

**Credit River Township Board Meeting
Monday, August 6, 2012, 6pm**

Meeting Minutes

The August 6, 2012 Credit River Township Meeting was called to order at 6PM by Chairman Brent Lawrence.

Members Present:

Chairman Brent Lawrence; Vice Chairman Bruce Nilsen; Supervisor Leroy Schommer; Supervisor Tom Kraft, Supervisor Al Novak.

Others Present:

Township Clerk Lisa Quinn, Township Treasurer Sarah LeVoir, Township Engineer Shane Nelson, Township Attorney Bob Ruppe.

- 1) Approve or Amend Agenda:** Chairman Lawrence asked if any Board member would like to add or remove anything from the agenda. Chairman Lawrence added as Item #5 to New Business "Classification and Sale of Forfeited Lands." Treasurer LeVoir asked that under Treasurers Report, Item #6 as "Escrow Update" be added. Items were added as requested.

Vice Chair Nilsen made a motion to approve the amended agenda. Supervisor Schommer seconded the motion. Motion passed 5-0.

2) Consent Agenda

- 1) June 2012 Treasurer's Report**
- 2) July 2012 Developer's Escrow Statement**
- 3) July 9, 2012 Board Meeting Minutes**
- 4) July 12, 2012 Bond Authorization Meeting Minutes**

Supervisor Tom Kraft asked that Item #3, July 9, 2012 Board Meeting Minutes, be removed from the Consent agenda because there were some persons who did not have time to review them.

Supervisor Schommer made a motion to approve the August 6, 2012 Consent Agenda with Item # 3, July 9, 2012 Board Meeting Minutes removed. Vice Chair Bruce Nilsen seconded the motion. Motion passed 5-0.

3) Open Forum

There were no items added here.

4) Old Business

- 1) **Territory Update.** Township Attorney Bob Ruppe offered an update to the Territory CSTS II & III project. The Credit River Township Board asked for and received a document prepared by Attorney Ruppe concerning the Township options in regards to the remaining letter of credit (“LOC”) funds. Mr. Ruppe clarified that upon further review, he believes that the Developer’s Agreements do provide for the possibility that the LOC can be used for the wells. Mr. Ruppe then reviewed with the Town Board his memo dated 8/9/12 which outlined the Town Board’s options regarding to the current Territory well issues. The memo from Attorney Ruppe is attached as “**Addendum A**” to these minutes, but briefly, these options would be: 1) Use the LOC Funds to Complete the Community Well; 2) Use the LOC to complete the CSTS II & III; 3) Finance the Community Water Wells with a 429 Project; 4) Create a Subordinate Service District; and 5) use Homeowner’s Association (“HOA”) funds to complete the Community Wells. All of the options have potential pros and cons and they are outlined in the Memo from Attorney Ruppe.

Vice Chair Nilsen asked that if a SSD (“Subordinate Service District”) for water was created, could it be turned back over to the Residents after a period of approximately 5 years. Attorney Ruppe said no, but assured the Town Board that it would be possible to create a water SSD and Eco check (who currently handles other SSD’s in Credit River Township) could provide monitoring services.

Supervisor Kraft asked if, after a decision was made, an amount of money could be held back from the LOC for any potential legal costs associated with any challenges raised regarding the decision. Attorney Ruppe said no and explained that Township decisions have to be paid for and defended, if necessary, with Township funds. Chair Lawrence then asked if that meant that all Township residents would then potentially be responsible for legal costs associated with any challenges raised if the challenge was deemed not covered by the Minnesota Township Trust. Attorney Ruppe said potentially yes, and it would have to be paid for with Township funds.

Township Engineer Shane Nelson addressed the Board. He urged caution in releasing the LOC funds to the HOA, as there is currently no agreement in place to effectively do so. Secondly, he referenced the Water in Motion study received by the Territory Residents. He notes that 1) the study contains design upgrades; 2) that from an engineering standpoint, the water problems in Territory are still somewhat undefined; and 3) he notes that the current offer under consideration from SA Group covers an estimated \$24,000 shortfall in costs vs. remaining funds, actually more since SA Group is also willing to fund other construction related costs of the CSTS which will result in a potential \$80-90,000 value to the Township. Additionally, further delay may result in increased costs and more money coming out of the LOC for these delay related costs, which would

potentially raise the shortfall, with no guarantee of coverage by the current LOC funds. Also, if the project is delayed another month, there is the potential that the project could not be completed this year. Additionally, Engineer Nelson notes that MPCA permitting issues are also a potential problem, because if this project is not completed this year, Scott County and the MPCA will have to be notified and the possibility exists that building permits in Territory would be halted until the system is fully operational. His recommendation for the above reasons is to complete CSTS II and III at this time.

Supervisor Schommer asked Engineer Nelson who holds the water permit for the system. Engineer Nelson stated that Credit River Township does not have a copy of the permit, but that both the Minnesota Department of Health and the DNR issues permits for water systems.

Supervisor Kraft asked how much an engineering study on the water system would cost. Engineer Nelson stated an in depth study would be approximately \$20,000.00; however his bill for just a review of the original engineering study could potentially be done for closer to \$2,000.00.

Supervisor Novak asked what the actual water problems are. Engineer Nelson said he has heard that there is inadequate pressure in some homes and water hammer in others, but there also may be a desire for redundancy on the resident's part. He stated that conservation practices may help.

Vice Chair Nilsen asked if it was known if the water pipes were in the ground for the platted lots. Engineer Nelson answered that in some cases yes, but the water study called for an upgrade to the water system to accommodate increased yield.

Supervisor Kraft asked if the capacity on the North side would currently be able to handle 23 extra homes. Engineer Nelson stated that he could not answer the question without some more in depth analysis of the system.

Chair Lawrence asked Attorney Ruppe if the monies in the LOC were turned over to the HOA group, who exactly that would go to. Mr. Ruppe referenced a letter received on 8-3-12 from a Shaun C. McElhatton, who claims that his firm, Leonard Street and Dienard, is representing the Territory HOA. Attorney Ruppe said that funds could potentially be turned over to the Attorney representing them on behalf of the HOA to be used to complete the water system pursuant to a proposed contract with the HOA.

Chair Lawrence asked Attorney Peter Berrie, an Attorney for Faegre Baker Daniels who represents SA Group, who is representing the Territory HOA. Mr. Berrie said that Andy Gittleman, the President of the Management firm who is

representing the Territory HOA, hired Attorney Shaun C. McElhatton to represent the Territory Homeowners on this issue.

