

EUREKA PLANNING COMMISSION
REGULAR MEETING
JANUARY 7, 2008

Chair Mike Greco called the meeting to order at 7:00 p.m. The Commissioners present were Sharon Buckley, Mike Greco, Kenny Miller, Ken Olstad, and Nancy Sauber. Audience members included Georgie Molitor, Ray Swedeen, Supervisor Jeff Otto, Supervisor Gloria Belzer, Supervisor Cory Behrendt, Zach Malwitz, and Supervisor Brian Budenski.

Approval of Agenda - There were a few changes to the agenda suggested. Ken Olstad moved to approve the agenda as amended. Sharon Buckley seconded the motion, which passed unanimously.

Approval of Minutes

A. December 3, 2007 – Regular Planning Commission meeting- There were no corrections offered. Kenny Miller moved to approve the minutes as submitted. Sharon Buckley seconded the motion, which passed unanimously.

B. December 5, 2007 – Special meeting- Planner interview- Sharon Buckley moved to approve the minutes as submitted; Kenny Miller seconded the motion. The motion passed unanimously.

C. December 20, 2007 – Roundtable with the Town Board and the Township attorney- These minutes were not yet submitted by the Town Clerk, Nanett Champlain. They were tabled until the next meeting.

1. Permit Requests – There were no permit requests submitted for this meeting.

2. Land Use and Zoning Items

A. Georgie Molitor, 8875 225th St. W., asked to speak regarding the land use issue at the Friedges property near her home. Georgie stated that Supervisor Brian Budenski has worked with John Friedges and also, separately, with her concerning the conditions at the Friedges property. These issues have been an ongoing concern, and Georgie has spoken about these conditions a number of times in the past.

One issue was that the work is to take place inside the building; this has never really been the case, Georgie said. Before the granting of the permit for the construction of the building, there were perhaps three large piles of dirt, a couple front-end loaders, a mixer, a few trucks here and there, and a couple piles of rock at the site, Ms. Molitor stated. The business activity has been expanded to include a huge building with perhaps 300-400 pallets of soil and mulch stored outside. There are still materials outside of the Friedges area that can be seen as such from the property that used to belong to Georgie's parents.

The landform has been totally changed, Georgie asserted. The field to the north has been graded and flattened. Gravel, stone, and other materials are there now.

Last year there was a drainage ditch put in. It used to go into the Sauber/Molitor field, causing a problem. It has been redone now, but currently drains into another adjacent landowner's (Barb Friedges') field.

The work at the site was to have been reorganized. There are separate entrance and exit areas, but there are still large semi-tractor/trailers that routinely park on Highview Avenue starting at 5:00- 5:30 a.m. Georgie encounters these vehicles when going to work each day. Highview is difficult to travel on, she said. The building was supposedly built the way it was so that the trucks would be able to drive through the building, in one door and out the other, without having to back up. This is not happening. It is a huge lot where the semi-tractor/trailers wait on the road, drive in, pack up their goods, and drive out.

The work at the site was supposedly to stop in December, but they have worked through that month and are still working there now. There are lights on there very often at night. Georgie said that she does not have a problem with work that goes on inside the building, as she does not hear it, and the lights inside the building have not been a problem. She did express a concern about what will be coming soon in spring, which she says has already started, and that is the back-up noise. When Brian Budenski talked with the business people, they agreed to limit the activity from 7:00 a.m. to 3:00 p.m. That noise is really not supposed to be going on there at all, Georgie stated. Georgie said that it was her understanding when the permit was given that all noise was to be contained within the building, and the doors are to be closed. Georgie emphasized that she simply does not want the noise.

In addition, she stated that the activity that goes on at the site was to have been soil mixing only. Last year there was a huge issue with the chopping and grinding up of wood at the site and all the loud noises this produced.

Another very problematic issue is the dust that emanates from the activity there. Georgie stated that, having lived on a gravel road for her entire life, she is used to regular dust, but that this dust is totally different. She characterized it as being "slimy and gooey" and hanging in the air for a long period of time. Georgie does not believe that this dust should be there.

