

EUREKA TOWNSHIP PLANNING COMMISSION
REGULAR MEETING OF 03-03-08

Chair Mike Greco **called the meeting to order** at 7:02 p.m. Commissioners present were Sharon Buckley, Mike Greco, Kenny Miller, Ken Olstad, and Nancy Sauber. Audience members included Supervisor Jeff Otto, Supervisor Gloria Belzer, Supervisor Brian Budenski, Dean Engelman, Cheryl Engelman, Geoff Benedict, Russ Matthys, George Kohler, Zach Malwitz, Josh Malwitz, Beth Eilers, William Nordvik, Mary Kay Holzerland, Jon Holzerland, Wayne Hallcock, Gary Estrem, Eunice Estrem, James Andreas, Laurie Andreas, Mike Kalbfell, Town Clerk Nanett Champlain, Township Attorney Trevor Oliver.

Approval of Agenda

- 1) The minutes for the **February 28, 2008**, Planning Commission Special Meeting on Ordinance Update Round II were deleted from the agenda, as they have not been submitted as yet.
- 2) The minutes from the **February 19, 2008**, Glory to Glory Public Hearing were added to the agenda.
- 3) Mike Greco requested adding an item under "Permit Requests" concerning establishing a policy for housing rebuilds with teardowns. There were three permit requests for that very thing on the agenda, and Mike stated that it would be a good idea to have such a general policy discussed before addressing those requests.

Sharon Buckley moved to approve the agenda as amended. Ken Olstad seconded the motion, which was passed unanimously.

Mike Greco noted that there was a timed item of the continued Glory to Glory Christian Center Conditional Use Permit (CUP) public hearing at 8:00 p.m. Chair Greco suggested that if the meeting were approaching eight o'clock without having addressed all the permit requests, that a short recess be taken so that the time for the Glory to Glory Christian Center public hearing would not be encroached upon. He further recommended that after closing the public hearing, the Commission return to any permit requests still out and the "Other Land Use and Zoning Issues" items and finish addressing all of those before discussing the comments and issues from the CUP public hearing. This would be done so that those persons who were present for the permit requests or land use and zoning issues could finish their business and leave if they so desired. The Commission agreed.

Approval of Minutes

- 1) Sharon Buckley moved to table the **February 4, 2008**, Planning Commission Regular Meeting minutes until next month's Commission meeting as neither she nor Ken Olstad had had enough time to read them yet. Kenny Miller seconded the motion, which passed unanimously.
- 2) Sharon Buckley and Nancy Sauber offered corrections to the minutes from the public hearing of **February 19, 2008**. Sharon Buckley moved to approve the minutes as amended. Nancy Sauber seconded the motion, which passed with four votes. Commissioner Kenny Miller did not vote, as he was not present at that meeting.

1. Permit Requests

A. Policy for rebuilds with teardowns

Chair Greco stated that all Commissioners should have received an email from Scott Qualle, Building Official, and also a summary of a conversation between attorney contact person Supervisor Cory Behrendt and Township Attorney Trevor Oliver, which was relayed to Mike Greco and then to the rest of the Commission. These memos relate to situations in which someone wants to build a new house and then tear down the existing house.

There are a couple of different ways that this might take place, Mike said. The person could tear down the existing house first and then build a new one. In this instance, the Township's policy, and perhaps even the Building Code, say that the individual would have one year within which to build the new house after the teardown of the existing one. If that were not accomplished within the year, and there is no building right on that lot by what the Township says is a buildable lot, then the building right would exist no longer.

Another way would be the situation that the Commission would be dealing with at this meeting with each permit request before it. That is that the person wishes to build a new house and then subsequently tear down the existing one. There have been instances in the Township where the permit holder had stated that he would do this very thing, did not do so, and the situation lingered for well over a decade. Kenny Miller interjected that there is still an example of that in existence in the Township today.

Mike stated that he believes the Commission should come up with a policy that will allow people to build a house in such situations, but to make sure that there is a policy in place that will assure that the older house is torn down after the new one is completed. This teardown would take place after there has been a reasonable time allowed to move into the newer structure. Mr. Qualle's email states that existing structures in such cases are often allowed to remain (e.g., in Carver County), as long as all essential living facilities are removed such as the bathroom, the kitchen, and other plumbing. Therefore, if someone had a house that he is no longer using as a dwelling, but wanted to convert it for use as storage, for example, as long as the aforementioned facilities are removed, that structure could be allowed to exist. Therefore, the Township's policy could allow for a situation like that and would not *require* a teardown. Mr. Qualle suggested a signed statement from the applicant acknowledging the requirement that they must demolish the existing structure. Scott also suggested that the building permit for the new house could be issued contingent upon removal or conversion of the existing structure. He also said that another way to achieve the same thing would be to issue a temporary Certificate of Occupancy for the new structure, which allows for a move-in, but that the final Certificate of Occupancy would not be issued until the completion of all work. This completion of all work would include either the demolition or the conversion of the existing building. Finally, Mr. Qualle recommended an escrow, while Mr. Oliver recommended some kind of security deposit, to ensure demolition. If the applicant did not demolish or convert the structure by whatever deadline is given, the Township would then have the financial means to have that done for the applicant. The demolition or the conversion would require its own permit as well.

