

## BALDWIN TOWNSHIP PUBLIC HEARING

June 8, 2010

**Present** – Supervisors Larry Handshoe, Jeff Holm, Jim Oliver, Tom Rush and Jay Swanson.

**Call to Order** – The June 8, 2010 Baldwin Township public hearing was called to order by Chairman Jeff Holm at 7:08 p.m.

**Pledge of Allegiance** – All present recited the Pledge of Allegiance.

### **Public Hearing Regarding Headwalls and Obstructions in Road-Rights-of-Way -**

Holm welcomed the residents in attendance and invited all to attend the community visioning session scheduled for June 29, 2010. Holm turned the meeting over to Vice-Chairman Jay Swanson as he took over the headwall work of previous Town Board member Lester Kriesel. Swanson stated that anything that is placed in the road-right-of-way is a safety hazard according to the state and it is a state law not to have those things. Should anything happen to anybody with a headwall or an obstruction the property owner assumes liability. There are two things that are allowed in the ditch, a culvert and a mailbox. Snow piles need to be out of the road right-of-way. Ditches are made for snow storage by the road authorities. Residents have begun to reply and remedied their situation. The board is prepared to take them out. This started in 2005 with letters sent out. However, there was no follow up by that board. During a meeting regarding the Sandy Lake landing and encroachments, it was brought up about what this board is going to do with headwalls and obstructions. The township sent out 165 letters. If there are legitimate troubles, the board will try to work with you.

Randy Nemitz, 11549 284<sup>th</sup> Avenue, Cumberland Creek – Mr. Nemitz stated that a lot of people that have these barriers did not get letters. It seems like this is an ordinance that is stepping on touchy ground. You can find people, in any city, that have the same stuff around their mailboxes. There are not too many cities that can enforce every single ordinance on their books. There has been stuff around mailboxes for 10-15 years. He does not think it is right. It is well known knowledge that the right-of-way is for utilities and, if you have a fence or tree, it is basically to protect the city. If they have to come through there, they have the ability to do that. Sprinkler heads that or on the public easement, a snowplow comes in and hits it, the homeowners are responsible to take care of it. As far as a barrier, having rocks around mailboxes, they will hit the mailbox first, not the rocks. Homeowners insurance takes care of any medical issues. If we decide to leave it there then the homeowners should take the responsibility. This has created a lot of anger. Maybe there can be some revision to this.

Charles Hanson, 29787 – 126<sup>th</sup> Street – Mr. Hanson stated that it could be kind of nice if narrative in the letter was included to tell exactly what the issue was. Defining what an obstruction was would be a good idea. He has timbers on either side of his driveway and questioned if he had to remove those items and what would he need to use for the

slope. Swanson stated that he is telling people pebble rocks, grass or sod. Mr. Hanson questioned if he could blow snow in the ditch with Swanson responding that he was talking about pushing snow across a driveway.

Kim Thelen, 29345 – 139<sup>th</sup> Court, Fawn Hill – Ms. Thelen stated that 3 years ago she did get a letter and removed it but she still go a letter. It is not clear and she does not know what the problem is. Swanson stated that the board will review. She stated that she had not heard from anybody when she called several years ago. Holm stated that there may be some issues that are not really an issue and that the board is more concerned with major headwalls.

Chris Gadacz, 11438 290<sup>th</sup> Avenue, Baldwin Cove – Mr. Gadacz stated that he has a nice retaining wall and he is proud of it. The township did not leave a 4:1 slope. He lives in a cul-de-sac with one house after his. He lives in a development that has no outlet. Don't threaten to tear it out.

Dave Cowles, 12710 281<sup>st</sup> Avenue – Mr. Cowles stated that he does not see Jon Bogart here. He put in rip rap as the developer did. The rocks that the township put in at the end of the road are within 33 feet. He had ordered rip rap and it came larger than what he had ordered. If he pulls the rip rap out his driveway will wash out within the year. Why does he have to pay for hydro seeding when the developer should have been responsible for it?

Jan Peterschick, 12522 – 278<sup>th</sup> Avenue – We had two weeks to figure out what the heck this letter was about. Was it the mailbox or what? They live on a street with no through traffic. It is not posted. There are 10 houses in the development. They requested someone to come out and tell them what needs to be done.

