

EUREKA PLANNING COMMISSION
SPECIAL MEETING
FEBRUARY 28, 2008

Chair Mike Greco called the meeting to order at 7:04 p.m. Commissioners present were Sharon Buckley, Mike Greco, Ken Olstad, and Nancy Sauber. Kenny Miller was absent. Audience members included Supervisor Gloria Belzer, Supervisor Jeff Otto, and Timothy Kuntz.

The purpose of the meeting was to discuss the most recent ordinance language from the attorney for those items before the Commission in "Round II" and to decide whether further attorney input or discussion between the Commission and the attorney is needed. Chair Greco referred to the spreadsheet of ordinance items that he had prepared and the Commission has been working from.

The two areas of **wind energy** and **limiting school location** are to be dealt with after the Comprehensive Plan update.

There were some items where Mike was not sure if there had been language back from the attorney. One was **outdoor storage**. Nancy Sauber replied that was an area she had been assigned and, at the November roundtable with the Board and the attorney, she had reported that this was an area related to industrial/commercial ordinances, and since the Township does not allow either use, it could be dropped.

There were also a number of other items where Mike was not sure that the Commission had received language back or where perhaps Patrick Kelly, Township Attorney, had thought that the conversation held at the November roundtable was sufficient. Mike asked that the Commission go through these and come to agreement as to what it is looking for. He would then send a list back to the attorney with these items. Mike also said that he would like the Commission to go through the memos that have been received from the attorney. If it can come to agreement that the recommendations given make sense and that is how the Commission wishes to proceed, then he would go ahead and make those changes and, if not, he would like to document any specific questions to send to Mr. Kelly. He also stated that the Commission could determine at the end of this meeting whether it would like another meeting with Mr. Kelly and/or Mr. Oliver to discuss changes.

Assemblies: The recommendation made was to add a sentence that the Township shall release the bond within 60 days after the assembly unless the Township has already notified the licensee in writing of a claim against the bond. Patrick Kelly had indicated that he was okay with that addition; the Commission agreed.

Junk: Mr. Kelly had recommended adding language as to how it would be enforced if someone did have junk but was not willing to remove it. Patrick had said something about abatement or tax assessment. This language has not been received. Mr. Kelly was okay with the other changes the Commission had suggested. The Commission agreed that at this point all that is needed is the language on the abatement/tax assessment portion.

Noise/Nuisance: The Commission has talked about the “Jake braking” issue, and Mr. Kelly was to provide language for this. Nancy Sauber said that there was a lot more language that the work group had done that she had thought the Commission had asked Mr. Kelly to look at. Mike said that Patrick Kelly has said that this language from the work group was fine.

Driveway Setbacks on Township Roads: Mike said he has the language that Ken Olstad wrote, but was not sure where this had been left. Ken Olstad said that he thought that it was agreed to scrap that language. Mike asked whether that was because the Commission decided that the current regulation of 300’ applied only to the intersections of non-Township roads. Mike said that the issue is really about the high speed on County roads. He did not see Township roads approaching County roads as the issue. Where there are two County roads intersecting, especially because there may be turn lanes in the future, driveway setback becomes important. The County reviews these driveways for permits, so that really covers that. The only Township requirement would be the ten-foot setback from the property line providing there is adequate drainage so there is no run-off onto adjoining properties. Mike suggested that the language say “Driveways accessing a Township road must be located a minimum of 300’ from any County or State highway.” It would not apply to Eureka Estates (as has come up in the past), nor would it apply to two Township roads that intersect. It would apply to roads that intersect Dodd or Cedar, for example. The Commission agreed.

Escrow Funds: Mike said that he recalled Mr. Kelly saying that he would provide a schedule of recommended escrow funds for Nanett Champlain, Town Clerk. Mike also said that Mr. Kelly had stated that there was a way that some of these could be rolled into administrative fees, such as when people do not show up to pay for their permits. The Commission did not receive language on this. Mike said that he also happened to talk to Sherri Buss (with TKDA) related to the Glory to Glory permit. She had asked whether the Township had an escrow for that, and Mike told her it was \$500, which Sherri said was rather low. She recommended somewhere between \$1,000-\$3,000 as a standard Conditional Use Permit (CUP) escrow amount. Mike had formerly brought the Castle Rock Township newsletter to the Commission. In the newsletter it states that their escrow is \$1,000 for a variance, a CUP, or an Interim Use Permit, and \$10,000 for a rezoning or Comprehensive Plan amendment. Eureka could reasonably increase the escrow to \$2,000 for variances, CUP’s, and Interim Use Permits. Mike asked if the Commission would like to send this back to Patrick and ask that he recommend some amounts. The other Commissioners agreed.