Supervisor Tom Kraft stated that he did not see what the benefit to continue to delay any decisions on this matter would be, that in the long run both things will eventually have to be paid for by the residents of Territory, and to continue to delay only serves to increase staff and construction costs.

Supervisor Novak stated that he wanted the Board to consider an inexpensive general water study that would be funded by general township dollars, to try and determine what the real issue is with the Territory water system. Chair Lawrence said that the water study would have to be carefully considered by the Board, since it would be a general Township expense. Supervisor Schommer cautioned that it could create an expectation with other residents that the Township would incur costs to study their issues as well.

A Territory resident, Mr. Rich Ernst, stated that he would like to submit a petition to the Township signed by 72/96 existing homes. That petition is attached to these minutes as **Addendum B** (For the purpose of this record, only the text of the Petition has been included here. The signatures that were submitted as part of the Petition are on file in the Township offices.) Mr. Ernst summarized the petition as a document that asks the Township to use the LOC funds to finish the water deficiencies in Territory before using any funds to complete CSTS work “that will only benefit SA Group or future residents who do not currently reside in the Territory Development.” Mr. Ernst stated his basic points as 1) The Township should not rush into signing off on the last of the LOC funds when there is a question on whether or not the water system is adequate; and 2) Who on the Board is responsible for knowing what is in the Developer’s Agreement(s).

Vice Chair Nilsen asked Mr. Ernst how the HOA would fund the rest of the project if the remaining LOC funds were turned over to the residents. Mr. Ernst answered, “Ultimately, we would most likely end up funding the rest of the project.” Vice Chair Nilsen said he was asking “how” the residents were planning on doing that. Mr. Ernst then asked who the declarant is in the case that Laurent is bankrupt. He stated that since the Township Board entered into the agreements in the first place, he asks the Township Board: 1) Who is the declarant, and 2) Who is responsible?

Vice Chair Nilsen asked Mr. Ernst if the Residents have attempted to address their problems by implementing any conservation measures. Mr. Ernst said that he could not answer for the Residents.

Vice Chair Nilsen stated that the Township Board has never been responsible for any oversight of the developer’s agreements with regard to the water system, it has always been the responsibility of the Developer and the HOA.

Mr. Ernst says that the attachment he has submitted with the Petition states that the Township Board is responsible for the agreements.

Vice Chair Nilsen asked Attorney Ruppe if Laurent is responsible under the Developer's Agreements. Attorney Ruppe stated that there are two potential issues that would need to be researched to hold Laurent responsible under the past Developer's Agreements: 1) Is there a Statute of Limitations (6 years) issue; and 2) Is Laurent still around? However, Attorney Ruppe cautions that any "breach of contract" lawsuit against Laurent **would not** be covered under the Minnesota Township Insurance Trust and would have to be paid for in full by the Township.

A Territory resident, Ms. Kate Westad, centered her discussion upon the question, "Should the LOC funds be used for the unfinished CSTS?" Her position is that the LOC's were intended to ensure that the obligations of the Developer under the four prior Developer's Agreements were carried out in full, and that since the CSTS work being proposed by SA Group is directed towards future development, it would not fit the definition of fulfilling the intent of the original four Developer's Agreements. She also stated that if SA Group is not standing in the place of the Developer, they would not have legal standing to sue the Township if they did not carry through with using the remaining LOC funds to finish CSTS II and III. Finally, she commented that "There is no rush to complete CSTS II and III, so at the very least hold the funds."

Chair Lawrence stated that he wanted to assure the concerned Territory residents that the Board would not base making the right decision on the matter based upon if the threat of a lawsuit.

Vice Chair Nilsen asked Engineer Nelson to clarify what exactly CSTS II and III were being constructed to serve. Engineer Nelson answered that once CSTS II and III are completed, it will serve 64 homes, which would be the rest of the platted lots, plus potentially an additional 17 lots.

Supervisor Schommer stated that CSTS II and III are part of the Subordinate Service District in Territory, and thus are part of the Original Developer's Agreements.

Ms. Westad then stated that there is an existing \$300,000 amount available to the Territory Residents to help them address their water system problems.

Supervisor Tom Kraft stated that if the money in the LOC would be turned over to the Residents to address the water system, the Township would most likely still be obligated to finish CSTS II and III, and those costs would be assessed to the Residents, along with additional legal fees to redirect the project.

Engineer Nelson asked that since there are funds in place to finish the well on the South side, and additional revenue in the form of water hookup fees would be available to finish the well on the North side as the capacity became necessary, have the numbers been run to estimate whether or not there would be enough to complete the project in that way?

Mr. Rich Ernst said that only \$70,000 is in the account and says that there is no verification of the full amount of \$300,000. He also states that there is no guarantee that future development will cover the amount necessary to complete the well on the North side.

Vice Chair Nilsen asked for clarification on the water access fee. Mr. Ernst said to ask SA Group because they are the ones that activated it. Vice Chair Nilsen asked how long it has been active and Mr. Ernst answered, "Two homeowners."

Mr. Mark Thelen, Territory resident, had in hand an exhibit he said were the HOA Covenants, and that he stated places SA Group in the position of Declarant. He states that the current Territory residents are more concerned about the water than about the septic. Mr. Thelen asked why the water mains are on the Township right of way if the Township has no responsibility for the Territory water system. Attorney Ruppe states that if that is true, State Law provides for the right of utilities to place utilities in the right of way.

Chair Lawrence asked Mr. Thelen if the Township Board decided to turn the funds over to the HOA to fix the water system, did he think that the money would be strategically spent to make a definite improvement to the system, because from what he has been hearing at these meetings, it sounds like there is a "disconnect" between the residents and the HOA. Mr. Thelen states that the residents would just like to be involved in the solution.

Vice Chair Nilsen asked Mr. Thelen to be specific as to whom he is asking the money be turned over to. Mr. Thelen answered, "Towards the water system, is all I'm asking."

Vice Chair Nilsen stated that if the residents were aware of some other funds that could be used towards the water system, the Board needs to know that, so they can take it into account in the proposed fix.

Mr. Thelen said he was not in charge of that and did not have any answers.

