3:00 to 10:00 every day.

Mary Anne Daniel: To turn over cash that belongs to the residents that they have acquired as rent, what landlord who acquires rent turns it back over to the renter that just doesn't make sense.

Ellen O'Neil: Everyone wants this issue resolved. There is a legal process you are the end decision makers, why not go back to the process? I have a question about transparency. I was at the annual meeting listening to almost the very same conversation, there was an informal conversation to split 50/50. Why would you not entertain a proposal to do that?

Mary Anne Daniel: We wish this issue to be resolved, there has to be a way over a period of time getting use out of that building.

Wendy Gustofson: We have to take some of the responsibility it is our responsibility, we have (this board) are aware of everything they have to use.

Ellen O'Neil: I didn't ask about use I asked about transparency and process.

Don Sitter: I am in agreement with you, I think we should use the Joint Use process and I believe we should do the 200, 200 split.

Wendy Gustofson: I have a problem with the Joint Use Process and 200/200 split I don't believe in the process and I believe the money should be given to the school.

Don Sitter: In the use agreement it states parties recognize that the funds remaining in the town funds and may be used for any lawful purpose. Neither ABC nor North Shore should be charging any compensation for any community center uses. We already have use of those facilities.

Phil Strom: This would be an amendment to the joint use agreement, it acknowledges that those facilities in place at the time of the agreement. I don't know where the \$980,000.00 came from (*estimator placed the value of the facility that would be used for community center purpose. Audit requested by ABC, paid for by Township*) the school is valued at \$2.2 million. What it would cost the town to make the investment to make these facilities? The reality was put in place prior to another \$3.5 million dollar investment. This intends to amend the joint use agreement.

Mary Anne Daniel: We collected numbers over the past year and a half the numbers of users were pretty pathetic.

Phil Strom: It is available to those who use it.

Mary Anne Daniel: In answer to Ellen's question I believe we do need to use the Joint Use agreement, I believe we should split the funds 50/50, I would use the funds for projects not in cash.

Don Sitter: Why would we give you money for something you will do in the future? According to Tim's e-mail, there is the oddity here it's been built and there is a request for a contribution. Obviously had ABC come before the Town Board before it was built it would have been a perfect situation for the township to contribute. What is the benefit to the town in its role of the user of the community center? This is Tim's impression not his firm opinion. Tim has not talked to the Attorney General or Minnesota Association of Townships.

Dave Edblom: I am unsettled, why if someone wanted to press the issue and we were standing in front of a judge how would a judge hold someone accountable for that?

Tim Strom: We are talking 200/200, but it's not 200/200 it's what is the value to the town for community center use. If the value is only 100 then don't give 200, I understand the discussion that's been going on around here. If a judge were to look at it and find that no way in the world is it worth 200 its worth 100 now you have some difficulties with what you have done. Keep in mind my advice to you as your lawyer is what is the community center benefit what factors lead us to the conclusion that leads us to "X". The legal side of it is the resolution is on the right track, the political side I'm not discussing, I am discussing the legal side, we are now looking at specific factors.

Sue Lawson: Tim your question what is the difference between retroactive and proactive? One of the differences is ABC built the school they needed with little input from the town's people, they held one poorly attended meeting, that's

what the difference is it's the process. The school was built for the school. The difference is there wasn't a full transparent process. The BAT (Building Assessment Team) report was done and a great deal of time was spent on what was needed for the community.

Tim Strom: Let's suppose the school made some improvements and were of obvious value to the town, a very tangible use for the community, does the town derive a benefit? How you went about the process, is political.

Sue Lawson: Policy decisions end up being allocations of resource.

Barb Crow: This is an excellent discussion, we have set up a legal process to get more detail about what exactly it is that the township will receive in benefit. Throwing numbers around today is premature we need the Joint Use committee to do what they were set up to do.

Wendy Gustofson: My motion is a step in the right direction. That is the correct path to be on from a legal standpoint it is a policy decision at that point.

