

Minutes of the Public Hearing to Consider an Amendment to Ordinance 3: An Ordinance  
Establishing Fees for Emergency Services Protection and  
to Establish Ordinance 8: Subdivision Ordinance

A Public Hearing was called to order at 7:00 p.m. on Tuesday, November 29, 2016 by Chair Craig Gondeck at the Watab Town Hall. Other board members present were Treasurer Eileen Saldana, Clerk Pat Spence, and Supervisor Todd Waytashek. Audience members were Arlen and Kim Roos, Matthew Loven, Anna Saldana, Jerry and Char Lage, Sandra Saldana, Allen Saldana, Sean Moe, Maureen Graber, Jane DeAustin, Kevin Reiter, John Thompson, and Ed Rowan.

Following the Pledge to the Flag, Chair Gondeck reviewed the purpose of the meeting and the rules of conduct for the hearing and then called on Pat Spence, Clerk to explain the amendment to Ordinance 3. This is her testimony:

- Ordinance 3: An Ordinance Establishing Fees for Emergency Protection Services was originally adopted in June 2006 and was amended in 2013. Currently, the Township bills the recipient of services 75% of the cost of an emergency call in the Rice service area, and the township picks up the other 25%. When the bill goes delinquent, the township can assess it to their property taxes if they own real property. However, if the recipient of the services is renting, we are not able to assess it.
- Over a year ago, Watab's town board sought to initiate a statewide legislative change, in cooperation with the state organizations of County Auditors and Assessors, to allow townships the option to assess unpaid emergency call bills for those in rental properties to owners of the property. We received unanimous support in the vote on it at our Minnesota Association of Township District 8 Meeting this fall. Later, when it was brought to the Legislative Conference, a Supervisor from Langola Township disrupted the discussion of the committee, and the resolution was tabled before final action could be taken. The attorney for the Association of Townships, Kent Sulem, met with our Board Chair Craig Gondeck the following morning and recommended that the township implement a local Ordinance to be able to assess unpaid emergency calls to the owners of the rental property. Which brings us to tonight. Our attorney has drafted the amendments to our current ordinance, which would allow the township to do this.
- Through October 23<sup>rd</sup> of 2016, Watab has over \$15,000 outstanding in 2016 emergency call bills served by the Rice Fire Department from a total of 52 calls. 78% of the medical calls were at rental property (32 of 41 calls). Only one renter paid their bill.
- Four of the 52 total calls were cancelled enroute by Gold Cross. So far this year, the township is \$6,000 over the budgeted amount for fire disbursements for the Rice Fire District.
- Rockwood Estates is where most of the rental property in Watab exists. It currently pays \$688.52 for the Fire District I levy, which is based on the value of their office building and their land. On that land sits 240 mobile homes that are not included in the levy assessment, because personal property (mobile homes) is not taxed for the fire levy.

Mobile homes do not pay real estate taxes, but pay personal property tax to the state. None of that is assessed for emergency services or comes back to the township. Then, the problem is compounded, because the City of Rice contract with Watab includes a percentage rate of 2.6% of Net Tax Capacity, which is over 2% higher than it charges the other townships it serves. The base contract is 2.6% of the Net Tax Capacity of the property in the Rice Service District, and additionally we pay \$350 per call. We thank the owners of Rockwood Estates last year for paying the difference in Net Tax Capacity rates, which was about \$2,000.