Vice Chair Nilsen reminded the Territory residents in attendance that the Township Board tried to warn the residents that there may be problems with the water system in 2008 but they were told to stay out of it. He also asked on behalf of the Board to be told

by the residents what monies are currently available for the Board to consider, as they are being asked for a solution.

Mr. Ernst states that it is the Boards responsibility to stay on top of the Developers Agreements and asks the Board if they are aware if SA Group has filed with the County the proper documents necessary to recognize them as the Declarant. Attorney Ruppe states that is a Homeowner's covenant issue that the Town Board is not a party to.

Mr. Ernst said that the covenants are attached as an exhibit to the Developer's agreement that the Township Board signed. Thus, it is his position that the covenants and the Developer's Agreements are not two separate documents.

Attorney Ruppe disagreed with this position.

Vice Chair Nilsen stated that the remaining LOC was earmarked for this phase of the development which includes CSTS II and III. He explained to the residents in attendance the chain of events leading to the agreement that was in its final stages of approval just prior to the Territory Residents bringing forth their request to use the remaining LOC funds to complete and upgrade their water system. Briefly, it was that US Bank, as the major landowner in Territory, turned over control of the completion of the neighborhood to SA Group, their real estate subsidiary. SA Group sought the Township Board out so they could complete the project to Township specifications, not the other way around.

Mr. Ernst also referenced the LOC that was overlooked in the past and inadvertently expired. Supervisor Schommer pointed out that SA Group's current offer to voluntarily add an estimated \$90,000.00 in value replaces the \$80,000.00 LOC that inadvertently was allowed to expire.

Engineer Nelson recommended that the Town Board "take advantage" of the large number of Territory Homeowners in attendance to ask them what exactly the water issues are that they are having. The question was put forth to the residents in attendance. One responded that when he was watering his yard, he has no water pressure available to take a shower. One respondent said that they had "surges." One resident said they had no water problems whatsoever. Addresses were provided to the engineer upon request.

A Territory resident, Jaden Bragg, stated that he was a volunteer on the unofficial financial committee of the Territory HOA Board. He summed up the Territory residents in attendance's comments presented this evening as a request on their behalf to halt the forward progress of the approval of the Township Board for SA Group to use the remaining LOC funds on CSTS II and III for a period of time, until the HOA group can study the financial impact on the residents of the various scenarios. Also, there exists

unanswered questions as to who is responsible for all of the unfinished needs of the Territory development at this point.

Mr. Bragg also answered the previous question in regards to the amount of money the Territory Residents have under their control to address their water system issues. He said there was approximately \$200,000.00 in that fund. He also clarified the need for water system issues as the South side needing completion, and the North side nearing capacity, according to the Water Study they have received. He points out that water system upgrades would also benefit SA Group's unsold lots, but the CSTS upgrades currently proposed by SA Group would not benefit existing Territory homeowners.

Vice Chair Nilsen clarified that some lots in Territory were recently sold by Main Street Bank to an investment group.

Vice Chair Nilsen asked Mr. Bragg, "Hypothetically, if the LOC monies were given to the residents to finish the Water Systems, how would he (Mr. Bragg) recommend CSTS II and III be finished? Would he recommend all the Residents pay for that at that time?" Mr. Bragg said that his personal opinion would be that it be "charged" to SA Group, as part of the infrastructure that they would be responsible for.

Engineer Nelson offered a caution to Mr. Bragg's suggestion that SA Group be responsible, and pass on, any costs of CSTS II and III to only new homeowners of their (currently) unpurchased lots. He clarified that due to municipal improvements law, all benefitting homeowners would be required to pay an equal amount. In the end, there would be some existing Territory residents who would benefit and thus be assessed for CSTS II and III under the proposed scenario.

Mr. Bragg said that in a year and a half when the HOA is able to assume the declarant rights, there is a provision in there that would allow for "special assessments" and would thus give the HOA rights to determine that. Supervisor Schommer reminded Mr. Bragg that as a Township, under the Subordinate Service District, the Township has the right to specially assess at any time. Mr. Bragg replied that under the HOA, they would be allowed to assess to the allocated lots.

Supervisor Novak asked Attorney Ruppe to clarify whether or not the HOA could spot assess only what lots they determined were responsible for the fees. Attorney Ruppe answered that that is unclear, because of the fact that the Town operates under an established Subordinate Service District for which there is no guiding statutory or case law. His recommendation would be that the Township would not be subject to a challenge if everyone was treated equally, but may be subject to one if everyone was not treated equally.

Mr. Ernst wanted to clarify at this point that the Homeowners who signed the Petition are NOT agreeing to fund CSTS II and III merely by signing the Petition. Chair Lawrence acknowledged that it did say that in the Petition.

Chair Lawrence asked Mr. Bragg how much time he was specifically asking for. Mr. Bragg said one or two months.

Attorney Peter Berrie, representing SA Group, spoke next. He explained that it is SA group's position that Developer's Agreement 3rd Addition requires CSTS II and III be completed. They have also completed other projects within the development. He also wanted to clarify that the excess capacity designed into the completion of CSTS II and III was not intended for Main Street's lots, rather for the outlots in the 3rd Addition owned by SA Group. He stated that not only does it benefit them, that it is also economically advantageous to do it now, versus adding capacity later. He also stated that it wasn't quite accurate for the current homeowners to claim to have paid for the current CSTS. Rather, it was built by Laurent with US Bank's money.

Supervisor Kraft asked Attorney Berrie if he could verify that US Bank's offer to cover the cost overages in CSTS II and III would still be an option if the Township delayed another month or two. Attorney Berrie said he wasn't sure, possibly no, because a month delay had already been previously asked for and granted and that brought all parties to the current day.

Mr. Berrie also offered a clarification on the HOA Association hiring Attorney McElhatton to represent the HOA in these matters. He clarified that Andy Gittleman, who owns and operates Gittleman Management, which represents Territory and many other Homeowners Associations, hired Attorney McElhatton to look into these matters, and that is all the comment he wanted to have on that at this time.

Attorney Berrie also stated that the HOA Agreement is separate from the Developer's Agreements.

Attorney Berrie stated that another month delay would be of no benefit.

Attorney Berrie stated that their group has requested that Main Street Bank pay their fair share of the infrastructure costs. That issue is unresolved at this time.

Attorney Ruppe asked Attorney Berrie directly whether or not the terms of the tentative agreement for CSTS II and III would remain in place if the Township Board granted the 1 or 2 month delay asked for by the Territory Residents in attendance. Attorney Berrie stated that he could not offer that assurance.