Matt Hendrickson, 11843 – 302<sup>nd</sup> Avenue – Mr. Hendrickson questioned if the state has been bothering the township with his issue. He had bought the house and obtained a certificate of occupancy. A year later he installed a culvert and is just now getting a letter. If not an issue then, grandfather us in. Make the law now and enforce from now on. What about all the money he has put in it? It is not an obstruction and snowmobiles can go through no problem. Where is his obstruction? Swanson stated that he will come out and measure. Holm stated that the township is the road authority, not the state. The state statute is in place for public safety. Mr. Hendrickson stated that there are all kinds of laws that are not enforced. Holm stated that the township will try to work on what it can with the residents. This is a resident meeting and the board is taking everything into consideration. Mr. Hendrickson requested that the board doesn't let one bad apple spoil everything and suggested that the board use a little tact and don't tell the residents August 1<sup>st</sup> otherwise they will be removed and suggested the township take this on an individual basis.

Sean Fenton , 29412 – 125<sup>th</sup> Street – Mr. Fenton stated that he has lived here now over a year and has experienced good road service and sheriff service. He has not needed the fire service. He thanked the board. He has not made any changes to what was

was already there. He does not appreciate being accused of a crime on a public document. It is how the property was when he bought it. A few rocks around a culvert. He does not appreciate the letter and it is not right to accuse him of a crime that he did not commit. How to get an answer in regards to what specifically is the problem? He does not mind correcting it but he won't spend an arm and a leg. It is really not his problem to begin with. He will not have anybody tear up his driveway over it. He would not like to be a matter of record (the letter) and wants the board to tell him what the problem is.

Deb Teigen, 28617 – 119<sup>th</sup> Street – Ms. Teigen stated that she has new construction. She actually got the permit from the township to put the driveway in. This is the first time she has heard of a 4:1 slope. We have a headwall and have tried erosion barriers but they are trying to keep the driveway from eroding from under the asphalt. She would be happy to remove the headwall if the township maintains the 33 feet. Somebody had come out and approved it and, if not a 4:1 slope, then it should have not been approved. The cost, the work, she does not have an option except for the headwall. She even hired a professional and they told her that she needed to have something there. The development has not been accepted by the township and hers is the only house there. Holm told her to throw the letter away as it is not a township maintained road. She then asked if she would be grandfather in. How to you get an exception? She needed a permit and somebody inspected it and shouldn't they have told her at that time?

Todd Wallin, 11520 – 290<sup>th</sup> Avenue – Mr. Wallin stated he had a question regarding the driveway drawing. His driveway is only 12 feet wide. Is this something that will come up in the future? Will he need to widen the driveway? His culvert is 24 feet. To go back and change is not a good idea. The driveway spec is dated 2003 and his home was built in 2005. He does not have any headwalls but has sprinkler heads in the right-of-way. What does that hurt? He should not have to mess with anything now. Swanson stated that the township receives a lot of complaints regarding snowplows hitting sprinkler heads. Mr., Wallin stated that, if the driveway thing is more of an issue, he does not want to be forced to widen it.

Joel Schafbuch, 13513 – 308<sup>th</sup> Avenue – Mr. Schafbuch stated that the letter lists headwalls, landscaping, decorative rocks and sprinkler systems. That is not the state statute. Did the board not read the letter prior to it being sent out? If it is the law, he will do it. If it's truly the law. If we are misinterpreting the state law it is the boards due diligence to read the letter that is sent out and accordingly adjust it to what makes sense. Can the board take this information, hold on the August 1<sup>st</sup> date, and reevaluate it? He has been there 12 years and now, all of a sudden, enforcing?

Supervisor Tom Rush questioned why culverts can be in within 33 feet? Swanson replied the culverts are there for water. Holm stated that the town board should have another meeting to discuss. The purpose of the public hearing is to hear the residents. The packet wasn't perfect. Thankfully we go through the process of having a public hearing. A resident stated that it is not personal, it is the letter and hopes that the board

stated that he had scanned the letter when the board approved it and the context did not scream at him. A resident stated that, if it is not broken, then don't fix it. A resident asked if the letter was reviewed by legal counsel as she does not agree that a state statute affects township roads. Swanson stated that all cities and municipalities are governed by state statutes in regards to road rights-of-way. The township is not allowed to go less strict than the state.