Clustering: Mike commented that Nancy Sauber had sent each Commissioner a memo in response to the attorney language memos and asked Nancy to walk the Commission through her points. Nancy first asked that her memo, entitled “Response to Attorney Feedback *Re* Ordinance Updates (6)” and dated February 4, 2008, be attached to the minutes of this meeting and be forwarded to the attorney. Nancy also offered the opinion that the items on this memo were complicated enough that she does not see their being resolved at this meeting and would request a meeting between the attorneys and the Planning Commission. Mike suggested talking about a further meeting at the end of this meeting and asked others if they were okay with attaching the memo to the minutes of this meeting. It was agreed to do so.

Mike stated that the goal with clustering was to clarify the ordinance language to reflect what is understood to have been the traditional interpretation and application of this ordinance that has been that one can cluster *to* a partial $\frac{1}{4} \frac{1}{4}$ but not *from* a partial $\frac{1}{4} \frac{1}{4}$, and there was a requirement that there be at least 80 contiguous acres. There was also the issue of whether or not a public hearing is required for clustering. Mr. Kelly had said at the earlier meeting that a public hearing was not necessary, but Mr. Oliver's language retains this language.

Nancy stated that one area she had a question about was the instance she had brought up at the earlier roundtable meeting. This was a case in which a property owner owned complete $\frac{1}{4} \frac{1}{4}$'s and a partial $\frac{1}{4} \frac{1}{4}$ and was allowed to cluster the building right from a complete $\frac{1}{4} \frac{1}{4}$ onto the partial $\frac{1}{4} \frac{1}{4}$, even though that $\frac{1}{4} \frac{1}{4}$ already contained three houses and a buildable lot of record. She did not see that this was addressed in the language put forth by the attorney. This sort of transfer should require a consideration of the density already existing in the $\frac{1}{4} \frac{1}{4}$ in question. Mike asked if that is not already taken care of in "2 B" which says that a maximum of four dwelling units may be constructed in any $\frac{1}{4} \frac{1}{4}$ section. Nancy said that she believes that it would be more clearly read by people and that sort of thing would not happen again if the transference into a partial $\frac{1}{4} \frac{1}{4}$ were specifically addressed and spelled out. What happened should not have happened, but it did. At a minimum, Nancy said, she would like to discuss this more particularly with Mr. Kelly to see if he thinks that it should be addressed specifically or does he think that the language given does, in fact, cover this situation and, if followed correctly, would not be a problem. There followed a brief discussion about lots of record, "first come, first served", not stripping building rights from lots of record, and houses *vs.* building rights in a $\frac{1}{4} \frac{1}{4}$ section. In the end, it was agreed to discuss this language further with Mr. Kelly.

Also to be discussed with the attorney was the question of whether a public hearing should be held in conjunction with a cluster application.

Ken Olstad asked about the part that says that if multiple owners were combining separate parcels of land to gain eligibility to cluster, all involved parcels must be in common ownership at the time of application. Ken wondered whether this means someone could buy a forty, do a transfer, and then sell the forty back. The intention is to have the clustering be within common ownership, and this would skirt that. Nancy said that she thinks that it bears discussing with the attorney. Now that Ken has brought this item up, where did it come from?

Ken also asked if it should say *how* the cluster is recorded. Details are missing here as to where and how.

Mike stated that regardless of whether the Commission meets again with the attorney as Nancy suggested or not, he would type up the questions being raised to submit to Trevor. In the case of a meeting, then, Trevor would have information as to what the questions were ahead of time so that he could be prepared. Nancy Sauber said that when she had mentioned to Patrick Kelly at the Board meeting that the Commission would maybe request another meeting with him, Patrick had said that he could bring Trevor and the Township would get "two for the price of one". Nancy said that she thinks it would be important that they both be there, if possible, so nothing is lost in the translation. Mike agreed.

