

EUREKA PLANNING COMMISSION  
REGULAR MEETING  
MARCH 2, 2009

Chair Sharon Buckley called the meeting to order at 7:04 p.m.

Commissioners present were Sharon Buckley, Vince Mako, Kenny Miller, Ken Olstad, and Nancy Sauber. Town Clerk Nanett Sandstrom was present. Audience members included Supervisor Cory Behrendt, Supervisor Dan Rogers, Supervisor Jeff Otto, and Building Official Scott Qualle.

**Approval of Agenda**

Items were added to the agenda under "Approval of Minutes." Nancy Sauber moved to approve the agenda as amended. Kenny Miller seconded the motion, which passed unanimously.

**A. Permit Requests**

There were no permit requests.

**B. Land Use and Zoning Items**

There were no land use and zoning items before the Commission.

**C. Building Official Time**

Building Official Scott Qualle was in attendance.

**1. Contract Renewal**

The contract is up for renewal. The Town Board is the body that addresses this. Items that will be discussed are extending the length of the contract from one year to the originally-proposed three years and certain fee change recommendations.

Kenny Miller asked about the part concerning the Building Official's receiving 75% of all penalty fees. Kenny wanted to know why the Official should receive this money. Scott replied that currently, for example, his office has spent thirty or forty hours on the Buffington case, where he was sued, and has received no money for that. Scott stated that, according to the Building Code, the Township is obligated to defend the Building Official unless he acts out of malice or in bad faith. He has not submitted a bill for the reimbursement of those expenses or for any time that was spent in defending that case. He said that he takes that on as part of his responsibilities. Kenny asked, in uncontested cases, why does the Building Official receive a share of penalty fees? Scott replied that having to do a special investigation involves extra visits, letters, whatever is required. Kenny voiced his objection to this matter. Sharon stated that the minutes would reflect the discussion.

Ken Olstad commented that perhaps Kenny was talking about those simpler instances where someone has started the work without a permit, has his fees doubled, pays the doubled fees, and then continues with the work. Ken said that what he believes Scott is

talking about is a different situation that involves more work to reach a resolution. Kenny said that he thinks that in the cases that may be contested and require more hours, Scott should bill the Township for those hours, but that there should not be “blanket coverage,” whereby the Official would receive 75% of *all* penalties.

Scott added that there were a couple items that were included in the proposed contract at the end of the Building Official responsibilities section. One of these was the timeframe within which applications will be processed. Also, language was added that states that the Building Official is responsible for processing the license investigations of all contractors. Nancy Sauber asked when the clock starts with the Building Official’s processing of the applications. Scott replied that it starts for his office once they have received a complete application from Nanett. This inclusion is simply an assurance that applications will be processed in a timely manner.

## **2. Permit Application forms**

Ken Olstad gave a brief recapping of the process by which the forms have been amended to date. There are current concerns from Nanett. She would like to see the form be no longer than two pages, so that nothing gets lost. If it were two pages, it could be printed back-to-back.

Scott commented that the application serves one purpose for the Building Official and a different purpose for the Township. The application and the (inspection) card are really the permit, Scott stated. The application should be as complete as possible without being too long. The goal from Nanett’s perspective, Scott said, was to pare it down to two pages. It could be that some items on the form do not really have to be there. Determining what the Township wants or needs is part of this process. Plans for a single-family home need to be saved for only one year. Scott stated that he should, however, be able to go back to the file after that year and see from the form if it was a bedroom addition, a basement addition, or what. His goal is to make the form as thorough and as complete as possible because it, along with the inspection slips, are really the permit written record. The type of structure section may be what the Township wants or needs on the form, or it may be there because it has always been there. The list of the types of structures could be reduced to those most commonly used, or it could be converted to a blank space that the applicant fills in with the type of structure. This would save significant space. If it would be unclear how to designate a type of structure, Scott’s office could be consulted when the application is filled out. Scott has a couple of other suggestions he would be willing to discuss, he said.

Kenny commented that these application forms are the Township’s record of what has happened on a particular piece of property. He said there should be as much information as the Township deems necessary, and he suggested that Scott is looking at these forms from only his own (Scott’s) perspective. Scott said that it could be a “freeform” spot where “dog kennel,” for example, could be written in. Kenny disagreed, saying that the different structures should be listed on the form, and each is either checked or not checked. This type of record is important for the future as a record of the site, Kenny contended. Scott said that he wants the form to be functional for the Township and also

to be functional for the Building Official. Minimizing spacing might be another way to shorten the form. A legal-sized page could be another option to keep things from getting lost, Scott offered.