Michael Sangiovanni, 29072 – 115<sup>th</sup> Circle, Baldwin Cove – Mr. Sangiovanni stated he received a letter also about an obstruction. He cannot find an obstruction in the picture and would like to have it pointed out to him. Swanson pointed out the obstruction and Mr. Sangiovanni had no further comments.

Stacy Marquardt, 11535 – 284<sup>th</sup> Avenue – Ms. Marquardt stated that, in 2009, Baldwin passed a road right-of-way ordinance. Rules that apply for 40 mph roads. The state statute has changed its number but the content has not changed. She read, in part, from a letter that she would like to have as part of the public record. The following is the full content of the letter along with the original attached to the public hearing meeting minutes:

June 8, 2010

Stacy and Darin Marquardt  
11535 284th Ave NW  
Zimunculus, MN 55398

RE: PHD 01-490-0215

Dear Baldwin Township Board Members,  
We received your letter regarding what you reference as an illegally placed obstruction in the road right-of-way (ROW). I am assuming you are referring to the small corks and flowers I have around my mailbox since this is what is shown on the picture you have taken of my home. I have many questions to ask which I may bring up at the hearing, however I wanted to submit it in writing as well for the record.

My home was built 10 years ago and I have lived in it for 8 of those years and this is the first something like this has ever been brought to my attention or the attention of my neighbors. It is hard to justify in my mind how people taking an interest in keeping our development nice is a crime, especially when many developments, including ours at one time have foreclosed properties in them that are an eyesore. Our development finally has a stable neighborhood that takes pride in their homes and yards by maintaining each of their properties regularly.

Some of my questions and concerns are as follows:

1. Since most of us, at least in my development, have been here for a number of years and the Baldwin Township right-of-way ordinance was passed in 2009, would these properties be considered a pre-existing non-conformity meaning are they "grandfathered in"? If previous to your enactment of this ordinance you were only using State Statute 160.27 Subp. 5 (which for the record was repealed and is now MN Stat 160.2715) some of the items you listed in your letter would not be covered under that statute, such as sprinklers. These are underground and by definition (including the definition of obstruction you adopted in your 2009 ROW ordinance) is not an "obstruction of the highway". Also it is hard to justify flowers (or anything low to the ground) around a mailbox as an "obstruction" since the mailbox itself is much larger and would hinder free and open passage over that part of the right-of-way in of itself, however, would be considered a permitted obstruction and therefore is exempt from State Statute and the Township ROW ordinance. In spite of this, the flowers around the base of the exempt structure are not permitted and somehow are more of a hindrance?
2. I understand that this all may have stemmed from a larger issue and may have been a blanket letter to the whole Township, but in our neighborhood there are no retaining walls or "head walls" in our ROW's. There are flowers around our mailboxes and in some case these flowers do not even expand over footprint of the mailbox itself. Like I said before our neighborhood has come a long way to beautifying our development and it would be a shame if we had to take that away because someone else in the Township was actually the target of this enforcement.
3. I would also be interested in knowing where the money came from to conduct this extensive and seemingly expensive inspection process since you are a governmental entity and are paid with our tax dollars. It seems this money would be better spent cleaning up some of the foreclosures in the area that look like a junk yard with abandoned houses, overgrown lawns, falling down buildings with garbage in their yards, instead of coming after property owners who really care about the appearance of their property and take pride in it.

Thank you for your time,  
Sincerely,

*Stacy + Darin Marquardt*

Ms. Marquardt questioned, since Baldwin Township's right-of-way ordinance was passed in 2009, are they grandfathered in? Some of the items, such as sprinkler heads, flowers, etc. are being considered exempt of mailboxes and flowers around a permitted structure with most not expanding over the footprint of a mailbox. Where did the money come from for doing this project? The township would be better off to go after foreclosures. The town did not even reference their own ordinance. Some of these things would be preexisting nonconformity. Holm stated that there was a disconnection when ordinance was adopted and when the process had begun.