Mr. Ernst asked Attorney Berrie whether he would be willing to meet with the HOA and the Residents of Territory within the next month to attempt to work out a solution, and to

leave the current offer on the table until that time. Attorney Berrie stated that he did not have the authority to agree to that.

Chair Lawrence asked Engineer Nelson if there would be permit problems on a month or two delay. Engineer Nelson stated that he wasn't aware of any.

Supervisor Kraft asked Attorney Berrie what he knew about the HOA Water hookup funds. Attorney Berrie believes the amount is between \$220-230,000.00. Of that, \$70,000 came from homeowners, and the other \$150,000 came from SA Group.

Mr. Thelen took the podium to ask Attorney Berrie if they were to use the LOC funds to complete CSTS II and III was it part of the plan to put in the streets and curbs and gutters or just let it sit. Attorney Berrie answered that the infrastructure asked about is not planned at this time; rather it would be the responsibility of whoever wanted to develop the lots. However 64 of the lots are currently platted and will be served by CSTS II and III.

Vice Chair Nilsen asked Engineer Nelson whether the current water system would serve the proposed lots owned by SA group or would the improvements have to be put into place for it to do so. Engineer Nelson said that according to the study, the second well would have to come on line in order for the additional lots to be served.

Supervisor Kraft says that he hesitates to approve a transfer of the funds because that would leave the additional lots without a functional service district.

Vice Chair Nilsen asked Attorney Berrie if SA Group would have any further contribution to the water system for their additional lots. Attorney Berrie said that any additional contributions towards the water system would come from the homeowners, both future and present, that SA Group did not plan on any additional funding other than what they have already put in place.

Supervisor Schommer asked if there would be any benefit to having another water study done. Chair Lawrence said that the Territory homeowners would almost certainly benefit from another one being done.

Chair Lawrence wanted to know if the Homeowners and SA Group would be ok with another water study being done and the cost of it coming out of the remaining LOC funds. Engineer Nelson stated that spending a couple hours with Gary Johnson, one of the authors of the existing study, interpreting the current study would probably save him 30-40 hours of independent study into the issue. This would take cooperation on the part of SA Group to be accomplished. It would take at least two weeks to get this accomplished.

Territory Resident, Lucian Strong, stated that he didn't think the Territory residents were asking for the Township Board to fix the Territory water problems, nor did they have any interest in creating another SSD. He said that he was asking the Township Board not to spend any more money out of the LOC while they investigated what their options might be. He asked for a 1 month delay of the decision of the Township Board.

Attorney Berrie reiterated that he had no authority to guarantee SA Group will approve another month delay with the current offer remaining valid.

Mr. Ernst asked that the Township would just give the month with no additional monies or expenses coming out of the remaining LOC funds, that if the HOA would like more study into the issue, that they would contract with an engineer on their own to get that accomplished. General agreement to this request was given by those Territory Homeowners in attendance.

Chair Lawrence asked if by September 4 the HOA group would be able to bring something forward. Mr. Bragg said he would hope so.

Vice Chair Nilsen asked whether the issue could be revisited in two weeks instead of at the next month's meeting. After discussion, the idea was not adopted.

Chair Lawrence asked if there were any further comments on this issue. There were no other comments forthcoming.

Supervisor Schommer made a motion that this issue be tabled until the September 4 meeting, during which time the LOC funds will be frozen for any further work on Territory CSTS II and III or the water systems, except for invoices dated on today's date or previous. Chair Lawrence seconded the motion. Motion passed on a vote of 3-2. Vice Chair Nilsen and Supervisor Kraft dissented.

- 2) **CR 44 Frontage Road Turnback.** Frontage Road/Turnback issues remain, and Scott County public works is scheduled to get back to the Township Board. At that time it will be looked at again.

A 5 minute recess was asked for at this time by Supervisor Kraft and granted by Chair Lawrence.

- 3) **19555 Oak Grove Avenue.** Engineer Nelson states that there is an open grading permit on the referenced property. In January, a letter was sent to the Homeowner stating that there are a number of issues of concern, including boulders, grading, and outstanding escrow balances.

Halling Engineering, representing the Homeowner, has sent a letter to the Township stating that it is his professional opinion that the grade meets the Township guidelines.

Engineer Nelson stated that although the pond was green with algae, it appears that the slopes have been corrected. However, the boulders still remain, the escrow balance has not been addressed, and the encroachment agreement has not been signed.

Attorney Severson will be sent a letter per Mr. Krieger's instructions to only contact him through his attorney.

Supervisor Kraft made a motion to have Engineer Nelson draft a letter to the Permit Applicant through his Attorney stating that the boulders need to be removed, that the escrow is insufficient and needs to be brought up to the agreed upon amount, and the encroachment agreement needs to be signed. Supervisor Novak seconded the motion. Motion passed 5-0.

- 4) Fern & Birch Reconstruct Informational Meeting.** Supervisor Novak presented a report on the proposed costs for a Fern & Birch Reconstruct. Engineer Nelson referenced the report which estimates costs of this project being \$526,720.00. 23 benefitting properties have been identified, at an estimated cost per benefitting homeowner of \$13,740.00 if the Township adopts a 40/60 split. Engineer Nelson cautions that the estimates cannot be verified until geotechnical studies are done, but that is the best estimate at this time.

The proposed schedule still shows a completion date of 2014. The estimate includes the cost of culverts. Engineer Nelson states that in his professional opinion Fern & Birch is in worse condition than Lynn & Monterey was before they started the reconstruction there.

Supervisor Kraft stated that minimal work has been done on Fern & Birch due to the possibility of an imminent reconstruct.

It was decided by the Supervisors that an informational meeting should be scheduled for the residents. October was recommended.

Item will be placed on the September 4, 2012 agenda to set the date for a Fern & Birch Informational Meeting.

5) New Business

- 1) **210th Street Paved.** Candice Leinenkugel, a Clemwood Drive resident says she feels that a majority of the Residents would want a paving of 210th Street, and possibly Nevada. Supervisor Kraft stated that a petition would be necessary to indicate to the Township Board that at least 75% of the residents would be in favor of it. He said that it would not move forward until the petition was received because preliminary work costs a lot of money.

Engineer Nelson referenced the 2008 study that the Township conducted to pave the road. Vice Chair Nilsen stated that back then the Residents said they did not want it due to the costs involved.