- The rental property at Rockwood Estates is getting more than half of the services of the Rice Fire Department in our township and so far this year 32 of 41 medical calls. In the past year, Rockwood paid under \$3,000 for that service: the \$688 fire district levy + their donation. If you divide that by the 240 homes it equals about \$12.50 per home. If Rockwood only pays the levy amount, it is less than \$3 per home. By comparison, a single home in the Rice Fire District valued at \$209,300 paid \$90.73. And, the same valued home in the Sauk Rapids Fire District paid \$33.00.
- As most of you are aware, the township has tried numerous ways to collect the unpaid bills. The Treasurer and I have gone to Conciliation Court, which resulted in no payment of the judgments. We were not able to collect because the recipients of the service did not have checking accounts. We have used two collection agencies, with almost no result. We have taken a vote of the residents in Fire District I, which resulted in the residents voting to not have medical First Response from Rice Fire Department. The City Council would not give Watab a contract without the medical service. We then worked with Sheriff Heck to give residents the option to say they wanted only the ambulance when they call 911. This has not been very successful, because people are shook up when they dial 911 and don't always remember. Also, we had a resident who recently called Gold Cross directly, because he didn't want the First Responders to come. Then Gold Cross dispatched them because they were further away. By the time, Gold Cross and First Responders arrived, someone had already taken the man to the hospital. Gold Cross did not bill the customer, but Rice billed us for the call.
- To be fair to the property owners in Watab and for them not to carry as heavy a burden for the Rice Fire Contract and Emergency Services, the town board believes that amending the current ordinance to allow us to assess unpaid emergency calls to owners of the property is the only way we can resolve this issue. The owners of Watab rental property have a value larger than what they are paying, and they are the recipients of the majority of the services. The language allowing this amendment to the current ordinance is in Section Four: Rates. It says, "A payment of 75% of the cost charged to the Township by the fire department for the first hour of service and 100% of the cost charged to the Township for the additional hours of service plus any other costs shall be billed to the party receiving services and/or to the owner of the property upon which Fire and Emergency Services are provided. A payment of 100% of the cost charged to the Township by the fire department shall be billed to the Non-Township Resident receiving Fire and Emergency Services."

Chair Gondeck called for those wishing to speak in favor of the Ordinance:

Maureen Graber of 8550 Lakewood Shore Rd NW, Rice stated that she has lived in the township for 30 years and has never called 911. I think this amendment will make it fairer to the other property owners in the Rice Fire District and allow their taxes for fire protection to be lowered. Chair Gondeck called for others to speak in favor; there were none.

He then called for those who wished to speak in opposition to the amendment:

1. Matthew Loven, Minneapolis attorney representing the owners of Rockwood Estates, said that after listening to Pat give the rundown on why the change is needed, I am not going to disagree with what Pat has said. The cost is being borne by those not necessarily using the service. The way the statutes are written that dictate landlord tenant law and charging property owners makes it clear that it is the recipients of the services who can be assessed for them, not the owners of the property. With Rockwood Estates we are talking about tenants, and Rockwood Estates itself is not the recipient of the services. The landlord has no control over those calls for service. It is tough to say that the owner of the underlying property at the trailer court is responsible. Landlord tenant statutes 405.b12 express prohibition against a local government charging a landlord. I spoke with Mike Couri, township attorney, and he is in agreement with some of my points. Where we left it, is that we have no agreement. \$15,000 is a substantial amount of unpaid bills, and the current system is not working. No one is denying that. My point is that this change in the ordinance to be able to assess Rockwood Estates may not be legal. If this is passed, they may take it to court. Kevin Wright, owner of Rockwood Estates in Minneapolis would be willing to talk through a solution before leading to litigation. Maybe you can come up with another solution. Talk again to the township attorney about things we discussed and whether this is truly the way to tackle the issue. Pat Spence then asked for Kevin Wright's contact information. None was given.
2. Sandra Saldana, 905 95<sup>th</sup> Street NW, Rice: I did my homework. We pay taxes in this township. I have a piece of rental property in the township. If my renters call 911, am I supposed to pay for it? I understand the township. I understand this is a big issue. I am put out and have talked to several businesses, and nobody contacted them: Jim Hoihjelle at Rumors, Kevin Johnson, Oak Hill Estates, and they didn't know anything about it, and they are upset. The town board's job is to get input and contact everyone personally. If I am having a garage sale, I could be billed for the call. Supervisor Gondeck responded that he was at Rumors last night and asked Jim Hoihjelle if he had any concerns for the township; he said "no and thank the board for doing a fantastic job." Supervisor Waytashek said that he talked to RDO and invited them to come and he had told Jeff Hanson of Oak Hill Estates. Sandra responded that most of the people here tonight are ones that I talked with. This isn't just about Rockwood. Please don't make it seem that it doesn't affect the rest of us. Craig went to the legislative committee, and they opposed it (the idea behind this amendment). Supervisor Gondeck responded that not everyone at the committee was opposed and that it got tabled because Greg