Ken Olstad suggested that Nanett and Scott each work on this and then report to the Planning Commission with their ideas.

Scott reminded the Commission that, although the information is blended on the application forms, the responsibility of the Commission and the Board concerning building permits is purely that of land use and zoning. Their authority is connected to the land use; there is no point or purpose in the Board's approval of building permits if there is not a land use issue.

### **3. Ordinance Update Needs**

Some time before, Scott had given the Commission ordinance language concerning commercial plumbing permits. Scott explained that the original request for services from the Township was to provide these permits in lieu of the State Plumbing and Engineering Unit, as his business is able to do. This is in reference to plumbing plans for commercial projects; Glory to Glory is an example of this. However, that particular project was sent to the State and approved at that level. Scott was not sure how long that took, but generally, the State can take up to 14 weeks or so to complete such a review if it is a busy time. The State does offer a 15-day turnaround at twice the fee, but does not guarantee that turnaround. If they are too busy to accomplish a 15-day review, Scott said, what happens is half the doubled fee is returned, and it takes however long it takes. The foundation on a project cannot be started without the approval of the plumbing plans because the pipes cannot be put in. Therefore, the process can be delayed for much longer than would be desired in most, if not all, cases. Since Scott's company guarantees a 15-day turnaround at the standard State fee, this is beneficial for Eureka.

Scott further explained that once a municipality has requested and agreed that his company do these permits, the municipality adopts the ordinance language that he had presented to the Commission earlier, or something similar to it, and amends the contract language. The ordinance language has to be sent to the State. In the instance of Carver County, the State questioned how it would know what project was in the City and what was in the County. There could be a similar concern for Eureka, Scott stated; there are three different cities on Eureka mailing addresses, but the projects are in the Township, not any of the three cities. Scott said that he thinks that if Eureka Township is on the State's list of approved municipalities, then anyone doing work here would apply through Nanett, and, of course, it would be known if that project was in the Township or not. Scott is not sure why the State is worried about this. If he gets a plan that is not for one of his municipalities, he sends it to the State anyway. The worst case would be that the State does the approval anyway, which would be okay. His recommendation to the Commission at this time is to hold off on the ordinance language until he hears something further from the State. The other option is to adopt it, but the State may still say no.

Sharon clarified that if the ordinance is adopted, and an applicant came through the Township, it would go to Scott, but, if it went through the State, it may not. Scott agreed, but said that the State would still have to approve the ordinance.

Vince Mako asked what would happen in the event that a future building inspection firm was not authorized to perform commercial plumbing inspections. Scott replied that the ordinance would then have to be repealed and the permits would all have to go through the State. It would also be possible to just be sure to hire a firm which *could* do those inspections.

Vince stated that having the ordinance in place would be of benefit to citizens. Ken Olstad commented that it would not be hard to simply go ahead with the ordinance at such time that the way is clear; to do so now may just be confusing. Until this process is completed, the State will be the body which handles commercial plumbing permits for the Township

Scott indicated that he would look through the other ordinance language to see if there is anything else that needs to be discussed from his perspective.

Nancy Sauber reminded the Commission that the definition for commercial agriculture has to be amended to reflect that one actually needs a minimum of 11 acres to have commercial ag; that is, 1 acre in excess of the 10 acres at minimum that have to be in exclusive ag use. Even though this is in State statute, the Eureka Ordinance should be complete and clear to understand. There has been some confusion on this topic before, it has been discussed before, and it is on the list of Ordinance updates.

Another part of Nancy's question was the issue also raised before about whether horses should be considered ag or not. Scott said that in his opinion, horses are pets, unless they would be raised for meat. If they would not be considered ag, then someone who has only horses and no other animals such as cows or chickens, which are clearly ag, and no other agricultural activity such as raising crops, could not claim an ag exemption. "Ten acres and a horse" does not constitute ag use. Scott acknowledged that this is his opinion and that someone else on the other side might be able to construct a compelling argument that horses are, in fact, ag animals. Kenny stated that it might be helpful to have Scott present when this issue comes up again by way of an application.

Sharon then went on to say, in her communication with Scott at the time that a previous request for his attendance at a Commission meeting was voted down, he had made the statement that Eureka really underutilizes him as Building Official. He could contribute to the discussion at a meeting where a specific application has been submitted and there are questions. He could also attend meetings on a quarterly basis for general questions and information, as was once discussed at his hiring, but not followed through on.