There is also a different business sign on the property. Friedges Landscaping is at one end, Ms. Molitor stated, and another industry is at the other end, with its own particular sign. Georgie expressed serious concern about a past request regarding a split of the property and the resulting status of any non-conforming use that may exist on the property.

Georgie stated that she does not believe that the business is following through in good faith. She herself was willing to compromise on the 7:00 a.m. to 3:00 p.m. issue. She said that the back-up noise and the loud truck noises are nearly nonstop. She gets up with this noise in the morning; she hears it all the while she is working in her garden. As a teacher, she has her summers off, and this time has, up until about three years ago, been a time of peace and recharging. Now she is subjected to the conditions described above.

Brian Watson of Dakota County Soil and Water has been out to the site and has aerial photos of the property. The landforms have been changed without permits. The drainage ditch is a big issue.

Supervisor Brian Budenski had asked Georgie if she could compromise, and she had agreed to the hours stated above. However, this fall, when the landscaping business was probably actually slow, the work (and the noise) started at 4:30-5:00 in the morning. The noises can be heard very clearly even inside her residence, Georgie stated. Georgie said that she does not believe that the industry should be there in its present condition; the business owners should honor what was promised at the time that the permit was given.

Mike Greco responded that the Township attorney has advised the Township that, in situations where there is a split of a non-conforming use property, the landowner has to choose which one parcel will continue to have the non-conforming use on it. The use cannot continue on both (or more) parcels. The concern is that there not be a multiplication of the use resulting in a number of industrial parcels. The advice has been clear, Mike said, that this is not permissible, and the Township should not allow it.

Georgie then asked about the large, outdoor storage area. If the use of the property is to be the mixing of soil inside the building, does this other use as storage constitute another separate use or another industry? How should she approach that question?

Mike replied that he was on the Planning Commission when the building permit was recommended for approval by that body. Mike said that he believed that the understanding of the Board at the time was that, to the extent that this was a non-conforming use, so as long as all the activity that was at the time taking place outside would then take place inside the building, they would not consider this an expansion of the use, and, consequently, there would be no need for a public hearing as the Ordinances require in instances when a non-conforming use wishes to expand. The permit for the building was granted. The problem is that building permits are not permits to which the Township can attach conditions. In the case of a Conditional Use Permit, the Township may attach conditions. The Building Official issues a building permit if the building meets the building code, and if it meets Township Ordinances for those requirements. The conditions that were placed in this case are not really binding in any sense, Mike stated. It is clear, however, that the use is no longer on the scale that it was when the building permit was granted and before the building was erected. The concern for the Board and something that needs to be communicated to attorney Patrick Kelly is the understanding that allowing this building to even be built was conditioned upon the belief that it was not an expansion because an agreement was made that all the existing activity would take place inside. Mike said that he is not sure how the situation may be corrected. He is not sure whether the Board is able to go back and say that the business has been expanded, and it needs to return to the scope and scale it was originally, which means put everything in the building and do not do anything more than was being done before. If the business owners were to choose not to return to the original intensity, Mike said, he is not sure whether they would then need to come in for a public hearing - a public

hearing at which the Town Board has the right to deny the expansion if they see fit. The attorney could give advice about that.

Georgie expressed that she has real doubts about whether things at the site will change. Mr. Friedges has never sat down with Georgie and her brother, Jim Sauber, although he did sit down with Brian Budenski and Brian Watson. However, the situation did not change in the fall as agreed to by Mr. Friedges, Georgie said. She has an issue with having the noise from 7 to 3, but has an even greater issue with anything beyond that.

Mike Greco mentioned that the Township has adopted a complaint policy and has a form for such situations. He asked Ms. Molitor if she has pictures of what the use was before the building. The County, of course, has aerial photos going back years, but the more documentation Georgie can compile, the better her case would be. Georgie replied that she has tapes of the noise, pictures of the dump trucks, etc. She will gather all the documentation that she has.