Bruestle from Langola Township disrupted the meeting and conversation was going nowhere. There were several questions, and Kent Sulem, MAT attorney, recommended that Watab should handle it at the local level. Again, Craig repeated it was not unanimously opposed. Kent Sulem also felt that the mobile home association would lobby against the proposed legislation. Also, at the legislative committee meeting there were three people who had rental property that wasn't zoned properly and were getting cash payments for rent; they didn't want this legislation to be passed. Sandra asked, "How is this fair on the owner of the property? Other communities don't do this. We pay taxes to cover these services." Maureen Graber responded that the board would not automatically bill the property owners if a bill was unpaid; they could use discretion with each case. This is just to make it legal. It is an option. People in the Rice service area are footing the bill for all those who don't pay. The people receiving the service should be paying for it.

3. Kim Roos, resident of Rockwood Estates: I am here personally because I had to call 911 for my husband twice this year. Because it is third party billing, insurance companies will not pay the bill. I have been fighting since March on this issue. Watab recommended that I go to Rice to ask if they would submit the bill; the Rice Mayor told me to go back to Watab, because we won't do the billing. I have talked to Kevin, I have asked what to do. I know that I will probably have to call 911 again. When I call, they don't ask if we want the First Responders. It is not the first thing on my mind. They don't come up with 1, 2 or 3 guys; they come with at least 7 into my mobile home. They can only stabilize my husband; they can't do anything else. I am willing to put time in on the paperwork at Rice. They don't want to listen to us. It is a lot of older people that are calling mostly. My husband has a condition. Am I supposed to be scared to call because I am going to get another bill? My son said that it's so sad, Mom, that you have to call a second time when you haven't even paid for the first one. I don't think it is right to have to send the bill to Rockwood. It is the fire and rescue problem. It is not Rockwood Estates problem.
4. Ed Rowan, Rockwood Estates: There have been really good points tonight. I am the service manager at Rockwood. I know Kevin personally, and I think from knowing him and the generous heart he has that if we sit down with him, we can talk with him and settle this. They donate to the book club, etc. They would be willing to hash something up. He asked if there are other townships that charge owners of the property for unpaid services. Clerk Spence responded that she didn't know of other townships, only cities. Ed said that once something like this begins it is government overreach; that is one of the problems in our country today. Lack of common sense. We feel that the residents should pay for their bills too. This is a burden for the township, but Rockwood is probably in a worse position to collect things than you are. We have no legal recourse at Rockwood to collect this money. We are an asset to the community. We really like Rice. We don't trust the government, we are supposed to scrutinize government. This isn't just about Rockwood. It is about every business in the township. I think we can come up with a solution. Clerk Spence said that another option could possibly be a per house fee assessed to every home, including mobile homes, in the Rice service area to cover the

contract costs and unpaid calls. She does not know yet if this is a legal option. The assessment could possibly be about \$60 per house. Ed said this all boils down to personal responsibility as the key. I think that you should table this until we get some of these other things in place with Rice.