#### **4. Over-the-Counter Permits**

There had been a question about the demolition of a structure, other than a house, not needing to come before the Commission. Unless the structure is a house, there is not a

land use and zoning issue involved in the demolition, so the permit can be handled through Nanett and Scott. In the case of a house, the act of tearing down the house is not the problem; it is the *not* tearing down the house that can be a problem, because of density.

It was discussed that there are really three levels of permits: (1) those that do involve zoning and land use, such as a new house, which must come before the Planning Commission and the Town Board and which must be reviewed and inspected by Scott; (2) those that don't involve zoning but do require a plan review, such as an addition to an existing house, which do not have to come before the Planning Commission or the Town Board, but do have to go through Scott for review and inspection; and (3) those that do not involve zoning nor require a plan review, such as re-roofing, which do not have to come before the Planning Commission or the Town Board but which are inspected by Scott.

Ken Olstad suggested that page 17 of the Commission's Policy and Procedure Manual should be stated more clearly concerning what has to come before the Commission. Sharon added that page 21 should also be looked at for the same reason. A list would make this clearer.

Scott commented that his definition of the term "over-the-counter," which is somewhat different from the way the Commission was using the term, is that it is the type of permit that Nanett can issue without even calling him. All permit fees are based on valuation except for one- and two-family dwelling maintenance permits, such as re-roofing, re-siding, and replacement of doors or windows. Plumbing and mechanical permits can be based on a valuation or a fixed fee; Eureka does a per-fixture fee with a minimum.

It was also discussed that any change of occupancy which would require a new Certificate of Occupancy, such as a house being converted to a school, has to come before the Planning Commission and the Town Board as it is a land use issue. An abandoned house being remodeled to be inhabited again is still a house and this would not involve land use and zoning. However, an abandoned house that was abandoned because of the construction of a new residence would be covered under the demolition permit, and this application would come before the Planning Commission and the Town Board. Density is an issue in that instance. Any temporary (6-month) use of a garage as a residence during the construction of a house, as allowed in the Ordinances, would need to be permitted and would also need Board approval.

Ken will work on this information for the manual. Nanett agreed that this would be helpful.

### **5. Temporary Structures**

Scott said that this area is one of the challenges that his company faces in its work. This was discussed for some time. "Temporary" refers to a maximum of 180 days; such structures must be permitted. Even a big tent for a wedding is supposed to be permitted. Determining the fee attached to such a permit is a challenge. The tent, in this example,

may be valued at many thousands of dollars, but may cost only a couple of thousand dollars to erect and rent. Temporary structures must meet Code for wind load, snow load, etc. Most car port, and boat shelter structures do *not* meet Code. Scott would follow the Township's lead in this matter; some communities ignore these structures. Whatever the stance is, it should be uniformly enforced. Nancy pointed out that in the Township's Ordinances as they are, a wedding tent would actually not be allowed. Three temporary situations are given and all else are prohibited. Anything that goes beyond the six months is considered an improvement and is then taxable. Anything that comes to Scott has to meet the Code. Enforcement would typically follow complaints. The question was asked how these different structures might benefit residents. Plastic-type constructions that have agricultural uses were thought to be fine and these would not come before Scott because they are ag. Other non-ag uses such as car ports should meet Code. What might be allowed for this type of construction is another question. In another community's ordinance language received *via* the attorney as requested to see other approaches, "unsightliness" was a concern for the township in question. Some plastic structures do meet Code; others do not. Ken stated that he would like to have a plan as to how this issue will be pursued. The starting place, he thought, is to figure out what is *wanted*. It was again stated that enforcement is most likely to follow complaints. The Township does not have the staff or the money to do otherwise.

Nancy asked Scott whether it were true, as represented by the previous Building Official, that there was to be some move at the State level to put agricultural structures under the purview of the Building Official. Scott replied that there is an optional appendix that addresses ag structures for Code enforcement, but nothing beyond that to his knowledge.

## **6. Other**

### **a. Examples of Exemption from the Building Codes**

The language Scott gave is out of the Building Codes. This could be incorporated in the Manual for clarity.

