

**SALEM TOWNSHIP
TOWN BOARD MEETING
www.salemmn.org
AUGUST 15, 2015**

Members Present: **Rick Lutz**
 Sharon Petersen
 Gail Fritts
 Jim Evans
 Brian Connelly

Staff Present **Roger Ihrke**

The meeting was called to order at 9:02 a.m. by Brian Connelly with the pledge of allegiance.

A motion was made by Rick Lutz and seconded by Jim Evans to approve the printed agenda as submitted. The motion passed unanimously.

The purpose of this meeting is to discuss Rochester Asphalt and the fuel storage issue and how the board wants to proceed. Also we need to decide which attorney we are going to work with going forward.

Roger Ihrke was asked for a summary of the history on this property.

Roger Ihrke explained that Rochester Asphalt's 40 acre property was rezoned into two different districts. They have one district for Ag-Resource Commercial for Mining and the other is rezoned to a Special District. He further explained that the Special District for Olmsted County has an Ag Resource Mining District that allows about seventeen uses. Salem's ordinance has only five uses that are allowed. Part of the agreement that was made with Rochester Asphalt when the township was considering revoking their permit, was that they were going to apply to get a permit for the contractor storage yard. The only way to do that without amending Salem's ordinance was with a special district. Olmsted does allow for the Special District in their ordinance, so it was appropriate to allow the special district for only a contractor storage yard. That is the only thing that can be on that site. That was the agreement at that time. Their attorney stated they felt they had a commercial site and should be allowed to store their equipment on this site. The township issued the re-zone and conditional use permit to allow them to store their equipment on that site. Since that time they have expanded that use. The request originally was to allow them to continue to do what they were doing. The town board agreed to that. Since then the use has been expanded to fuel storage/sales which is the issue that the town board has to decide if it will allow on this site.

Brian Connelly restated his understanding of this history. The Special District is the zone and the Contractor Storage Yard is the use within that zone. It is consistent with the use that is allowed from Olmsted County. However nowhere in this district does it allow fuel sale or storage. This is not allowed in this type of district in Olmsted County.

Roger Ihrke has discussed this with Olmsted County Planning and Zoning and this type of operation is only allowed in the Industrial Zone in Olmsted County. Olmsted County has one similar use that was allowed for LP tank storage and sales. The reason they did allow this was because it is farm and rural related. The LP goes to farm operations to dry corn and to rural residents to heat homes. They have allowed a use for Ag related business in the Ag Resource District in Olmsted County. That is the only large bulk storage allowed outside of the Industrial District. There is another use in High Forest that is allowed within the Rural Service District of that township. Roger Ihrke explained that the Rural Service District was created for small communities that existed prior to zoning with several different uses within their boundaries. This allows residential and certain business uses. Most of these existed prior to zoning. This would not be an allowed use in this situation. The county planning felt that this use is not consistent with their ordinance.

Questions were asked about this by board members. The sales of fuel from this site would probably not be Ag. There is no bulk fuel sales anywhere in Olmsted County except for an Industrial District.

At this point in time, the zoning is not correct for this fuel storage. Roger Ihrke stated Rochester Asphalt went ahead and did this without the proper permits.

Questions were asked about information about what was allowed. Roger Ihrke explained that they were told they could have a tank on a pickup or a transport tanks. While we may have tanks in pits, they are usually limited to smaller tanks.

Questions were asked about whether there is a limit written for fuel storage. The MPCA has regulations for the containment of fuel. There was discussion about fuel storage by other pits.

Roger Ihrke stated that it is a gray area until they start selling fuel. When they sell fuel they are establishing another business. The selling of fuel is the issue at hand.

The sale of fuel is an industrial use. We have an ad that shows that they are intending to sell fuel. In order for this to be permitted they would have needed to get an amendment to their conditional use permit.

There was discussion about whether the tanks can be on the site for their own use. There was discussion about whether the case would demand the removal of the tanks because they were put up without the proper zoning for fuel sales. Their intent for fuel storage /sales seems clear. They have advertised fuel on Craig's List. We have a copy of the ad that was on the site on March 20, 2015.

If Rochester Asphalt has gotten MPCA and other permits for the fuel storage, they have not brought them forward.

Brian Connelly stated that they are in violation of the County and Salem Township Ordinances.

Rick Lutzi suggested that the board decide who we want to hire to proceed with this ordinance violation.

Brian Connelly reviewed our options for attorneys:

Troy Gilchrist has stated that he would pursue this if directed by the board.

Peter Tiede has been contacted and would be willing to work on this case also.

Bob Ruppe has also submitted a proposal.

The rates for each attorney were reviewed:

Troy Gilchrist	\$180.00 Per Hour
Peter Tiede	\$240.00 Per Hour
Bob Ruppe	\$175.00 Per Hour

There was discussion about the service we have gotten from Troy Gilchrist and some of the responses have not been timely.

Roger Ihrke reviewed his experiences with all three attorneys that are being considered.

After discussion, it was decided that the township will assign one of the board members to contact the attorney's that we are considering to pursue this issue.

Brian Connelly stated it is the board's intent to stop the fuel sales.

Roger Ihrke stated that if our attorney proceeds to revoke the Conditional Use Permit for the contractor storage yard that it could result in a lawsuit against the township. At that point in time our insurance from the Minnesota Association of Township's will become involved. They may use our attorney and or have their attorney's brought in. There was discussion about how this action may affect their other business operations. They have not come into compliance with their other Conditional Use Permit and have been out of compliance for an extended period of time.

Rick Lutzi and Jim Evans made the recommendation that Peter Tiede handle this issue going forward.

Roger Ihrke suggested the board designate a board member who is given the authority to hire and negotiate with the attorney. Whoever is designated can keep the board informed about their decisions.

A motion was made by Rick Lutzi and seconded by Jim Evans to allow a board member to decide who will be hired to handle the Rochester Asphalt fuel storage issue. The designated member will decide which lawyer will be used. The motion passed unanimously.

A motion was made by Rick Lutzi and seconded by Jim Evans to designate Brian Connelly as the lead person for this issue. Jim Evans will be the backup for this designated action. The motion passed unanimously.

Brian Connelly will be contacting all attorneys early next week. He will contact Troy Gilchrist first about this.

A motion was made by Rick Lutzi and seconded by Jim Evans to adjourn the meeting at 10:02 a.m. The motion passed unanimously.

Respectfully submitted,

**Brian Connelly
Chairman**

**Sharon Petersen
Clerk**