5. Kim Roos, Rockwood: If we did a \$60 assessment per household, that would relieve so much stress. Right now, I have a \$700 bill, and if there was a per household fee, I wouldn't worry as much. To be honest, that is why I am fighting this because my insurance company won't pay a third party. I would gladly pay \$60. Other residents are on limited income. I think this is a good idea.
6. Kevin Reiter, 9955 Oak Court NE: I have mixed emotions about this amendment. There are good points either way. I think we need to go toward the Rice fire contract. There are so many questions. I am not a fan of taxes going up. We need to stick up to the Rice Fire Department. And, how much are we paying you guys to try to collect it? I know you put together a committee to help. It frustrates the heck out of me, I don't want to pay anymore bills. Why should I pay the bill for someone else? We need to fix the problem. We know there is also lots of lack of information from Rice. Stop this process and get a better solution. Maybe we divide the Rice District and make Rockwood Estates their own fire district. I don't want the responsibility of having to pay the bill for someone else.
7. Jerry Lage, 10734 West Lake Road. In listening to good comments, as a business owner I support what Sandy said, you shouldn't be stuck with a bill for a customer. This is similar to uninsured motorists. We have \$15,000 in unpaid bills this year that could be applied to road improvements and other projects. When you have \$15,000 in unpaid bills, after sending it to collections and not getting it, the only other avenue is small claims court. It is a hassle and it sometimes needs to be done. Rockwood: how many times do you allow people to not pay their rent? Your recourse is eviction at certain times. You do have recourses. The only way you can collect money is through the legal system. If we can get something, that is an improvement. The rest is a charge off. This is a business; township is a business; we need to run it as a business; but we have to collect fees. It is unfair to all the good citizens that don't utilize the services routinely, and we need to address the problem. Clerk Spence responded on how the township had gone to small claims court; judgments were in the township's favor, and there was no way to collect the judgments, because none of them had checking accounts. The township has to do the collecting. Jerry then stated, "I am on the fence."
8. Ed Rowan, Rockwood: There isn't anything fair about it. It is just the way it is. I was never raised that things would be fair but rather this is how things are. The poor will always be with us. Rockwood battles with this day in and day out. When you go through all the legal hassles, we still eat it at the tune of thousands and thousands of dollars. You are a business like we are. What is our option when people don't pay it? The bills need to get eaten. We'll just pick someone to bill. You can't always get paid. The biggest

hassle with a business is bad debt. Again, I reiterate that we sit down with the owners of the park and make some great progress. I think the Rice Fire Department will help with this and come to an agreement we can all live with.

9. Larry Halvink, Lot 41, Rockwood Estates: There were lots of great points. I am in opposition to the change. Basically, I am seeing bills not being paid. Basically we are seeing that the tenant is responsible, but we are trying to get someone else to pay for it.

Supervisor Gondeck recommended that the board table a decision. Motion was made by Supervisor Waytashek, seconded by Supervisor Gondeck, and passed to table and have a board meeting with the owner of Rockwood Estates.

Board Chair Gondeck invited Clerk Spence to give a summary of Ordinance 8: Subdivision Ordinance. Here are her comments:

- The board is initiating this Subdivision Ordinance in order to implement a Park Dedication Fee. For the past several years, Benton County has accepted a per lot cash fee of \$600 in lieu of land or it has accepted land in a plat or a combination of the two. The park dedication fee is currently \$600 per lot. The county ordinance calls for at least 75% of the funds to be used for acquisition or development of parks and trails in the township or city where it is collected consistent with the County Master Plan for Parks, Trails, and Open Space and Comprehensive Plan. The remaining 25% of funds may only be used by the County for trail connectivity and accessibility purposes.
- Since November of 2004, more than \$70,000 has been collected from Watab Township plats such as Oak Hill Estates, Golf Haven Estates, Paradise, and Lake Andrew. Nearly 100% of these dollars have been spent as the match for other funds at Bend in the River Regional Park. While this park is in Watab Township, it is a regional park that serves a larger area. It is not connected to the developments where the funds originated through any trails or bike lanes, and it has no amenities for children. Our town board, throughout these years has tried to have input to the county on how the money should be spent; we have had zero input, and have been told on some occasions that our requests did not meet the county master park plan. This year the county board approved other playground projects in other townships, and we were told that the Master Park Plan is out of date.
- We believe it is past time to take control of the Park Dedication Funds at the township level. Our attorney, Mike Couri, has cited the new law, MN Statute 394.25 Subd. 7 (o) as the basis. It says in summary that the county may not enforce its park dedication ordinance if the township has adopted a park dedication ordinance.
- To implement this the township has incorporated the park dedication fee, in the same amount as the county has previously collected at \$600 per lot, into a new Subdivision Ordinance. This ordinance includes what was previously in our Resolution 2015-11: Establishing a Town of Watab Policy for Plat Process. It includes developer requirements for town roads, meeting our mandated Stormwater Pollution Prevention Program, Letters of Credit, escrow funds to reimburse the township for costs of attorney and