Buildable lots prior to 1982: Mike stated that the goal here was to clarify the buildable lot policy by including requirements for substandard lots of record based on when they were created. That was the Township's approach; Trevor has offered another way to deal with it. The goal was also to address the density issue for substandard lots of record.

Sharon Buckley mentioned that the language about filing surveys in the County Surveyor's Office is missing.

Mike said that the language still says that one cannot have more than four dwellings on a $\frac{1}{4}$ $\frac{1}{4}$. Nancy said she sees this as a problem because one could have "new construction" on a lot of record that might exceed the density requirement because the building right on that lot of record cannot be entirely stripped from it. There exist lots of record that are larger in size and dimension than the minimum lot size and that, therefore, do not have to be combined to meet that requirement. There can also be lots of record that, although, not of the minimum lot size may be close and may stand alone and cannot be combined with adjacent substandard lots of record to meet the size requirement. That does not mean that they cannot have new construction on them. The construction on "newly created lots" makes sense, Nancy stated. The part taking out "created" before 1982 is a problem, Nancy said. That language was put in there to protect the people who had lots of record before the one house per $\frac{1}{4}$ $\frac{1}{4}$ zoning. A similar problem exists with the part about having to always have been in the same or separate ownership. Some person could have created four legal lots of record before April 12, 1982, and may still own all of them so they would not be in separate ownership from abutting lands because he owns them all. This same person could also have sold one of those lots of record after April 12, 1982, to somebody who has the abutting land on the other side of the one he sold. So, Mike said, the question is why "separate ownership". Nancy agreed that this is part of the issue. The part from the existing Ordinances about "created and/or under separate ownership from abutting lands on or before April 12, 1982" needs to be in there still, Nancy commented. This part was cumbersome, and people did not always like it because it was cumbersome, but it is there for a reason. Those legally created lots before April 12, 1982, are lots of record that still have a building right. Nancy said that she could give examples of this. Mike said that he would prefer to hold that discussion for Patrick. This is one where Patrick needs to hear the specifics, Mike said. Patrick, Mike stated, is thinking what is the Township trying to accomplish, and he is not looking at particular cases such as the one Nancy is bringing up. Nancy said that she does not think that the attorneys have a full understanding of this history in the Township. Mike said he thinks that the Commission needs to sit down with Patrick. Mike will forward the general discussion from this meeting, the attorney will have Nancy's memo, and the Commission can discuss this in more detail with the attorney at a later date. The Commission agreed to do so.

Swimming pools were next discussed. The Commission had given the attorney some language from other communities. The attorney has now given language back. Part of the issue is that the Commission has been trying to deal with the fencing and gating aspect of this area, Mike said, and this has been confusing. It was further complicated by spas and hot tubs. The language gives a different definition of swimming pools. The depth has been changed from 24" to 36" and

now does include spas and hot tubs. Nancy said that she thought that she had remembered that the attorney had said at the roundtable that the Township did not have to deal with hot tubs. Mike said that he thought that the approach was that, whatever you call it, if it meets the depth and capacity requirements, it needs fencing. Nancy said a question she had was that, in some communities, it is allowed to have a certain type of pool cover instead of a fence as they are thought to be as effective as a fence in restricting access to the pool. Mike said that there have been people before who have asked about having a locking cover for their pools; they did not want to have a fence. Mike said that he remembered that then-attorney Jim Sheldon's response was that, yes, pool covers can be effective, but that they have to be used. A gate that is self-locking is self-locking. Nancy said, yes, but one has to move the ladder away, too. Mike said it may be that the ordinance would require a gate around a movable ladder. Nancy said that a fence could be visually offensive to the neighbor, and that, if the pool cover were safe enough, perhaps it could be allowed as an option. This question can be asked.

Mike said that the way it is worded for an above ground pool with sides that are high enough to function as the fence is cleaner than the existing language that has led to some confusion in the past.

Sharon Buckley had a question about the allowable clearance at the bottom of the fence being increased to four inches. Nancy commented that she believes the difference there is that the increase is allowed if there is concrete under the fence; one could not dig under it. This question will be asked. Mike said that these pool questions could just be emailed and responded to by email as well and the meeting could focus on more complex issues. The Commission agreed that it was comfortable with this approach.