If the activity were to take place inside the building and if it were quiet, etc., she would be okay with that, she repeated. Mike said that when this was presented to the Planning Commission it was said that, if anything, the impact to the neighborhood would *decrease* because all activity that had been taking place outside would then be inside the building. It seemed reasonable and logical as it was presented to the Commission, Mike commented, but it seems obvious that this is not what actually happened.

Mike suggested that Georgie put together a formal complaint following the Town Board's published procedure for making a complaint. Having been on the Planning Commission at the time, Mike said that he could testify to, not only what was agreed to, but also what had been presented to the Commission, not once but twice, and what was also presented to the Board at its meeting the next week. Georgie said she would file a formal complaint.

Nancy Sauber stated that when she looked at the Friedges file some time ago, she saw a permit for excavating so much material from the site, which was then to be returned to its former condition. Nancy further stated that she believes that the non-conforming use registration that was submitted for the Friedges property was one of those that used the phrase "constantly changing" instead of giving any concrete information or factual data to answer the questions that tried to get at the intensity of use at the time of the registration. At the time that the building permit came up, the Board was asked many times to explain why it did not consider it to be an expansion of a non-conforming use, but, Nancy stated, she has a question as to whether it is truly a non-conforming use in the first place. Maybe part of what needs to be done is the non-conforming use verification process, using the form that the Township has for this purpose, Nancy suggested. If all they were supposed to do was to excavate the material and then return the land to its original condition, but, in fact, they continued to go on to another use of the mixing of soils and so forth, and there was no additional permit given for that, or, if that use was not covered in the permit that they were given regarding the excavation in the first place, then Nancy says that she sees a problem there. Nancy expressed the opinion that she believes that the

whole non-conforming issue as it applies or not to the Friedges property should be looked at more closely.

Kenny Miller suggested looking at the various Town Board meeting minutes. He said that there was not necessarily a permit issued, but that the Boards allowed the work to happen. Kenny said that Boards approved of the work that was being done.

Mike Greco then said that this is an area where there needs to be some research done. The two issues are inter-related, but separate. If it is not a non-conforming use, then the use itself is in question, but, in the meantime, Ms. Molitor is still dealing with the noise and so forth. Looking at this before any additional uses start occurring on that parcel is important, Mike stated. It is much easier to deal with in advance.

Georgie restated the conditions that used to exist at the site before the building was built. There was very little noise there then and not a lot of activity; this is totally different now. Ms. Molitor will work on the formal complaint.

B. Zach Malwitz – Zach said that he was there to represent his parents concerning the Glory to Glory Center. He was informed that the Planning Commission did not receive any application from Mr. Kohler or the Engelmans and that, therefore, that application was not on the agenda. When such application is made, it will be placed on the agenda. Mike asked Zach to communicate to his parents, and the Commission Chair would speak to George Kohler, about the fact that the property is in the Vermillion River Watershed and, since more than an acre of land will be disturbed in the rough grading, a storm water pollution prevention plan needs to be explored. The Vermillion River Watershed Joint Powers Organization will need to know that the property is in compliance with its recently adopted rules. This takes place through the County level, but the Township can give the applicants information about pursuing this. Mike Greco told Zach that he is available for any questions his parents or the applicants may have.

C. For general information, Mike told the Commission that the Township had received applications from the Minnesota Pipeline Company for four separate road crossings in conjunction with the MinnCan project. These crossings are on Ipava, Highview, 245th Street, and Essex. They will also be crossing Denmark, but that will be under the road. These are administrative permits that do not need to go before the Commission, but Mike wanted the Commissioners to be aware of them.

There were no other Land Use and Zoning Items brought forward.

3. Other Business

A. Board Report –Mike Greco

1. The Board received the Commission's road recommendations and capital improvement recommendations. There is a special meeting in January on the 10th to work on the budget for next year.

2. Mike communicated the Commission's concern about the transition to the new Building Inspector and what happens to open permits. The standard operating procedure, Mike

stated, is that Bob Hegner would close out any permits that were issued while he was still employed by the Township. Any new permits, starting in January, 2008, would fall under Scott Qualle's domain.