engineering fees, board costs, and MS4 review by the MS4 Consultant. We have also moved some of the review to the preliminary plat review process rather than at the final review. Fees will not increase. Road standards have not been changed.

- Adopting this ordinance will allow the township to potentially create a Park Board with representation from the developments where the funds originated and other interested community members. It will give the township the opportunity to seek matching grants for parks and trails and perhaps work with the City of Rice and adjacent townships to create connected trails, which many of our residents have requested over the past years. The township would also be able to donate funds toward other county parks within the township.

Chair Gondeck then called for those who wish to speak in favor of the Subdivision Ordinance.

Jane DeAustin, Director of the Central Minnesota Builder's Association, gave the following testimony: "I am not here to speak in favor or opposition to this ordinance, but rather to give a technical review. Good evening. I am Jane DeAustin with the Central Minnesota Builders Association. The CMBA is a trade association with 450 businesses in all phases of the building industry – remodelers, residential and commercial builders, excavating, concrete, and lumber, construction loans, mortgages, title companies, and more. Thank you for this opportunity to comment. I passed the ordinance information on to members living and/or working in Watab Township. Their primary concern was the process. I have been working with Pat Spence on the process involved with this proposed ordinance and some of the language: (1) 11/28/16 email to Pat Spence asking how the process would differ from what is done today. Would everything be through the township rather than the county? What, if anything, would I need to do with the county to complete the development and/or building process? Would fees be the same or different? Would the township contacts be available during regular business hours as the county now is? (2) Flexibility- we ask for flexibility in implementing the new ordinance. When reviewing ordinances, three items catch my attention: dates/timelines, people/position, and amounts/fees. (3) Pg. 3 – Development Agreement – "recorded immediately"? Pg. 11 0 Final Plat is "recorded simultaneously" with it, or "immediately after." Language should be the same. (4) Pg. 5 – Subdivision lot "at least 500 feet in width." May not always be possible (ex. Topography) and ask for flexibility; could it be 500' in depth? Or X number of square feet? What is the reasoning behind 500'? Is it an arbitrary number? (5) Pg. 7 – Zoning Administrator mentioned, but not defined in Definitions. (6) Pg. 8, Section F, Preliminary Plat, to Town at least 4 weeks prior to the meeting. And then on Pg. 9, #4 the hearing is within 45 days. From submittal to meeting could be six weeks, which can be crucial in our industry. Although we are doing better with building year round, six weeks in the spring could be a huge delay. Would the Town consider special meetings? (7) Pg. 8-9 mentions Town Engineer, Planner, Fire Chief, Building Official, MS4 Consultant. Not identified in Definitions. Need to be? (8) Pg. 9, #6, "within 120 days" and Pg. 11 – Final Plat, "within 60 days." Does that fit within the "60 day rule?" Minnesota Statute 15.99. (9) Pg. 10 – Final Plat – to County Department of Development. Would be helpful to have a one-paper process (flow chart) with dates/timelines, to whom (Town attorney, engineer, clerk, county department, etc), what is deliverable. (10) Pg. 11, #7, Final Plat, recorded within 180 days. Some municipalities are extending to one year. (11) Pg. 15