Ben Seppman, a 210th Street East resident, stated that this is the third time he has advocated for the project.

Supervisors explained to the two residents in attendance that more than likely Clemwood would not be included in an assessment, but 210th would for sure, and possibly Nevada as well. If Nevada decided to have their Road paved at the same time, the assessment may go up from the initial estimate, because the initial estimate did not include Nevada.

Engineer Nelson provided an overview of the 2008 estimates. The project cost back then was \$305,000.00 and that breaks down to a benefitting property cost of \$13,000.00 per household for 210th only. Base costs are estimated at 5-7% greater due to cost increases.

It was recommended that the Township supply a list of benefitting households as they currently are, in order that the residents know who they have to contact to get the 75% petition sign rate that they will need. Attorney Ruppe recommended a sample of a waiver be provided in order to show the residents what they will be asked to sign if the project goes ahead. Attorney Ruppe also provided Ms. Leinenkugel and Mr. Seppman more information to give to the residents when they were bringing their petition around; namely that the interest charged on assessments is usually 2% above what the interest charged to the Township is, the payment period is 10 years, and these amounts are assessed to the Homeowner's taxes if they are not paid off ahead of time.

Ms. Leinenkugel and Mr. Seppman acknowledged to the clerk that they could be emailed at the same time.

Ms. Leinenkugel asked about the possibility of dustcoating. Supervisors said they do not dustcoat all Township Roads due to costs. Dustcoating does not keep dust off vehicles, only keeps dust down near the homes.

Mr. Seppman also made a comment about the time spent on the Territory issue. Supervisors said the time was necessary due to the complexity of the issue.

- 2) **Territory/Dakota Avenue Extension.** Brent Anderson, Property Manager for Owens Valley, appeared before the Board to explain the construction of a road extension off of Dakota Avenue, without permit and prior review or approval.

Mr. Anderson explained that that was a misunderstanding / oversight at the time of construction. However, Mr. Anderson states it was built by Dasen Construction with proper grading and materials. Additionally, there is a swing arm gate on the property line.

Supervisor Schommer stated that most likely the Road can stay except the Property Owner would have to legally agree that if the property was developed it would be reconstructed to Township standards.

Discussion by the Supervisors and Engineer centered upon the proper permit procedures, signage, and encroachment agreement requirement.

Attorney Ruppe recommended an Access Permit and Encroachment Indemnity agreement. Mr. Anderson is also to contact Scott Soil and Water for an after-the-fact grading permit.

An escrow of \$500.00 will be required for staff time on signage and the encroachment/ indemnity agreement. An escrow of \$900.00 + a \$100 fee will be required for the Access (driveway) Permit.

- 3) **Minnesota Association of Township District 4 Meeting.** Township District 4 Meeting will be held Thursday, August 23, 2012 at Johnson Hall on the Nicollet County Fairgrounds. Supervisors may attend. Meeting will be posted on the Town Hall Board.
- 4) **Town Hall Internet Password Protected.** A new router has been installed at the Town Hall. Guests can access the internet in the Town Hall. Password is available from the clerk and will be posted inside the Town Hall.
- 5) **Classification and Sale of Forfeited Lands.** There are two parcels in Credit River that have been tax forfeited and are being offered to the Township for Public Use. The Township Supervisors will look at the parcels and determine how to best proceed.

6) Road Report

- 1) **Discuss Yield Sign at Oak Hill Circle.** Todd Zerlin, a Valley Hills resident, asks that the Yield Sign in his neighborhood be replaced with a Stop Sign. He provided pictures and a video that shows the current signage and sight lines. Supervisors discussed and decided to trim the trees back to improve sight lines.

7) Engineer's Report

1) Lynn & Monterey.

1.1) Pay Estimate #2 was presented, for the completion of work to the present day. The amount of this invoice is \$390,951.31.

Supervisor Novak made a motion to accept Pay Estimate #2 for the Lynn Drive, Monterey Avenue and 207th Street Project in the amount of \$390,951.31. Vice Chair Nilsen seconded the motion. Motion passed 5-0.

- 1.2) **Replace Culvert.** Engineer Nelson will contact Scott County regarding a Lynn Drive and CR 68 culvert which is the County Right of Way.
- 1.3) **Hoffman Culvert.** Engineer Nelson recommends grading in the area of the Hoffman Culvert in order for the wetland and the culvert to work independently. Issue will be added to the Special Meeting which is going to be held Thursday, August 9, 2012. Posting will be revised to note the additional topic.
- 1.4) **Cochrane Pine Trees.** Supervisor Schommer reminds the Board that the first 4 pine trees need to be removed/ moved. Fall is recommended for road stability for the tree moving truck. Supervisors should look at trees on the property when they can.
- 1.5) **Ditch on Lynn.** There is a ditch on Lynn that has been modified to a pitch that will be un-mowable for the Resident. Engineer Nelson will look at it.

Supervisor Novak also mentioned that there are also some basketball sized rocks in the ditch that will have to be removed.

- 2) **Map cost over-run.** Township map went over cost by \$250.00.

Supervisor Novak made a motion to pay the cost over-run of the map of approximately \$250.00. Supervisor Schommer seconded the motion. Motion passed 5-0.

8) Treasurer's Report

1) **Transfer Funds.** Treasurer says the interest rates have dropped for the Township accounts. Going forward, the savings account interest rate will be .6% and the checking account .43%.

Treasurer LeVoir made a request to transfer funds from savings to checking to pay claims in the amount of \$455,000.00.

Vice Chair Nilsen made a motion to transfer funds in the amount of \$455,000.00 from savings to checking. Supervisor Kraft seconded the motion. Motion passed 5-0.

- 3) Bond Update.** Paperwork for the recent Bond Issuance has come through in the last couple of weeks. Cost for the Bond Agent is \$350 for the initial set up and then \$450/year.

Treasurer LeVoor mentioned that she has received a Bond closing memorandum which she will review and forward to the Board.

Bond proceeds will be received by the Township Thursday in the amount of \$1,068,441.00 into checking.

Supervisor Novak made a motion that on or about August 9, 2012, Treasurer LeVoor will transfer the Bond Proceeds of approximately 1.068,441.00, from checking to savings. Supervisor Schommer seconded the motion. Motion passed 5-0.