Lance Soderholm, 13667 – 302<sup>nd</sup> Avenue, Whitetail Crossing – Mr. Soderholm stated that he does have a headwall. It is only one 3" block across the culvert. Had to do that so driveway does not wash away. If we are going to take liability, the culvert is clearly reflective and he also installs a snow fence. He did sign off with the permit. The township could not find the paperwork. Lester and 3 other guys told him it looked nice. Is that grandfathered in? Holm stated that the township will look at it in detail.

Craig Hilburn, 29809 – 137<sup>th</sup> Street, Fawn Hill – Mr. Hilburn stated that it seems to him that the problem is if the law does not state that the roads should be broken down different. Maybe the board should go to the state and say they are too restrictive. There are too many laws in America. A resident stated that the board is in charge of township roads. Mr. Hilburn stated that we don't need to be stricter than the state. Take this information and go back to a board meeting with some different information.

Stacy Marquardt stated that, unfortunately, the township did pass the ordinance. The town board may have to go back and amend the ordinance. Could add something about preexisting nonconformance. Holm stated that the ordinance was basically enacted to answer a utility severing a utility line. A resident stated that they are sick of the government. It looks very disorganized and the board is trying to enforce something that is not even researched. Ms. Marquardt stated that the board should have defined what an obstruction is in the letter.

Supervisor Jim Oliver stated that he is the longest term person on this board. He was through the dive team controversy. This board is probably the most proactive board. We have done so many good things. Trying to get community involvement. This meeting was great. The board needs insights from the residents. He thanked the residents in attendance for being present at the meeting. Supervisor Tom Rush thanked the residents for coming and stated that he feels their pain. Supervisor Larry Handshoe stated that the board needs the input and the residents and board need to work as a team. Communication is a big factor. Supervisor Jay Swanson stated that he is on the 2<sup>nd</sup> year of his term. He wants to see township do their own planning and zoning and not rely on the county. The headwall issue was started by a previous board and it is the law. We need government in the right place, not everywhere. When talking about grandfathering, or a waiver, the township to do that would not be right. We would be condoning something that is against the law. If you talk to one person you must talk to all. The letter of the law says no sprinkler systems. He is not the ogre that he is perceived to be. There was a death threat made (in regards to receiving the letter). He is not trying to make anyone angry. The liability falls on the homeowner if in road right-of-way.

Dennis Lindberg, 102 Sioux – Mr. Lindberg stated that he plows the west side of the township. He has hit a couple of sprinklers and has had residents running after him with shovels hitting the side of the truck.

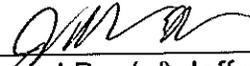
Holm stated that there is another public hearing scheduled for next Monday. He has the authority to cancel and schedule a special meeting to discuss the August 1<sup>st</sup> date and

where to go forward with the headwalls. A special meeting will be held at 7:00 p.m. on June 14, 2010.

**Adjourn** – Handshoe/Oliver unanimous to adjourn at 8:48 p.m.



Submitted By: (s/) Cathy Stevens  
Clerk/Treasurer  
Baldwin Township



Approved By: (s/) Jeffrey Holm  
Chairman, Board of Supervisors  
Baldwin Township

Attendees: Edwin Ott, Cynthia Wicka, Randy Nemitz, Chuck Hanson, Edna Hanson, Dennis Lindberg, Peggy Patten, Van Hendricks, Jan Peterschick, Kernan Peterschick, DeNice Janssen, Werner Janssen, Lawrence Close, Phyllis Close, Mary Dwinnell, Mike Dwinnell, Kim Thelen, Lester Kriesel, Bill Barnwell, Sean Fenton, Jeff Phillips, Rick Nystrom, Tony Shelstad, Tina Davis, Jackie Rubner, Jesse Ewert, Eric Kisner, Michael Sangiovanni, Debra Telgen, Todd Wallin, Dustin Romann, Matt Hendrickson, Stacy Marquardt, Darrin Marquardt, Pam Schedel, Heather Paul, William Paul, Jesse Carter, Christopher Gadacz, Brianna Gadacz, Bobette Sajjon, Lance Soderholm, Sabrina Petersen, Craig Hilburn, Denise Olson, Joel Schafbuch, Andrew Polski, Dave Cowles, Brenda Cowles

June 8, 2010

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