3. Mike had passed on the Commission's recommendation for a planning consultant, and there is now a signed contract with TKDA for the work on the Comprehensive Plan update.

4. Chair Greco passed on the Commission's recommendation on the topic of the CapX2020 project. Ken Olstad and Jeff Otto are the contact persons

5. Nancy Sauber raised the issue of the expiration of the Jeff Tonsager building permit. The permit had been listed as expired on the reporting sheet that goes to Mr. Hegner each month. He made no change to that notation. However, recently, Mr. Hegner has said that he granted an extension to Mr. Tonsager. However, there was no request in writing from Mr. Tonsager, and there was no extension granted in writing from Mr. Hegner, as laid out in the State Building Code. The start of a possible second extension period is coming up in February, Nancy stated, and she wondered whether the Commission should not ask the Board to request of Mr. Hegner that he put in writing, for the file, exactly what transpired so there is a record of it. Mike Greco agreed that this was a good idea and will communicate it to the Board. If the pipeline project was the reason for the delay, as Mr. Hegner mentioned in an email, there should not be much involved for either Mr. Tonsager or Mr. Hegner to document what occurred. Mike further stated that it is important for Jeff to know that this is a State requirement, not a Township one.

B. Organizational/Administrative Issues

1. Outstanding permits –Nancy Sauber

Nancy Sauber stated that, once again, she did not receive the report from Bob Hegner until picking up any possible additional papers in her folder just before the meeting; they were not in her folder when she had again checked at noon that same day. Bob reported that the Krapu dog kennel, the Kenny Miller inspection of the mobile home/office, and the Wong house were closed out. There were some other inspections now reported with dates. Nancy said that the Ori and Samantha Sexton house permit (approved 6-11-07) has actually expired if the notation of "Not Started" still being received from Bob were correct. (All previous reporting gave "Not Started" and the date of 7-02-07.) The most recent notation was in red and the new date was in red, indicating an updating of the report, so that does appear to be current, Nancy said. The Bill Adelmann house has had further inspections; the "needs compliance septic" notation mentioned at a previous meeting was a note by Bob to himself to remind himself that this septic is still not in compliance.

Mike Greco asked Board members present for clarification if the policy agreed upon was that the Board would send a letter or that the Building Inspector would send a letter to the permit holder informing him that the permit was about to expire. Further, Mike asked, if the 180 days has passed, would the permit holder still be allowed to request an extension at that time, or would the permit simply have expired, and a new permit would have to be applied for? Supervisor Cory Behrendt said that it was his understanding that the new Building Inspector would manage that process and that the notice would be given well in advance of the expiration time. Scott Qualle, the new Inspector, had also indicated that his office would be electronically filing updates within two to three days of any inspections, Nancy commented, which would improve timeliness.

Mike will report to the Board about the Sexton permit expiring, in addition to reporting the item on the Tonsager permit.

2. January newsletter

The next newsletter is due out mid-January, Mike Greco commented. If there is anything that the Planning Commission would like to put in this issue, the deadline is Friday, January 11. Everyone was emailed a draft of the newsletter from Jody Arman-Jones, editor. There is already an article about the new building inspection firm, and Jody is working with Bev Topp on the CapX2020 project article. The two possibilities that are left are “Eureka Township Ordinances-Did You Know?” and any Planning Commission message. The ordinance piece has tended to be seasonal, e.g., reminding citizens not to plow across roadways. The Commission decided that an article on the hiring of TKDA and what the process of the Comprehensive Plan update is going forward would be helpful. Mike Greco volunteered to write a summary of what is on the website, incorporating the more recent TKDA work plan, for the newsletter.

3. Changes to the Building Code –Ken Olstad

One confusing thing, Ken stated, is that the code says that any window replacement required a permit. Ken talked to Bob Hegner about this, and Bob said that as long as the size of the window does not change and nothing structural changes, a permit would not be needed. Mike suggested that the Commission clarify this with the new Building Inspector as well.