Non-conforming Uses was up next. The Commission gave the attorney language; the attorney sent back language. Mike said that he believed the goal was to clarify what is a non-conforming use and make sure the Township is consistent with current State statute. There has been a fair amount of discussion of this topic already, Mike commented. The attorney recommended taking out the current Section 4 and replacing it with his Section 4. Mike read the current ordinance language and read parts of the proposed language. Mike asked if everyone were in agreement that nothing in that language necessarily addresses the issue of a lot splits regarding non-conforming uses. It was agreed that it did not. Sharon Buckley expressed the belief that it should say that if the lot is split, the owner must make a choice as to which piece would contain the non-conforming use.

Nancy offered that she has a problem with "g" which says that a structure that contains a non-conforming use may be enlarged or altered so long as the enlargement or alteration does not increase or expand the non-conforming use. If *all* the structure has in it is a non-conforming use ("containing a non-conforming use"), how can it be enlarged or expanded without increasing or expanding the non-conforming use, Nancy asked. Ken said he agreed. Sharon said that if someone were making small, noisy widgets and now wanted to make bigger, quiet widgets and wanted a bigger building in which to do this, it actually is less destructive to the neighbors and that person could make a bigger building. Nancy said that she believes that is expanding the

non-conforming use and disagrees with that example. The situation where “g” might fit would be in the case where there is a building that is half ag and half non-conforming, for example, and the expansion were going to be used only for the ag use. Then it would not be increasing or expanding the non-conforming use, Nancy said. She does not think that it is a good policy to have such wording, because in the first example it does not even make sense. Mike stated that he tends to agree with that. Mike asked the question what does it mean to expand a non-conforming use. There was the case of the Friedges building, he said, which may not be the best example. One could expand lots of things about it (the Friedges non-conforming use), but it was not an expansion of the non-conforming use, was what the Board decided. Mike said he was not sure what their rationale was. Nancy replied that the Board had said that since everything was to have been put inside the new building and that this would be better for the neighborhood, it was not expanding the non-conforming use. However, Nancy went on, there is still that very large building where there was no building before, and she does not understand how that cannot be expanding the non-conforming use and having more of an impact. The Board argued the impact would be less; as it turned out, Nancy said, it was more. Just having that huge building sitting there changes the impact. Mike said so the Board was looking at impact instead of use, whereas the attorney language says it cannot increase the nonconformity; one cannot become more nonconforming than he already was. One cannot increase or expand the *use*. Nancy responded that there was an argument made at one time, too, that one is not expanding the business, but one is expanding the building. Nancy said that she does not agree that making a building for a non-conforming use bigger does not also expand the non-conforming use itself. Mike said one would be either expanding the amount of material that is there, or one is creating more room for an additional worker or employee, or one is allowing larger equipment to be brought in to do whatever it is one does there. The question is are all those things an expansion of a non-conforming use, Mike said. If the individual makes a product, then finds a larger machine that makes the product, and now needs a bigger space for that machine, is that expanding the non-conforming use? Nancy said that she believes it is. Maybe the new machine will work more efficiently, but the idea, as expressed before, is that, ultimately, non-conforming uses should go away. If these uses are continually improved with bigger and bigger machinery, they will not go away. Ken said to think about the reason there is grandfathering at all. It is because people have invested in these uses and expect to be able to recover some of their investment. One could be changing the use in such a way that one could argue whether it is an expansion or not and maybe it enables one to make more money. If it increases the impact, is it sufficient to call that an expansion? If one puts a building where there was no building before, Nancy asked, does it not decrease the likelihood that the non-conforming use will go away? It was agreed that “g” should be deleted.