- 4) Post Issuance Policy & Procedure.** Treasurer LeVoor asked the Board to consider and adopt the Post Issuance Debt Compliance Policy.

Supervisor Novak made a motion to adopt the Post Issuance Debt Compliance Policy as outlined by Ehler's. Vice Chair Nilsen seconds the motion. Motion passed 5-0.

Treasurer LeVoor asked the board to consider and adopt the Post Issuance Debt Compliance Procedure.

Supervisor Kraft made a motion to adopt the Post Issuance Debt Compliance Procedure. Supervisor Novak seconded the motion. Motion passed 5-0.

- 5) Budget 2013.** 2013 Budget numbers were distributed by Treasurer LeVoor. This report included a Levy Analysis, Revenues, and a Budget Summary 2013.

Supervisors reiterate that keeping the Levy consistent is an important goal. Treasurer LeVoor states that the best way to keep the Levy consistent is to finance at some point in the future, and that cost of living increases should be expected. Forecasts are difficult because unexpected things do come up.

Supervisor Novak praised Treasurer LeVoor for being accurate to her previous year's prediction. Vice Chair Nilsen praised Treasurer LeVoor for being able to project out a couple years.

Chair Lawrence asked Treasurer LeVoor to present a top-line presentation at the Continuation of the Annual Meeting.

- 6) Vacation Time.** Treasurer LeVoor will be unavailable from August 9-12. She will not be checking email but will be available to the Supervisors by phone if necessary.

7) Escrow Update. An invoice for Engineer and Attorney services for Liberty Creek will be sent to Gary Shelton at Scott County.

9) Clerk's Report

1) Reconvene of Annual Meeting. The Reconvene of the 2012 Annual Meeting will be held on September 10, 2012 at 7 PM. Moderator Chris Kostik is planning on attending. By State Statute, Clerk convenes and reconvenes Annual Meeting if available.

2) Data Practices Act/ Redaction of Employee's Net Wages. Redaction of net wages of the two employees of Credit River Township has been done the past two months, and will continue to be done due to Data Practices Privacy Law.

It is a Credit River Township policy to use Attorney Ruppe in the cases of Data Practice Requests. Attorney Ruppe suggests getting Data Practice Requests in writing.

3) Primary August 14, 2012

1) Election Judges Scheduled. All election judges are in scheduled for the Primary Election.

Treasurer LeVoir will use her purchasing card to pay for the catered food.

Defibrillator battery has been changed and it is operational. Defibrillator will be mounted by a Supervisor soon.

Supervisor Kraft will help set up for the Primary on Monday night before the election.

Township offices will be closed on Tuesday, August 14, 2012. Treasurer LeVoir and Engineer Nelson will not be working at the Credit River Town Hall on that day.

Clerk Quinn will be issued a purchasing card, as it is felt by the Supervisors that employees should not be required to purchase Township supplies on their own credit cards for reimbursement.

Vice Chair Nilsen made a motion to approve a purchasing card for Clerk Quinn. Supervisor Schommer seconded the motion. Motion passed 5-0.

10) Pay Claims.

Paid Chk# 000147E	ANCHOR BANK	38.40 ACH/Check Scanner Fees
Paid Chk# 000148E	ANCHOR BANK - DEBIT CARD	356.14 Clerk Cell Phone/Stamps/Office Supplies
Paid Chk# 000149E	EFTPS	1,583.19 FICA/Medicare/Fed WH
Paid Chk# 000150E	PERA	782.87 PERA
Paid Chk# 000151E	MINNESOTA REVENUE MW5	143.51 State WH
Paid Chk# 006745	AL NOVAK	796.18 July Srv Pd in August
Paid Chk# 006746	BRENT LAWRENCE	840.66 July Srv Pd in August
Paid Chk# 006747	BRUCE NILSEN	882.17 July Srv Pd in August
Paid Chk# 006748	LEROY SCHOMMER	787.82 July Srv Pd in August
Paid Chk# 006749	LISA QUINN	XXXX July Srv Pd in August
Paid Chk# 006750	SARAH LEVOIR	XXXX July Srv Pd in August
Paid Chk# 006751	TOM KRAFT	715.87 July Srv Pd in August
Paid Chk# 006752	AL ASPENGREN	69.09 Election Judge Training/Mtg/Mileage
Paid Chk# 006753	ANNE FELIX	52.10 Election Judge Training/Mtg/Mileage
Paid Chk# 006754	BEVERLY SMITH	60.98 Election Judge Training/Mtg/Mileage
Paid Chk# 006755	DOUG ARNESON	53.76 Election Judge Training/Mtg/Mileage
Paid Chk# 006756	DOUG BENIDT	57.09 Election Judge Training/Mtg/Mileage
Paid Chk# 006757	JAN PENNEY	50.44 Election Judge Training/Mtg/Mileage
Paid Chk# 006758	JANE M. RUGG	51.70 Election Judge Training/Mtg/Mileage
Paid Chk# 006759	JERALD R MAAS	52.65 Election Judge Training/Mtg/Mileage
Paid Chk# 006760	JEROME MICHELS	52.10 Election Judge Training/Mtg/Mileage
Paid Chk# 006761	JOAN BALDWIN	47.66 Election Judge Training/Mtg/Mileage
Paid Chk# 006762	JOHN SCHULTE	53.76 Election Judge Training/Mtg/Mileage
Paid Chk# 006763	KAREN ELANDER	48.00 Election Judge Training/Mtg/Mileage
Paid Chk# 006764	KRIS Z. THOMPSON	58.20 Election Judge Training/Mtg/Mileage
Paid Chk# 006765	LAURA WEBSTER	36.00 Election Judge Training/Mtg/Mileage
Paid Chk# 006766	LLOYD ERBAUGH	65.09 Election Judge Training/Mtg/Mileage
Paid Chk# 006767	MARIA LOWRY	72.63 Election Judge Training/Mtg/Mileage
Paid Chk# 006768	MARY HAMRE	55.98 Election Judge Training/Mtg/Mileage
Paid Chk# 006769	MAXINE ABERNETHY	57.09 Election Judge Training/Mtg/Mileage
Paid Chk# 006770	PARI SCHILZ	66.88 Election Judge Training/Mtg/Mileage
Paid Chk# 006771	PAUL E. NEWMAN	53.76 Election Judge Training/Mtg/Mileage
Paid Chk# 006772	RITA VOLLMER	56.09 Election Judge Training/Mtg/Mileage
Paid Chk# 006773	SUSAN SHROYER	52.10 Election Judge Training/Mtg/Mileage
Paid Chk# 006774	AL NOVAK	113.82 July 2012 Expense Reimbursement
Paid Chk# 006775	ART JOHNSON TRUCKING INC	380.25 July 2012 Road Mtc
Paid Chk# 006776	BOEVAAG PLUMBING INC	98.69 Town Hall - Plumbing work
Paid Chk# 006777	BOHNSACK & HENNEN EX CAVATIN	723.00 167th St - Clean Ditch/Work
Paid Chk# 006778	BRENT LAWRENCE	66.05 July 2012 Expense Reimbursement
Paid Chk# 006779	CENTERPOINT ENERGY	12.82 Town Hall Gas
Paid Chk# 006780	CHORES AND MORE BY HEIDI INC	121.20 Town Hall Cleaning 7/31/12
Paid Chk# 006781	COURI & RUPPE, P.L.L.P.	4,463.75 Legal Fees
Paid Chk# 006782	DB SERVICES	350.00 Street Sweeping - Franciscan Retreat
Paid Chk# 006783	DENNIS KAROW	918.91 Mowing - Town Hall/Parks
Paid Chk# 006784	ECM PUBLISHERS INC	91.00 Legal Publishings
Paid Chk# 006785	GALLAGHERS	156.23 Repair Washout - Birch Lane
Paid Chk# 006786	GE CAPITAL	149.64 Copier Expenses
Paid Chk# 006787	GOPHER STATE ONE CALL	34.80 July 2012 Utility Locates
Paid Chk# 006788	GOPHER STATE SEALCOAT INC	4,677.00 Crack Fill - Various Township Streets
Paid Chk# 006789	HAKANSON ANDERSON ASSOC INC	36,077.43 Engineering Fees
Paid Chk# 006790	INTEGRA TELECOM	552.29 Phone
Paid Chk# 006791	LEROY SCHOMMER	23.96 July 2012 Expense Reimbursement
Paid Chk# 006792	LISA QUINN	182.71 July 2012 Expense Reimbursement