4. Bill Weber – Chair Greco reported that, after informing Bill Weber (the MFRA planner during the Strategic Vision process) about the hiring of TKDA for the update of the Comprehensive Plan, he received an email from Bill asking whether that meant that there should be a cancellation of Bill’s contract with the Township to provide planning services on an as-needed basis. Mike replied that this issue had not come up, and the Board would have to decide that. Mike said that the Township has not actually used Bill’s services in this capacity to date. Mike asked whether the Commission had a recommendation to the Board concerning this. There is no retainer being paid, nor is it an exclusive contract. After some discussion, it was agreed that there doesn’t seem to be a down side to having the contract remain in place. However, no formal recommendation was to be forwarded.

C. Building Inspector

Waldron Associates has been hired, and Scott Qualle is our Building Official. He gave Town Clerk Nanett Champlain some copies of forms that his firm uses. Nanett asked whether the Township should be using the Waldron forms or the Township forms. The current Township forms were created because the forms used before did not capture all the information necessary. A lot of time was put into these forms and instruction sheets. Chair Greco emailed Mr. Qualle and asked him to look at the Township’s forms and instruction sheets. Waldron has worked with some communities that use their own forms; some communities use their own forms with supplemental forms from Waldron; some just use the Waldron forms. Mike asked the Commissioners whether they thought that it would be a good idea to have Scott Qualle come to a Planning Commission meeting to talk about this, the procedure for expired permits, and any other issues. It was agreed to invite Mr. Qualle to the February meeting, as a timed agenda entry.

D. Comprehensive Plan Update

Mike Greco said that he wanted to share what has been happening with TKDA. Mike, Supervisor Cory Behrendt, and Berry Farrington of TKDA participated in a conference call to talk about the contract before it was signed. They discussed the Township's expectations, the data needs of TKDA, and concerns about keeping the project within the budget. TKDA's standard contract already has a clause that says that any changes to the contract, such as additional meetings, must be in writing in advance. Mike and Cory made it clear that the agreed-upon budget could not be exceeded unless the Town Board approves that.

The three discussed which items in the budget might be altered so as to bring down the proposed cost. Some were found, such as most of the reproduction costs and also, possibly, hours for an engineer whose services may not be needed. Mike also stated that he has a lot of GIS data that he received from the County and the State. He offered to share this with TKDA, which will save a lot of time (and cost) on their part. This data is all verified and dated, etc., and is in usable form. There will be a monthly conference call to assess where the process is in reference to the budget. This will be reported to the Commission and the Board.

Regarding data that TKDA needs, Mike sent them a Word document of Eureka's 2003 Comprehensive Plan, the 2005 Metropolitan Council's systems statements, the 2000 census data for Eureka Township, a Word document of the final Citizens Advisory Committee (CAC) report, pdf reports from the Envisioning, Commercial, and Non-conforming Task Forces, and a simple base map of the roads. Kenny Miller suggested also giving TKDA updated road counts for the various roads. This was agreed to be a good idea.

It was next considered who might make up the committee to work with TKDA on the update. The various aspects of this were discussed. Kenny Miller moved to recommend to the Board to appoint Cory Behrendt, Sharon Buckley, Mike Greco, Kenny Miller, Ken Olstad, Jeff Otto, Jim Sauber, and Nancy Sauber to the committee to work with TKDA. Ken Olstad seconded the motion, which passed unanimously. The committee represents Planning Commission members, Town Board members, CAC members and CAC Chair. If there is a new Planning Commissioner in May, it was suggested that this person take it upon himself to become well informed about the whole process if he is not already. Being in attendance as an audience member at the committee meetings would be one avenue to accomplish this. It was felt to be undesirable to add someone to the committee later who has not been involved in the process so far as that committee and TKDA have a timetable to meet. If there is a new Planning Commissioner in May, that person would, of course, be involved in the public hearings on the Comprehensive Plan.

The first meeting of the committee will be Wednesday, January 16, with January 17 as a back-up date. Berry will send out information to the committee and to Nanett (for the public copy) one week before each meeting. Audience participation at committee meetings will be discussed at the first meeting. Another topic for consideration at the first meeting will be the issue of smaller meetings with stakeholders, such as the Chub Lake shoreland owners, farmers, etc. The purpose of the meeting is to start talking about the background information. A schedule of meetings will also be set.