Nancy said that the other really important thing about the non-conforming subject is that the Township should not entirely delete the definition of non-conforming use and structures, as suggested by Trevor. This would be foolhardy, she said. The term is used in the body of the Ordinances, and should be defined. There has been so much confusion on this before with people interpreting things the way they wanted to, even with a definition. Nancy stated that she believed that what Trevor may have been attempting to do was more in connection with the last sentence of the existing definition that refers to the December 31, 2004, date. By taking that out, one would make this applicable to any use or structure that becomes non-conforming at any

point, not just in reference to Ordinance 32. The Board would set the deadline by which newly created non-conformities must be registered or it is the set time given. The attorneys are trying to take away the specificity to that date, Nancy believed. That is fine, Nancy offered, but we do need the first sentence of the existing language because the Township does need to have a definition for this. Mike said that he did not know that the Township has to because there is a State definition that is actually controlling the non-conforming use. Nancy said that has always been the case and, even with the definition, there have been problems, so why would one want to take it out? Mike said that he believes the attorneys' rationale is that the State definition is controlling on non-conforming uses and there is already a definition. Nancy said she still believes that the Township needs the first sentence of the existing definition language and that it is clear. Mike said that he might suggest using the Minnesota definition. Ken said that there could be a reference to the State statute. Nancy asked what would be the problem with having a definition in the Ordinances? It could only make it clearer and could only assist people with understanding it. The attorneys and the Commission will discuss this.

Ken Olstad said that the phrase "of the same or more restrictive nature" is not entirely clear to him. (In reference to the substitution of one non-conforming use for another) Could it be expressed in terms of impact? Mike responded that would be dangerous, because impact can be totally subjective. The impact may not be about what is happening in a building, but it is about what is happening on the property. Sharon said that she questions this changing of one non-conforming use for another by way of a CUP. Mike said that this goes to the conversation with then-attorney Jim Sheldon about the language that says any subsequent use must be conforming. The question was what is "use"; if one manufactures widgets and now wants to manufacture gadgets, is that okay? Sheldon had replied, yes, it would be okay. "Use" is a broad category, Mike said. It is not the difference between widgets and gadgets, but it is the difference between manufacturing and service. Sharon said that what she is suggesting is that this substitution does not encourage a non-conforming use to eventually go away. It is allowing the non-conforming use to morph into a conditional use permit and continue. Nancy said that she thinks that this could be better explained to the Commission. Nancy and Mike both expressed that they tend to agree with Sharon. Non-conformities are intended to protect people who have invested in their property to a point, but it is not to allow the use to continue, necessarily, forever. The hope is always that the non-conforming use will eventually become conforming. What the Township is trying to do currently, Mike stated, is to allow enlargement, but this language allows substitution.

There was a short discussion of items that were taken out such as the maintenance of sewage disposal systems. Non-conforming, if it is a sewage disposal system, does not mean one can continue it. That was probably a carry-over from the old, old ordinances and the County takes care of that anyway, Mike offered.

"Registration" has been changed to "alteration" of non-conforming uses. This is not suggesting that registration be opened up again, but, rather, that it is ongoing, so that as things are changed in the Ordinances and new non-conformities may be created, this registration and its accompanying deadline goes forward with it.

Aircraft Hangars were next. There is an attorney memo on this saying that it is not clear who has zoning authority. Mike said that he understood the memo to say that technically, the Metropolitan Airports Commission (MAC) should have established joint zoning boards, in this case, between Eureka and Lakeville. They could be pushed on that, but they probably won't do it. Ultimately, Mike said, MAC is bigger than Eureka, and Eureka would probably lose, in his opinion. Nancy said that her comment was that case law could be looked at closely or that other communities that have MAC reliever airports could be talked with to see what they have done. Sharon said that she has looked at the ordinances of other communities and said that those ordinances do not say anything about this. Nancy said that she was talking about case law. Mike said that he believes the attorneys have looked at case law. As Bridget Rief of MAC has told Mike, every time MAC wanted to do something at these airports, the zoning has been what they needed it to be. He said that he believes that this gets back to MAC is bigger than Eureka and they do what they want. Most other airports are probably zoned industrial, whereas Eureka is not zoned industrial. Mike wondered what the zoning is on the Lakeville side. Was it Lakeville that zoned it that way, or is it that MAC assumes it has the ability to do what it wants, that its statutory authority would trump municipalities'? It is probably zoned however it needs to be zoned for the use that is there, Mike said. This may raise the larger question of is there a reason why Eureka may not want this area zoned to allow commercial as far as airport kinds of commercial. Trevor raises the issue of having a Starbucks there that could be open beyond airport use. The bigger question may be the performance standards, the building requirements. This can be talked about in the Comprehensive Plan land use discussion. There was a definition added for airport hangar. There was also language added for application requirements for airport hangars. The discussion continued for a while, with the end result being that this issue will be further discussed during the Comprehensive Plan updating and that the attorneys will be asked about other communities' relationship with MAC.