Dave Edblom: There is a difference between "this is wrong" or "are people culpable". You want to make a careful decision so a judge doesn't say you didn't follow the legal process. Document this document the reasons.

Don Sitter: 4 art classes (adult sized meeting space), 10 people in every one of those classes.

Janet Johansen: We see no rental fees to say people are using the facility.

Travis Stolp: When we talk about community use?

Janet Johansen: Lease aid money can only be used for rent.

Don Sitter: The whole premise of turning over to ABC was to make the school more secure for the children. Why don't we let the Joint Use Committee decide?

George Sundstrom: We have to recognize that town funds are town funds, those funds belong to you but we aren't asking for those funds. Why don't we go to the joint use committee first, the town board has 2 people on it ABC has 1, North Shore has 1 the community has 1 and it requires consensus. George then moved on to a discussion on legal, and the resolution he brought forth at the March annual meeting.

Dave Mount: As a taxpayer of the town I would be in an agreement if the town got a second legal opinion from a licensed attorney. I am confused by the question before the board, this document does not amend the joint use, it simply is a motion to spend money. I am anxious to see the funds get spent as far as I can see they (the funds) are poisoning the community. The process has not been followed it could be the value that benefits the community. Do some due diligence. The town never spends significant amounts of money without analysis. I am just encouraging more analysis.

Beth Mullan There was a public process that the town followed we did try to engage the public in that. The community center space the interior was difficult to use for many years, we didn't have a problem using the outdoors.

Ellen O'Neil: For me it's hard when we end up talking about something legal and financial in value. I very much value the school that isn't the issue for me, as elected officials you are by law responsible for being fiscally responsible. But all I hear is show me the money.

Kit Sitter: I don't believe there isn't a large value in putting more money into the school I believe this does need to go to the joint use committee. If you do vote on this tonight I will be very disappointed as a tax payer and a resident.

Sue Lawson: I don't believe there is disagreement about the Joint Use process is the process we agreed to. We need to begin using the process so we can begin making some decisions.

Travis Stolp: if we don't try to amend the joint use committee we are going to get mired up. I seconded the motion to get discussion, my intent was to vote on this document another night. I feel strongly that the money needs to go to the school but we need to make sure. If a check is written to ABC where would the funds go?

Phil Strom: Security in the old part of the building \$40,000.00 was the estimate, complete the demonstration area leading into the greenhouse \$20,000.00 est., complete the cold storage off the gym and resolve cash flow shortage for June and Julys debt service. Portable classrooms whatever the town feels appropriate for that purpose. We have significant new storage several new closets in the new expansion and that probably cold storage off the gym leaving one of the portables for community members to meet in. The portables aren't plumbed and we intend that they will be sold. The whole process of security came about when the fire Marshall said we could not make the portables contiguous with the school.

Don Sitter: You are using a percentage of the value of the addition as the number we are to use? That is why we need to go back to the Joint Use Committee I believe the tax payers are already paying for that addition. If we had money left over we would be charging the tax payers twice for the same space. You mentioned a number of future projects that could easily fit into the Joint Use Process. We need to start healing the community we need to spend this money instead of 300/100, I propose we split the money 50/50 or approximately 200/200. My amendment to the motion is as follows:

I move that \$200,000 be transferred into the township general fund to be spent on township needs as determined by the Town Board and that \$200,000 be reserved in the CCF (Community Center Fund) for community center facility improvement purposes.

- And that Community Center improvement proposals will be done via the established process indentified in the Joint Use Agreement
- And that Community Benefits will be identified and quantified using Township Funding Support Request form showing the factual basis for the proposed contribution is in an amount roughly commensurate with the benefits conferred by the improvements made to the school.
- Upon receipt of the recommendation of the JUC, the Town board will review the proposed contribution to determine if it is appropriate and justified, and if approved, a check will be prepared in that amount.
- The remaining dollars will be held in the CCF for future community center improvement projects which will be requested through the Township Funding Support Request process.
- Upon receipt of the JUC's final proposal by the Town, prior to the transfer of any funds, the Town will need approval from our town attorney and the Attorney General of the State of Minnesota to ensure the Town has the legal authority to transfer any funds to ABC.
- No changes are necessary to the JUA.