Mr. Greco asked whether the Commission would like to work out the details of this policy at this meeting. The Commission could make the recommendation and ask that Mr. Oliver draft the wording of the policy in time for the Board meeting. The applicants could then sign a statement so that the Board's approval could be contingent upon the applicants' signing the agreement and providing whatever escrow or security that the Board and Mr. Oliver think is appropriate. Kenny Miller stated that he would like to add something about the maintenance of the building that remains to be converted. There have been houses that have been left with trees growing out of broken windows and vermin living in them, Kenny commented. If the owner is going to keep the building as an accessory structure, permitted as such, is he going to use it, or is it going to sit there and become a vacant or abandoned building until he gets around to converting it?

Since all applicants for the permit requests at this meeting were present and heard the explanation, Mike recommended that the Commission, if agreed, advise each of those applicants that there would be something drafted as described above for them to sign by the time of the Board meeting. The Commission agreed.

Sharon Buckley suggested that the Commission ask the applicants present what, in their opinions, a reasonable period of time might be within which to require the demolition or conversion after the issuance of the temporary Certificate of Occupancy.

B. William Nordvik, 24282 Essex Avenue, new house/tear down existing house
Mr. Nordvik represented his application. The Commission has the building plans, an application for a 1500 square foot rambler with an unfinished basement and septic system, proof of ownership, and a site plan. The property is not in shoreland. Appropriate side and rear setbacks are shown on the site plan, as well as the minimum fifty-foot separation of the septic from the well. The same driveway will be used. There will need to be a demolition permit obtained through the Building Inspector when Mr. Nordvik is ready to demolish the old house. His plan is definitely to demolish the old house. William thought that sixty days would be ample time after move-in to tear down the old house, in his situation. Kenny Miller moved to recommend to the Board to approve the application as presented with a timeline for a teardown a decision to be made by the Board. Nancy Sauber seconded the motion, which passed unanimously.

C. Mary Kay Holzerland, 8685 225th St. W., new house/tear down existing house
Mary Kay represented the application. The Commission has building plans and an application for a 1680 square foot rambler, a manufactured home, with a loft, an unfinished basement, and a 624 square foot attached garage. Ms. Holzerland is not applying for a septic system at this time due to not being able to acquire a soil sample because of the frost. Mr. Greco asked Ms. Holzerland to delete the check-off for the septic and initial it on the application submitted. There is proof of ownership. The site is not in shoreland. Mike asked a question about the site plan, as the area designated for the new home is vaguely drawn. Is the 68' measurement from the side, measured from the point indicated by an "X" on the plan? The answer was "yes" and the "X" represents the approximate center of the house. Mike reminded Mary Kay that the side setback is 30'. Before any digging for the foundation is started, since the plan is a little vague as to placement of the house, the Building Inspector would be required to come out to the site and measure the placement of the stakes to be sure that the setbacks and distance from the well are

met. Mary Kay said that she and her husband are hoping to live in the old farmhouse until the new house is built, but they may not be able to because of the ultimate placement of the new house. If the Holzerlands decide later that they wish to tear down the old house before building the new house, they would need to come in for a demolition permit first. It would not be a problem to change the occurrence of the teardown relative to the building of the new house. There was discussion of obtaining permission from the Township to use the road (225th St. W.) for more than 5-ton loads during the construction and teardown. Mary Kay was advised to have her contractor make contact with a Road Supervisor about such a waiver. There are also road bans from approximately March 15th to May 15th to be considered. There is no question that the Holzerlands will tear down the existing house and perhaps also the garage that is closest to the existing house, Mary Kay stated. Mary Kay said that perhaps 90 days would be sufficient time for teardown once the temporary Certificate of Occupancy is issued. Mary Kay also asked whether one would be permitted to live in the basement of the new house before the rest of it is finished. The answer given her was that it would be up to the Building Inspector, depending on safety. It is also not desirable to be in the basement only for an extended period of time. Kenny Miller moved to forward the application to the Board with the recommendation to approve with the understanding that there needs to be a septic design for the site, that the location of the home in reference to setbacks must be finally determined, and that there will be a removal of the existing house after the temporary Certificate of Occupancy is issued. Sharon Buckley seconded the motion. Mike clarified that what the Commission is asking is that the septic system plan and septic system permit are completed before occupancy, and that the final location on the site meet all setbacks. The motion passed unanimously.