Utilities and road right-of-way excavation: This language was work group language. The bond was increased. The Commission agreed with the language. The attorneys will review this language. The language should say that utility companies must post a bond in accordance with what is listed in the fee schedule. This would allow the fee schedule to be updated and changed without going through Ordinance updating.

Home Occupations: There is suggested language from the attorneys, and Nancy has some questions on this topic, Mike said. Mike said that he would track the changes approved by the Commission on the attorneys' document and send it back to them. Nancy talked to the different changes that she suggested. The Commission discussed them and agreed to the following as noted in the attached memo:

- > Ordinance 1, Chapter 4: add "in a building".
- > Add "G. If a home occupation is conducted in an accessory building."
- > Cap the accessory building use at 1,000 square feet or 25% of the total square footage of the dwelling, whichever is less.
- > A. 2-f: Add "products".
- > A. 2-I: Add "or maintenance". Also agreed to add "or motor vehicles" after "internal combustion engines".
- > A. 2-k: Eliminate this item.

> B. Application procedure:

>Change 350' to 1,000' so it is consistent with CUP and variance applications.

>Also agreed to take out "from time to time".

>Require escrow; The attorney would be present at public hearing, and could have other issues such as waste disposal that would need a consultant's advice.

> License renewal: The onus of proof of compliance should be on the applicant. Likewise, the home occupation owner should pay all costs incurred by this determination of compliance, Nancy said. Mike said that this is already covered in the fee schedule under inspection fees. Nancy asked how is the determination of compliance to be made; does the Township want to require an inspection? Mike said that he believes this should say: "The applicant shall demonstrate that all licensing conditions are met." Nancy said that it should not be the case that others are paying for the proof that a home occupation is in compliance. Mike said that the sentence says the Town Board cannot renew the license unless it finds that the home occupation meets all the conditions, and that Nancy is bringing up another issue which is who proves that the home occupation is in compliance. It is agreed that the applicant is responsible for this.

> A. 2: The Commission agreed to add a minimum requirement of 10 acres for a home occupation *in an accessory building*. ("A home occupation may not be carried on in an accessory building on a parcel less than 10 acres in size.") The majority agreed that this made sense, as explained in the attached memo.

Ken Olstad expressed the opinion that the item ("i") that prohibits machining, etc., is too restrictive. Ken gave an example of CNC machining, which he believes can be quiet and would not be a problem. The Commission discussed different options in the wording that might allow such uses as CNC. It was discussed whether there should be a listing of uses that should be prohibited such as those that are more industrial in nature and likely to cause problems, or should this be dealt with only by letting noise and nuisance ordinances regulate this. It was discussed what "objectionable" means and whether, if most people would find a use objectionable, it should be prohibited or not. It was decided that the Commission discuss this item with the attorneys.

Ken asked how this idea of home occupations in accessory buildings fits with not making illegal businesses legal. Mike said that he would add Ken's question to the email to the attorneys.

Interim Use Permits, Automobile Graveyards: It was agreed to eliminate automobile graveyards and to limit the phase-in period to 30 days. The attorneys will be asked for the language to put this into the Ordinances.

Soliciting and Canvassing: The "shorter" version provided is as long or longer than the first one. The Township wanted to avoid having to do background checks on people because it simply does not have the staff to do so. Is it possible to have something shorter that is not overly burdensome? The point was to gather reasonable information about solicitors. They should be required to register with the Township. Citizens would be able to ask for the license and could call the Sheriff if the solicitor did not have a license.

Horses: Scott Qualle, Building Inspector, had sent a memo about not considering horses as ag. In order to be considered ag, horses have to be raised for a specific purpose, according to State statute. It may be worth asking the attorney if he agrees with this requirement. The Township would then not be giving people ag permits for a barn because they have two horses that are essentially pets. The Commission agreed to ask about this item.