Mary Anne Daniel seconded.

George Sundstrom: It didn't say the community center specifically at the school.

Don Sitter: Yes you are correct it would be \$200,000.00 specifically for the community center at the school.

George Sundstrom: I would hope your motion is defeated. The Joint Use Committee can look at the rooms that are in place and spend up to \$200,000.00. A future board always has the right to revoke a resolution.

Tim Strom: Some talk has been about fees I've charged, there are legal issues here. I would encourage you strongly to take your time in this.

Phil Strom: We are not for profit, we are held to same requirements to open meeting laws as a public school corporation. The transfer went to ABC for maintaining the facility for the school and the community center. We have consulted an attorney the amendment came from our attorney.

Don Sitter: The ability to transfer funds was considered questionable so it was determined you should pay \$2500.00 in addition to the Use.

Travis Stolp: Does that mean I have a motion I want to make? Yes. Have our attorney give us the vehicle to use to transfer the money. Can we say we want a recommendation before the next board meeting?

Mary Anne Daniel I make a motion to table Dave Edblom seconded. Motion and amendment tabled. 4 to 1.

Aye - Dave Edblom, Don Sitter, Mary Anne Daniel, Travis Stolp – No Wendy Gustofson

Motion to table approved.

Wendy Gustofson made a motion that until such time until this has been figured out that there is a freeze on the funds sitting in the community center fund. Motion died for lack of second.

- Tim worked with Sue on the Stormwater Ordinance and with Phil Strom on some concepts he had. .
 - g. Roads
 - Nordling Road the culvert was St. Louis Counties not MnDot. Culvert is fine it just settled, St. Louis County is monitoring the issue.
 - There is no ditch on the Clover Valley Road so you can't put in a culvert. Road likely needs to be ditched. The Town will put in the culvert once the ditching is done.
 - Travis will contact Bob Rodda to find out about road grading and when he plans to start.
 - h. Joint Use Committee: June 22nd 5:00 p.m. POST
 - i. Town Hall
 - Facilities Project update: Both the Planning and Town offices will need to be vacated in 2 weeks.
 - St. Louis County Commissioners Meeting July 14. It should be ok for the meeting to continue.
 - Funds have been moved to the General Fund.
 - j. Materials Management:
 - We have lost the shed and one roll off isn't big enough a request has been made for another roll-off.
 - One person apply for the recycling attendant job then didn't show up on her interview. Roger and Carolyn continue to work the open hours.
 - D/NSSD : freeze up problems are being resolved.
 - k. Cemetery
 - Memorial Day service was held at the Town Hall due to the weather.
 - l. Communications
 - Janet and Wendy met with Joe from anySite communications. All the e-mails have been repaired. Planning and Zoning will now go through the Town office. Anyone needing to e-mail an employee or Supervisor should go directly to the web page.
 - m. Personnel
 - Shed Keeper open position dealt with in Materials Management
7. Old Business
No old business at this meeting.
8. New Business
Community School WiFi. Perhaps the communications committee could look into this. Is there a way to set parameters for who can view what while using the town WiFi?

9. Correspondence

- MN Dept. of Health – newsletter
- St. Louis County Classification of State Tax forfeited land
- Minnesota Association of Townships – Membership Cards
- MAT – short course
- SLCAT – newsletter
- St. Louis County - Calcium Chloride
- St. Louis County – Zoning Ordinance 62
- Minnesota power – Township Road Permit
- St. Louis County – Aquatic Invasive Species Prevention Aid

10. Meeting Schedule

- a. Town Board Meeting 7:00 p.m. July 9, 2015

11. Adjournment Dave Edblom made a motion to adjourn, Mary Anne Daniel seconded. Motion passed 10:30 p.m.