E. Ordinance Update- Round II

There is no word back yet from attorney Patrick Kelly about the status of his review. The Commission will need at least one more meeting to finalize what recommendations will be sent to the Board based on Mr. Kelly's comments and feedback.

Sharon Buckley reported that she and Supervisor Gloria Belzer have been working on a listing of the businesses in the Township, as was requested at the roundtable meeting with the attorney. (During the discussion of the non-conforming portion of the ordinance update, Mr. Kelly suggested that it would be helpful to have an inventory of businesses in the Township so that he would better understand what the situation is.) What is listed or is suggested to be listed are all the CUP's, Non-conforming Use registrations, the Ordinance 32 permits, Interim Use Permits, Prairie Creek School, Highview Christiana Church, commercial horticultural uses. If there are any others, please let Sharon know when she sends out the emailed list.

F. Training

1. Reports- No trainings were attended since the last meeting.

2. Upcoming opportunities-

Dakota County –“Growing Green Together”

Government Training Services-“Working Nature Into Land Use Decisions”

Embrace Open Space- meeting 01-09-08- ordinances to encourage conservation

MN American Planning Ass'n- John Shardlow's CD on Comprehensive Planning
Mike gave each Commissioner a copy of the CD.

G. CapX2020- Ken Olstad went to the meeting on 01-03-08 at the Waterford Town Hall and reported. The deadline to form a group to become an intervening party has been extended to June 27th. Any requests for witnesses or experts have to be made by April 15th. On January 14th, a document giving an overview of the main issues and concerns will go to the Administrative Law Judge. The group has settled on the name of “Citizens Energy Task Force”. The group discussed what it hopes to accomplish, what is its main motive. There were many exemptions to requirements that were granted in the application. Those may be challenged. Another meeting is scheduled for January 24th.

H. Vermillion River Watershed Joint Powers Organization (VRWJPO)

Nancy Sauber, Gloria Belzer, and Jeff Otto attended a meeting called by Dean Johnson, the planner working on the Comprehensive Plan for Dakota County townships. Dean had given each Local Government Unit (LGU) a map on which he asked that the actual land use be brought up to date. Jeff Otto had understood that to mean any land use that would have an impact on the

watershed. However, Nancy pointed out that Dean is not working only on the Vermillion River Watershed issue, but also generally on the Comprehensive Plan updates, and that she took that to be a request to show current land use. Nancy had asked Nanett to make copies of the maps for each Board member and each Planning Commissioner; however, Nanett was not able to accomplish that in the time available, especially since the map did not fit on the Township copier. Jeff Otto will call Dean and clarify exactly which it was that he wanted. Dean would like the map returned by the end of January. There was also a map given out at the meeting of the Dakota County 2020 Development Land Use Guide Plan. Nancy also asked Nanett to make just a few copies of that, two for each body, just for general information.

Mike said that, after receiving an email from Nancy about this, he printed the October, 2007, Dakota County Tax Assessor's Office data on the generalized land use for the Township. It lists vacant, ag, ag homestead, ag preserve, residential, residential multi-family, commercial, tax-exempt, and industrial. This may be helpful in looking at the other map.

Nancy also suggested that Jeff ask Dean about whether commercial horticulture should be noted on the map. It may not be taxed differently, but it is a different land use. Jeff Otto agreed to call Dean Johnson. If the copies are made in time, and Jeff is able to reach Dean in time, the maps could be brought to the upcoming Board meeting.

I. Minnesota Valley Transit Authority (MVTA)

Chair Greco reported that he received a request from the MVTA asking for a resolution of support for the MVTA as the preferred transit provider. This topic was discussed. In the end, it was determined that it did not have to be decided at this meeting.

Nancy Sauber moved to adjourn. Kenny Miller seconded the motion. There was no objection to adjournment; the meeting was adjourned at 9:09 p.m.

Submitted by,

Nancy Sauber, Recorder