D. Wayne Hallcock, 5975 280th St. W., new house/teardown of existing house

The Commission has an application for a single-family, 1680 square foot rambler with a finished basement, a 896 square foot attached garage, and a septic system. The existing driveway will be used. The notation on the form that indicated a driveway to be permitted was deleted, and Wayne initialed this change. There is a porch noted on the back of the form, but this is not a screened porch; there was an adjustment on the square footage of the entire project. There is proof of ownership, a site plan, and a septic design. The existing garage is to be moved to the Hallcocks' son's house. Wayne was advised that he would need to obtain a moving permit at that time as well. His plan is definitely to tear down the house after building the new house. Since Wayne is a farmer, and he has to do harvesting and planting, he would ask for a longer time to accomplish the teardown of the existing house. He would prefer to take the old house down during the winter, but it may be necessary to do so during the following summer. This teardown could be within six months from the time that the temporary Certificate of Occupancy is issued, Wayne suggested. Mike asked Wayne to draw the existing driveway on the plan. There is a letter from the County stating that the actual building site is not in shoreland. Ken Olstad moved to recommend approval of the application with language added by the Board about the teardown of the existing house. Kenny Miller seconded the motion, which passed unanimously.

>The meeting was recessed for ten minutes, with a restart at 8:00 p.m. for the public hearing. As Town Clerk, Nanett Champlain took the minutes for this continuation of the February 19, 2008,

Glory to Glory CUP public hearing and also for the Planning Commission's discussion of the hearing comments and issues as they occurred later during the meeting. <

2. Other Land Use & Zoning Issues

A. Public Hearing, Glory to Glory Academy CUP (continued from February 19, 2008) – See Town Clerk's minutes as noted above.

There was a fifteen-minute recess taken after the conclusion of the public hearing.

Mike Greco reconvened the meeting at 9:55 p.m.

As earlier agreed, the Commission revisited the other Land Use and Zoning Issues portion of the agenda before going on to discuss the public hearing comments and issues.

B. Polly Johnson, Lot of record verification

Those representing this application said that they would withdraw their application and would reapply later and then left the meeting, Nanett Champlain informed Mike Greco. There was no written withdrawal of their application, however, Nanett stated.

C. Mark Buffington, 6725 245th St. W., pole building without a permit

There was no one present to represent this issue.

There were no other land use and zoning items brought forward from the audience.

The Polly Johnson lot of record verification and the Mark Buffington pole shed without a permit items were tabled until later, Chair Greco stated for the record.

D. Rebuild/Teardown Policy Revisited

Mike Greco asked that the Commission discuss the rebuild/teardown issue as another land use and zoning issue, with the attorney present. Mike said that his recommendation would be that the Commission should direct the attorney to come up with an agreement that the applicant can sign that indicates that the applicant understands that he must either convert the building as explained in Mr. Qualle's email concerning removal of all essential living facilities, or that he must tear down the existing structure within 180 days. Mike said he suggested 180 days as none of the applicants at this meeting asked for more time than that. Mike further recommended that the Commission ask for a security deposit of some reasonable amount to ensure that, if the structure is not removed or converted within the 180 days, the Township is able to demolish the structure and/or take legal action if necessary. Kenny Miller estimated that, dependent on the size of a house, its demolition and removal would require \$3,000 to \$7,000. Mike also stated that if there is a septic tank associated with the building that would not be used, there is a procedure necessary to close up that septic tank. There might also be an issue of the capping of a well, depending on the particular circumstances. Mike again mentioned the temporary Certificate of Occupancy as another possible way to enforce the demolition or conversion of the structure. Ken Olstad asked how a contingency for removal/conversion might be applied on a building permit. Kenny Miller asked Trevor Oliver if it would be legally proper for the