### **b. Buffington**

Scott gave a brief update on this. The Court had set aside the matter because the appeal process had not been gone through, so Scott has written a letter citing the owner for a violation of the Code because he did not obtain a permit. Mr. Buffington may start the process if he chooses. Cory Behrendt stated that he had received a call that Mr. Buffington intends to sell. Scott said that he does not believe that the property could be closed on until the permitting on the site is resolved.

### **c. Septic**

Scott said that his contract does not stipulate that his firm does the septic. They have been doing it, using Darryl Gilmer for the second soils verification. Scott stated that he believes it should really be the County who should be in charge of this, but the County's stance is that it has delegated the land use authority to the townships, so it is the townships which should do this. Scott stated that he thinks it is ridiculous to have the Township protecting the water resources of the State with the limited resources that it is given. It is expected to do all this through the permit fees. There are no soils scientists, no engineers on staff to represent the Township effectively. That being as it is, Scott's

recommendation would be to contract with Darryl Gilmer to do the septic for the Township.

**d. Hawkins**

Nancy Sauber asked Scott if he was going to update the Board on this. This is about a mobile home, to be used for storage, moved in during the time of Bog Hegner's tenure as Building Official. It was to have been anchored to the ground and skirted, and this was not done. Nanett confirmed that this was so and stated that she had forwarded information to Scott's office. Scott agreed to look into it and update the Board.

**e. Schedule**

Scott said that he would be willing to come to Commission meetings. He will send a proposed schedule to Nanett.

**f. Enforcement**

Scott commented that the Commission should keep in mind that there are Building Code issues that can be brought to bear on someone who is noncompliant. He wouldn't go looking for things, but if someone is doing something in a building that resembles a commercial use, and it is not ag, then it is a Code issue, too. The Building Official can work with the Township to bring the use into compliance. The noncompliance can open up the misdemeanor issue, the Building Code, whether the building is safe, and so on. Pressure can be brought from another direction through him and help to accomplish the goals of the Township.

**D. Approval of Minutes**

**1. Planning Commission Special Meeting, January 29, 2009**

There were a few corrections offered. Sharon Buckley moved to approve the minutes as amended. Kenny Miller seconded the motion, which passed with four votes. Ken Olstad abstained.

**2. Public Hearing, February 2, 2009**

It was asked that the list of attendees be included. There was a correction suggested. Sharon Buckley moved to approve the minutes as amended. Nancy Sauber seconded the motion, which passed with four votes. Ken abstained.

**3. Planning Commission Regular Meeting, February 2, 2009**

There were corrections suggested. Sharon moved to approve the minutes as amended. Vince Mako seconded the motion, which passed with four votes. Ken abstained.

**4. Public Hearing, February 10, 2009**

It was asked again that the list of attendees be included. Other corrections were given. Vince moved to approve the minutes as amended. Ken seconded the motion, which passed with three votes. Ken Olstad and Kenny Miller did not vote.

**5. Planning Commission Special Meeting, February 17, 2009**

There were corrections offered. Sharon moved to approve the minutes with the corrections. Vince seconded the motion, which passed with three votes. Ken Olstad and Kenny Miller abstained.

**6. Planning Commission Special Meeting, February 18, 2009**

There were no corrections suggested. Sharon moved to approve the minutes as presented. Vince seconded the motion, which passed with three votes. Ken Olstad and Kenny Miller abstained.

## **E. Other Business**

### **1. Board Report and Miscellaneous Updates**

#### **a. Building Permit Files**

Nancy Sauber finished her review of building permit files and the list of missing files from the last Building Official. This list was given to the Board which passed it on to the attorney for follow-up.

#### **b. Workshop Listing**

The Board approved money for one person to attend the Government Training Services home occupations session in Little Falls, with the Planning Commission having first opportunity. Nancy Sauber reported that she will attend this workshop on March 5th.

### **2. Planning Commission Presentation for Annual Meeting**

It was decided that the Commission will have a handout available for citizens, as in the past. What will be on the handout was discussed briefly and agreed upon; Sharon will update the handout. It will be circulated for any corrections or additions before the Meeting.