Paid Chk# 006793	METRO SALES , INC.	124.84 Copier Qtrly Mtc Contract
Paid Chk# 006794	MIKES SEPTIC	235.00 Town Hall Septic Pumping
Paid Chk# 006795	MSC	7,444.96 CSTS 1st Mowing
Paid Chk# 006796	MVEC	666.47 Electricity
Paid Chk# 006797	NATURAL SYSTEMS UTILITIES MN	9,389.69 CSTS
Paid Chk# 006798	NORTHERN TECHNOLOGIES	5,430.00 Monterey, Lynn and 207th St Testing
Paid Chk# 006799	NORTHWEST ASPHALT, INC	390,951.31 Pay Estimate #2 - Monterey, Lynn, 207th
Paid Chk# 006800	PRIVATE UNDERGROUND	235.50 July 2012 Utility Locates
Paid Chk# 006801	SARAH LEVOIR	55.55 July 2012 Expense Reimbursement
Paid Chk# 006802	SGC HORIZON LLC	234.50 Ad for Bids - 2012 Road Mtc
Paid Chk# 006803	SOUTHWEST SUBURBAN PUBLISHING	438.71 Legal Publishings
Paid Chk# 006804	TOM KRAFT	19.98 July 2012 Expense Reimbursement
Paid Chk# 006805	WEBCETERA DESIGNS LLC	112.50 Website Service Charges
Paid Chk# 006806	XCEL ENERGY	12.67 St. Francis St Light

Total 476,829.09

11) Adjourn. There being no further business before the Town Board, a motion was made to adjourn the August 6, 2012 Credit River Town Board Meeting.

A motion was made by Vice Chair Nilsen to adjourn the August 6, 2012 Credit River Town Board Meeting. Supervisor Novak seconded the motion. Motion passed 5-0.

Meeting was adjourned at 12:23 PM.

Submitted By: _____

Lisa Quinn, Clerk of Credit River Township

Approved by: _____

Brent Lawrence, Chairman of the Board, Credit River Township

Memo

To: Credit River Town Board
From: Bob Ruppe, Town Attorney
Date: 8/8/2012
Re: Territory Community Water Wells

Can the Town Board use the Territory letter of credit proceeds to complete the infrastructure improvements for the wells in Territory development?

The Town Board at the last meeting requested that I review in detail the Territory Developers Agreements to determine if the Letter of Credit ("LOC") proceeds could be used to complete the infrastructure improvements for the wells in Territory. Based on my review I believe that the funds could be used to complete the community water wells within Territory development.

Territory First Addition:

The Territory First Addition Developer's Agreement dated May 25, 2004 states in Section 7a states that the Developer is to furnish to the Township a letter of credit in the sum of 125% of the construction costs as determined by the Township Engineer. Attached to the Territory Developer's Agreement is a "Summary of Phase I Fees and Financial Guarantee" which lists under the financial guarantee to the Township the following line item number 4: "125% of Engineer's Estimated Watermain (\$156,918 x 125%) \$196,147.50. In determining that amount for the watermain, Greg Halling, the Township's engineer at the time, completed a "Phase 1 – Construction Cost Estimate – Community Water System" which estimated the total cost of the community water well to be \$156,918. 125% of 156,918 is \$196,147.50 the amount listed in the letter of credit computation worksheet. The Township included the estimated construction costs of the community water well in its Letter of Credit Proceeds.

However, Section 7a, paragraph 2, lists the uses of the letter of credit proceeds:

The financial guarantees submitted to the County and Township, or any portion thereof, may be used for erosion control, CSTS construction, road construction, building demolition and removal, landscaping and trail installation or any other expense related to this development at the County and/or Township's discretion if the Developer fails to perform as required by the Township and/or County

This paragraph does not list the community water well but does state that the funds could be used for "any other expense related to this development...or if the Developer fails to perform as required by the Township or County.

I believe that given this language and the attached worksheets prepared by Greg Halling that the Township could use the letter of credit funds from the Territory First Addition to complete the community well. Unfortunately, there are no letter of credit funds available from the First Addition.