Sharon Buckley asked about the timeline for these Ordinance updates. Mike said that he is confident that most of these items are things that can be taken care of in one meeting with the attorneys. The items that require this discussion are buildable lots and clustering. It is really a matter of the attorney understanding what the Commission wants and fixing it. If this cannot be accomplished soon, Mike said that he was inclined to say that these items could wait until the next round of updates that will come after the Comprehensive Plan update. The Commission should ask the attorney to try to get this back to themss by next month. The meeting with the attorney would probably not take place before mid-March. All agreed to bring calendars to the regular Planning Commission meeting on March 3rd.

Ken Olstad moved to adjourn; Sharon Buckley seconded the motion. There was no objection to the adjournment. The meeting was adjourned at 9:29 p.m.

Submitted by,
Nancy Sauber, Recorder

RESPONSE TO ATTORNEY FEEDBACK *RE* ORDINANCE UPDATES (6) 02-24-08

NON-CONFORMING USES AND STRUCTURES

Do not delete entire **definition**, just the last sentence of it. We NEED a definition; we have had enough confusion on this topic already! I believe the intent of the removal is focused on the second sentence of the definition so that the ordinance addresses all non-conforming uses and structures that may come into being as we move forward. The terms “non-conforming uses” and “non-conforming building” are used and need to be defined.

Section 4-G: How would a building containing a non-conforming use be enlarged and NOT increase the nonconformity or expand the non-conforming use? Perhaps if there were a building that housed, say 50% ag use and 50% non-conforming use, and the building were to be enlarged but the additional space were to be used for the ag use only, that would fit. Otherwise, this does not make sense and is not, I believe, good policy. I believe this segment (G) should be deleted.

HOME OCCUPATIONS

Ordinance 1, Chapter 4: (Definition) “Any occupation **in a building** that results...” Otherwise, the use could be carried on outside!

8. “Home occupations **are a permitted use with a license** subject to the licensing requirements stated in Chapter 4 of this Ordinance.”

Under Ordinance 3, Chapter 4 (new section):

Section X-A- LICENSE REQUIRED- Add “**G. If a home occupation is conducted in an accessory building.**” Without that, we do not have adequate oversight for such use in an accessory building. Since allowing home occupations in accessory structures is a departure from best planning practices (as noted by planners interviewed), such oversight would be very important from the Township’s (and its citizens’) perspective. *Any* home occupation in an accessory building should require a license. If the home occupation were to be carried on in the traditional sense of being only in the dwelling unit, it would require a license only if any of “a” through “f” occur more than 30 days a year, as currently stated in the suggested language.

A. 2-d- Cap it at some square footage. 1,000 square feet, roughly the size of a three-car garage, was recommended by one of the planners interviewed because this is the size at which very large equipment can be introduced. I do not believe that we want that. There would be no hardship in restricting it to this size, and twenty-five per cent of some very large homes’ total floor space could exceed 1,000 square feet.

A. 2-f- (last sentence)- All **products**, materials, and equipment related to the home occupation shall be stored within an enclosed structure. (no finished material outside/ could be producing on-site also) If “the premises” means the land, then could store outside. ALL storage needs to

be in a building. Outside storage is unsightly, changes the residential character, and is not desirable.

A. 2-i- "...shall not include the repair **or maintenance** of internal combustion engines..."
(Could have a Jiffy Lube!)

A. 2-k- This item should be eliminated! These are *minimum requirements* and should not be waived under any circumstances. An arbitrary Board, under "k" could even say that there could be fire hazards, or any number of non-resident employees could work on the premises, or traffic could be greater than normally expected in a residential district, or noise could be created detectable to the normal senses off the premises, and so on and so on if the home occupation is at least 350 feet from a residential lot line! This is clearly not what is desired. This would be chaotic and this segment has to come out.

B. Application Procedure-Make the notification to the owners of all properties located within **1,000** feet of any lot line, etc. as we currently require with CUP and variance applications. This is more appropriate in this rural setting. 350' is a more urban setting designation.

If there is waste that needs to be treated or regulated (A-f), for example, are additional expenses incurred during the application process to verify? Is there an escrow amount to cover such circumstances and not just the public hearing? Was it the intent to hold these public hearings at regularly scheduled meetings or will the usual public hearing fee be assessed?

C. License Renewal- If there are expenses incurred in the Town's determination that all licenses and Town ordinances are being met, who pays the amount? Does the Board send a representative (or two) to inspect? How is such determination made?