### **3. Policy and Procedure Manual**

The Commission will review the Manual and check for any needed updates or added clarifications. The following assignments were accepted:

\*Vince-p.2, who's on PC and date revised

\*Nancy- pp.12 and 13, conflicts of interest and open meeting law, email exchanges, meetings outside of meetings

\*Kenny- p.15, site inspections, add form

\*Ken- pp. 17 and 21, permits and operating procedures

\*Sharon- p. 27, procedure for requesting attorney representation at a meeting, expand to include other professionals as amended by Board

### **4. Ordinance Updates**

#### **a. Special Meeting with the Attorneys**

The Planning Commission Special Meeting to be held on March 3, 2009, is primarily to focus on buildable lots and clustering. "Permanence of housing rights" is a connected issue to be discussed at this Special Meeting. If there would be any additional time available after the discussion of buildable lots, clustering, and housing rights, the Commission may ask other ordinance questions of the attorneys.

#### **b. Rural Collaborative Water Ordinance**

Nancy Sauber reported on the Rural Collaborative Water Ordinance meeting that she had attended at Castle Rock and what was discussed there and how it might apply to the Township. The procedure for the upcoming public hearing and its continuance; that buffers come into effect only upon lot subdivision; that *any* changes, no matter how small, have to be approved by the Vermillion River Watershed Joint Powers Organization (VRWJPO); that there are average *vs.* minimum buffer widths; that easements can be written to say that they are for water quality only and not for trails were all items discussed. Nancy brought back three hard copies of the draft ordinance and three

watershed maps; the proposal has also been sent out by email through Nanett. There is a final draft still pending. Dean Johnson, planner, is to meet with the VRWJPO to get its approval for a couple of things he is proposing. The deadlines for plan adoption and ordinance adoption were also mentioned. Also, there was already an extension granted through Dean's request, as the collaboration was started late.

Supervisor Jeff Otto updated the Commission on this matter from the Board's perspective. There had been discussion of the Township's doing its own water plan. The window of opportunity to do that has actually passed, as the State statute mandated a deadline of February 23<sup>rd</sup>. Carrie Jennings, as one of the Supervisors working on this issue, went through the JPO version of the water plan and, after further discussion with Dean Johnson, she was then clearer on what was expected at the Township level. The language had not been streamlined from just that perspective; there was a matrix at the end that was to have served that purpose. The Township could write its own plan, but it has to meet the same VRWJPO Standards. The Township could amend the plan or the ordinances, but it could not be less restrictive, only more restrictive, in any changes made and approved.

Nancy reminded the Commission that, since this was a collaborative effort of twelve communities, and not only townships, but also cities, and not only VRW communities, but also those with two watersheds were all represented, the plan and the ordinance had to be written to accommodate all. All had to be covered, but not all applies to each. For example, cities have to do their own floodplain work, while Eureka goes through the County. Those parts in the plan and the ordinance addressing floodplains therefore do not fall under the Township's jurisdiction. These parts that do not apply to the Township could be taken out, but the amended document would still then have to be approved by the VRWJPO. Commissioners should plan to attend the hearing on March 19<sup>th</sup> at the Castle Rock Town Hall.

### **c. Uniform Street Naming and Addressing System (USNAS)**

Sharon and Vince had worked on the ordinance language. This language was discussed, amended, and agreed upon by the Commission at this meeting. Nancy Sauber moved to forward the language to the Board with the recommendation to approve it. Sharon Buckley seconded the motion, which passed with four votes. Kenny Miller voted "nay," saying that he wanted to see the draft of what would be submitted to the Board, rather than just move forward from the discussion and the changes made at the meeting. Sharon stated that a draft would be sent through Nanett so that if any Commissioner had any further input for the Board, he/she could submit that comment for the Board's consideration. This same opportunity had been available concerning the Request For Qualifications for the Commercial/Industrial study, although, in that case, there was no motion by the Planning Commission as a body as that draft language had been received only that very night at the start of the meeting.

### **F. Trainings and Meetings**

The Policy and Procedure Manual highly recommends that new members of the Planning Commission attend trainings such as Government Training Service's (GTS) "Basics of

Planning and Zoning” and “Beyond the Basics of Planning and Zoning.” Nancy Sauber is scheduled to attending the training on home occupations. Sharon reported that, in the past, she had attended the GTS’s “Your Role as a Planning Commissioner” and had found it helpful. That particular one is available now as a video conference. Sharon mentioned other trainings from the GTS brochure, which was sent to all Commissioners.

The Dakota County Soil and Water Conservation District is offering a session on March 25<sup>th</sup> on wetlands, noxious weeds, and feedlots. Nancy Sauber said she was planning to attend.

Ken Olstad moved to adjourn; Kenny Miller seconded the motion. The meeting was adjourned at 9:55 p.m.

Submitted by,

Nancy Sauber, Recorder