- \$600 park dedication fees. Separate fee schedule so ordinance is not reopened when fee changes are proposed? (12) Pg. 17 – 125% escrow. Consider reducing it to 100% or less? (13) Pg. 17 – Letter of Credit. When is the LOC/escrow released and how? Add a clear process. Consider a partial release of LOC/escrow. And, an update on area city building permits that the CMBA tracks: Single family permits, year-to-date for area cities are at 274, compared to 212 in 2015 and 219 in 2014, 138 in 2013, and 115 in 2012. Right now, we are expecting the numbers to be about the same in 2017. Except for what we saw in the early 2000's in the St. Cloud MSA – Benton and Stearns Counties – with about the same number of permits in the area cities as in the rural areas. Then in the later 2000's we saw most of those permits only in the cities. Now we are beginning to see the rural area take off again where people are building on acreage, along lakes and rivers. Thank you.”

Chair Gondeck thanked Jane for her input and then called two additional times for those who wished to speak in favor; there were none. He then called for those who wish to speak in opposition.

Sandra Saldana, 905 95<sup>th</sup> Street NW, said that she is not necessarily opposed but has questions. I want to know the difference between this and what Benton County is doing. Will developers have to pay park dedication fees only for the township or will they be double? I highly suggest that we talk to Benton County. Don't reinvent the wheel. A lot of this is completed at the county level. Who is going to govern it? We can't pay for additional staff to govern it. Clerk Spence responded that the town board has incorporated what we need to do now into the Subdivision Ordinance, and it is not the intent to create any new work for the township. The main difference is being able to keep the Park Dedication Fees at the township level. Also, the township attorney has told us how important it is to have our current resolution on developer's agreements, township roads, etc. in the form of an ordinance to make them official and legal. She added that the township had wanted to have time to review the draft of the ordinance with Joe Janish prior to the public hearing, but he has left Benton County for a different position. The board intends to have our attorney and board members meet with the county attorney and Sean Moe from the Department of Development to refine the ordinance and make sure everything is compatible. Chair Gondeck added that Watab development owners have told him that they want trails and playground. “I believe that we can respond to the people better at the local level.”

Clerk Spence then read the questions and challenges raised by the Assistant County Attorney in an email received today from her office: “This office received the proposed Watab Township subdivision ordinance yesterday, and it has not had sufficient time to do an in-depth review to compare the Benton County Development Code's subdivision requirements to Watab Township's proposed subdivision ordinance. However, based on a cursory review of the ordinance, I have noted several issues that may conflict with law and invalidate the proposed ordinance. If a township enacts official controls that are inconsistent with or less restrictive than the county zoning ordinance, the township's official controls will be deemed invalid. *Berggren v. Town of Duluth*, 304 N.W. 2d 24.27 (Minn. 1981). In the instant case, there appear to be several inconsistencies between the proposed subdivision ordinance and the Benton

County Development Code. First, the proposed subdivision ordinance does not require a subdivision process for the division of property that will result in parcels over 20 acres in the residential or agricultural district. Benton County does require a process to divide property that will result in parcels that are at least 20 acres in the residential or agricultural districts. The proposed language is inconsistent with the Benton County Development Code. Third, the ordinance proposes that the township will be the authority that approves or denies subdivision plats in the township. It does not require plats to be approved by the Benton County Board. However, if the township does not have more than 5,000 people, the county retains control of approving subdivision plans located within the township. Minn. Stat. 505.09 and *W.Circle Properties LLC v. Hall*, 634 N.W.2d238.243-44 (Minn. Ct. App. 2001). Watab Township's population is estimated to be 3,200 people. Consequently, the Benton County Board retains plat approval authority. The proposed language appears to be in conflict with statute. There may be additional inconsistencies that exist in the proposed ordinance; however, a more in depth view would be required. In general, the proposed zoning ordinance appears to be in conflict with the law and invalid. Since the proposed ordinance does not appear to be valid, I do not need to reach the issue of whether or not Watab Township can collect park dedication fees."

The Chair called for additional comments regarding the proposed ordinance; there were none. He thanked those attending for their good input, and said that the board would consider everything they had heard before making a decision. He closed the Public Hearing at 8:30 p.m.

Respectfully submitted by Pat Spence