Territory Second, Third and Fourth Additions:

In the Territory Developer's Agreements for the 2nd, 3rd, and 4th Additions, the Developer's Agreements in paragraph 4A each state that the developer is to provide a letter of credit to the Township as "security that the obligations of the Developer under this Agreement shall be performed." Each of the of the Developer's Agreements states that the letter of credit shall represent the sum of 125% of the estimated cost of Infrastructure Improvements ad determined by the Township Engineer. Each of these Developer's Agreements also have attached as an exhibit a worksheet that lists how the letter of credit amount was determined by the Township Engineer. Each of these worksheets lists under the "Total Credit River TWP. LC" the amounts for that respective addition needed for "Credit River Township Water".

SA Group may dispute this interpretation as the Agreements for state that the letters of credit may be used for "Infrastructure Improvements" within the development. SA Group may try to argue that the term "Infrastructure Improvements" are to be interpreted to mean those improvements to be owned by the Township such as streets and the CSTS.

What are the options for the Town Board?

1. **Use LOC funds to Complete Community Well.** Use the letter of credit funds to complete the community water wells within the Territory development. This action would potentially buy down the cost of the well to each resident but would be insufficient to pay the total costs of the project as proposed. With regard to the CSTS, the Town Board would have to determine how to fund the completion of CSTS 2 and 3 with costs increasing each year using the Subordinate Service District. Should CSTS 2 and 3 not be built the properties proposed to be served by CSTS 2 & 3 would need to be platted into larger lots in the future and an amendment to the MPCA permit would need to be obtained allowing the Township not to construct CSTS 2 and 3.

There is the potential that lot owners that will either no longer be served or which will have a delay in service might sue the Township for damages. In addition, SA Group may also sue the Township seeking to prevent the use of the funds for the community water wells. Such a lawsuit may not be covered by the Township's insurance. The Township Insurance Trust would not give me a definitive answer until they had reviewed the exact language in the complaint. The Township should plan to pay for any litigation costs and judgment, if any, as a result of any lawsuit brought by lot owners within Territory who are not provided with CSTS service through CSTS 2 and 3. The Township does not have an indemnification agreement with the homeowners association, as such, any judgment against

the Township would be the responsibility of the Township as a whole and not just the Territory residents. Minn. Stat. §365.41.

2. **Use the LOC to complete the CSTS 2 & 3.** Use the letter of credit funds to complete the CSTS 2 & 3. This would leave no funds for the community water wells. Under this option the Township would need to decide whether to accept SA Group's offer to complete the project or complete the CSTS 2 & 3 themselves using the Township Engineer.

The benefits of entering into a contract with SA Group to use the LOC funds to complete CSTS 2 & 3 would be the cost savings to the Territory residents as SA Group has agreed to pay for all costs to complete the CSTS, protective fencing and access driveway, provide the Township with a LOC for 10% of the costs of construction and agreed to warranty the work for a period of two years.

Should the Township determine to complete the CSTS using the LOC funds but not enter into the contract proposed by SA Group, the Territory residents would be responsible for any construction and warranty costs above the amount of LOC funds deposited with the Township.

3. **Finance the Community Water Wells with a 429 Project.** The Township has discussed the possibility of financing the wells as a Minn. Stat. Chapter 429 project. Unfortunately, Julie Eddington of Kennedy & Graven, the Township's bond attorney, has opined that the Township can not undertake a 429 project for an improvement not to be owned by the Township. Ms. Eddington has also opined that the Township could create a housing improvement area or other district other than a Subordinate Service District to finance the community wells.
4. **Create a Subordinate Service District.** The Township working with the residents could create a subordinate service district to provide water to the Territory development. This would require strict compliance with the provisions of Minn. Stat. 365A. Assuming we could meet the statutory requirements for setting up a district, using this option would require the Township to agree to take over and operate the community water system.
5. **The Homeowners Association Funds the Community Wells.** According to Bridget Chard, the residents of the Territory development, may be able to qualify for a low interest loan through the Minnesota Rural Water Association. Mrs. Chard did not believe that the Territory residents would qualify for any grants due to their income levels.

The Homeowners Association could also assess higher dues to their members and when they had sufficient funds then contract to complete the community wells.

Addendum B

Credit River Township Board of Supervisors,

It is the feeling of the residents of Territory that remaining funds in the developers escrow account as they relate to the letters of credit, which the Credit River Township Board called when the original Developer (Laurent Development) defaulted on Developers Agreement should be used to the benefit of the existing residents in Territory.

It has also come to the attention of the residents of Territory that the current Declarant "SA Properties" has been working with the Township Board in an effort to direct the Township Board as to how these remaining funds should spent in order to benefit SA Group's financial interest which is in direct contravention to those of the Territory Residents.

It has further come to the attention of the residents of Territory that the Credit River Township Board has been working with SA Properties on the use of the remaining funds without having a full understanding of the four (4) Development Agreements entered into by the Township. The Development Agreements "run with the land" and continue to be enforceable against SA Group as the successor to Laurent Development. This is true whether Letter of Credit funds are available or not.

It is the position of the residents of Territory that the remaining funds associated to the Letters of Credit, drawn on and now in sole control and discretion of the Township, should be used to fund the current infrastructure deficiencies of the Territory Development and as required and allowed by the Development Agreements. These funds should not be used to expand on future projects that will only benefit SA Group or future residents who do not currently reside in the Territory Development. The current residents have already "bought their piece" of the critical infrastructure of the Territory Development.

Our position is summarized in the following points:

- 1) The remaining funds in the escrow account with the township are to be used of for the completion of the well system. All the current homeowners have already paid for the cost of the well system in one form or another when they purchased/built their home.
- 2) The Septic System (CSTS 2&3) should be paid for by the future homes which are not already hooked up to a functioning CSTS system. Again, the current homeowners have paid for the CSTS systems in place and we do not need additional septic systems unless futures homes are built in the neighborhood. Bringing CSTS 2 & 3 online now only benefits SA Group who are seeking to make an immediate group sale of their remaining Territory lots. The costs of bringing this on line must be bore by SA Group alone.

We respectively request the Credit River Township Board consider our concerns as outlined above and begin fulfilling their responsibilities to the current voting and tax paying residents of The Territory Development. The basis for our position is laid out in Attachment A as it relates to both Ordinance 2006-01A and the Developers Agreement for Territory First Addition, Territory Second Addition, Territory Third Addition and Territory Fourth Addition.

The support of the residents of Territory are evidenced by their signatures on Attachment B.

Sincerely,
The Residents of Territory