Township to approach this by requiring a covenant or agreement, signed by both parties, with an escrow account. Mr. Oliver replied that, although legally proper, he would not recommend proceeding in this manner. He would rather see the linking of the permits; both permits could be applied for at the same time, and there could be some “play” with the deadlines on each permit. The escrow would be deposited as part of the application process for one or both of the permits, Mr. Oliver stated. Trevor further commented that he liked the concept of using the temporary Certificate of Occupancy to ensure compliance. Mike Greco said that the current applicants from this meeting could still be asked between the Planning Commission meeting and the Board meeting to apply for the demolition permits in conjunction with their building permits for the new houses. There was some further discussion of these methods by which the Township could ensure the demolition/conversion of the existing house. The result of that discussion was Mr. Oliver’s stating that the complication with the agreement method would be that, if it were violated, as a civil matter, this would have to go to court for action. The temporary Certificate of Occupancy could be limited in time, and if the existing house were not demolished or converted within that time, the temporary Certificate of Occupancy would be revoked, the occupants would then inhabit a structure without proper authority and could be removed. Therefore, those property owners would have an incentive to comply. With the Township’s authority under the Building Code and under its own Ordinances, with the zoning being what it is, and because there would be no inherent right to have more than one house on the lot, this would enable the Township to proceed with the demolition of the older house, using the escrow or letter of credit. It would be put on the applications up front what the escrow is for so the expectations would be clear. The standards for invading someone’s property would be lower in this instance than with a signed agreement.

Mike Greco moved to recommend to the Town Board that, in instances of a teardown and the building of a new home on a property, a temporary Certificate of Occupancy, limited to 180 days, be granted once the new house is in a condition to be occupied. The landowner should be made aware that the temporary Certificate of Occupancy would be revoked if he did not demolish the existing structure or convert it to a structure that is free of all essential living facilities. It would further be required that an escrow or a letter of credit be deposited in the amount of \$5,000 to provide the mechanism for the Township to demolish the house if that should become necessary. Ken Olstad seconded the motion, which passed unanimously.

>The Commission then turned its attention once again to the Glory to Glory Academy CUP agenda item. The minutes of this portion of the meeting, as mentioned above, are to be compiled and submitted by Town Clerk, Nanett Champlain. <

The Commission then looked at what was left on its agenda. The Commission asked that Mr. Oliver take up one of the items, 2. C., the letter from Mr. Buffington, concerning his pole building without a permit. Essentially, Mr. Greco stated, Mr. Buffington refused some time ago to allow the County onto his property. The County Assessor’s Office made contact with the Township after the assessor went to Mr. Buffington’s property to do an assessment this year, because he saw what he believed to be a building that was not there in 2006. This building was in evidence on the County’s aerial photos. The Assessor’s Office asked the Township whether

Mr. Buffington had applied for and received a building permit for this structure. The answer was no, he had not. The Building Inspector was consulted about what to do about this matter. Mr. Qualle tried to call Mr. Buffington, who basically said, "Thanks for the information," and hung up, Mike said. The Building Inspector let the Township know that this is what happened. The Township next received a certified letter from Mr. Buffington, asking a number of questions such as what is the Township's authority to require building permits, is it the Township's policy to violate private property, etc. The initial feedback that Mr. Greco gave Nanett Champlain is that Mr. Buffington has to come in for a building permit or the building has to come down, or if he is claiming that it is an ag building, then he at least needs to come in for a zoning compliance. The Township has an agricultural exemption form that people can fill out that takes them through the State statute for ag exemption. The Township asks them to sign this form, certifying that they are ag and that they meet all the requirements. According to Board policy, Mike will talk with attorney contact Supervisor Cory Behrendt concerning Mr. Oliver's becoming involved in this matter so that the Township's response can be moved along in a timely fashion.

3. Other Business

A. Board Report

This was tabled until Wednesday

B. Organizational/Administrative Items

1. Permit forms update

2. PC report at the annual meeting

These were tabled until Wednesday

C. Ordinance Update Round II

The Commission had met on February 28, 2008, and looked at the language that Mr. Oliver had forwarded to it and had some questions on it. The Commission also made some changes in some of that language. There were other issues that the Commission would like to discuss with Mr. Kelly and Mr. Oliver, to show them some examples that illustrate that the proposed language is not quite right. There were also some items that Mr. Kelly had said he would give language on that the Commission has not yet received. Mike sent Supervisor Behrendt a memo covering all of this. Mike was not sure if Cory had forwarded this memo to Mr. Oliver yet, but it is the Commission's intent to meet with the attorneys mid-March on these matters so that they might be resolved and a public hearing on them might be held mid-April. The tentative date of March 17, 2008, was set forth for the Attorneys/Planning Commission meeting.

D. Septic Inspections

This was tabled until Wednesday

E. Training

This was tabled until Wednesday

At 12:35 a.m., Chair Greco recessed the meeting until Wednesday, March 5, 2008, at 8:30 p.m.

Submitted by,
Nancy Sauber, Recorder