Generally, if the argument for allowing home occupations in accessory structures is that given at the last roundtable, namely that Eureka contains larger tracts of land and it is not unreasonable to allow these uses under that circumstance, then a minimum acreage requirement (say, 10 acres) should be set, as suggested by one of the planners interviewed. This would accomplish two things: 1) It would eliminate the potentially troublesome scenario of having home occupations in accessory buildings in areas that are more suburban in make-up, such as Eureka Estates, and 2) In the future, when the 10 acre parcel is broken up and sold off, the license goes away so that we do not have home occupations in accessory buildings in the then-more-densely populated areas. Otherwise, the home occupation in an accessory building never goes away. It was agreed at the last roundtable that a CUP would not be a desirable tool, as the use would run with the land whereas the license needs to be renewed. If a minimum acreage were to be required, this use would then be in the areas where the above argument could be made more logically. Traditional home occupations in the dwelling only would still be allowed in Eureka Estates or any parcels smaller than the 10-acre minimum requirement. This would be reasonable.

BUILDABLE LOTS

Section 2- Okay, but does not apply to nonconforming lots of record. The density for any construction on *newly created* lots can be one house per $\frac{1}{4}$ $\frac{1}{4}$, but, because buildable rights may not be *completely* stripped from a lot of record, it is not true that all new construction on *lots of record* can be enforced at one house per $\frac{1}{4}$ $\frac{1}{4}$. Likewise, the minimum lot size of 2 acres, for example, may not be met by a lot of record, but that does not necessarily mean that the lot of record is not buildable. The Township may require that, in certain circumstances, lots of record be combined to meet dimension requirements, but it cannot strip all buildability from a lot of record that may be smaller than 2 acres, but not combinable with any abutting lot.

Section 3- “Lot of record” is not equal to “substandard lot” and *vice versa*. Because of the history of going to one house per $\frac{1}{4}$ $\frac{1}{4}$ there exist very large lots of record that are buildable, but *not* substandard as far as any dimensions.

A-1- The old language protected landowners’ property rights. “Created and/or separately owned” is an important part of the language in Section 2, A, 1-b of the current Ordinances. There may be separate lots of record that were created before the ordinance change of April 12, 1982, that are buildable, but that may all still be in the same ownership. Or, there may be lots of record that were sold after the ordinance change, but may not be separately owned from abutting lands. Or, there could be lots of record created before the ordinance change that were sold later and *are* in separate ownership from abutting lands. The proposed language says that they must have *always* been in separate ownership from abutting lands. Personal property rights would be destroyed by the new draft and the Township cannot do that.

A-3- “...approved the lots or when the lot was created.” The lots did not have to be approved; they just had to be conveyed or be the lots resulting from a conveyance.

B- references Section 2-Should be Section 3? Last part of B-???

C- Additional references to Section 2 that should be Section 3?

C-1- Hard in application. Can always build a smaller house.

C-2- ...approved the lot **or when the lot was created.**”

Section 4- Clustering

Where does it address the problem that can exist when an owner of a complete $\frac{1}{4}$ $\frac{1}{4}$ wants to transfer a building right into a *partial* $\frac{1}{4}$ $\frac{1}{4}$, where the density is already at or even beyond the one house per $\frac{1}{4}$ $\frac{1}{4}$, as was described at the roundtable in November? An example was given of a cluster that was made that, because of a buildable lot of record in a $\frac{1}{4}$ $\frac{1}{4}$ that already contained three houses, exceeded the density requirement, becoming the *fifth* building right in the $\frac{1}{4}$ $\frac{1}{4}$. If it is the intent to not allow this to happen again, this should be addressed.

Automobile Graveyard-okay

Swimming Pools- Just a question of covers to pools instead of a fence. Some are thought to be as safe as the fencing option.

Additional comment on Airport memo-What case law is out there in instances of, for example, a county hospital in a city, or a county dispatch in a city, or county airports in cities- where two regulating bodies (other than the State) may be in conflict?

What do the other cities that contain MAC airports say as to zoning authority? South St. Paul has the only non-MAC airport in the metro area. What does Eden Prairie, which has Flying Cloud Airport, say about zoning authority? Or any other municipality with a reliever airport?

Submitted by,
Nancy Sauber