

# **TRANSFER ORDINANCE**

## **ORDINANCE NO. 2013-04**

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**TOWN OF EUREKA, DAKOTA COUNTY, MINNESOTA**

**ORDINANCE NO. 2013-04**

**AN ORDINANCE REPLACING CHAPTER 3: RESIDENTIAL BUILDABLE LOTS OF  
ORDINANCE 3: ZONING.**

THE TOWN BOARD OF EUREKA TOWNSHIP HEREBY ORDAINS:

**SECTION 1. PURPOSE** This Ordinance preserves density, lot size requirements, and recognition of pre-April 12, 1982, Lot of Record grandfathering regulations described in the prior Ordinance version. The Town Board of Eureka is expanding the flexibility in a limited way to reposition existing residential building rights to better serve property owners, encourage preservation of open agricultural land, and encourage non-development of substandard size parcels. The previous Cluster transfer feature is herein modified to allow moving residential building rights to non-adjacent property as well as title transfer of a residential building right to another owner of property within the Township.

**SECTION 2. DENSITY AND STANDARDS FOR BUILDABILITY.**

A. Residential use of land in any zone in the Township is limited to one single-family dwelling per quarter-quarter section as a permitted use except as provided in this Chapter. A single family dwelling may be constructed, as a conditional use, upon a Pre-1982 Lot of Record following application and proof to the Town Board's satisfaction that:

1. the lot proposed for building is a Pre-1982 Lot of Record;
2. there are no existing dwellings on the parcel to be built upon;
3. the proposed construction meets all other criteria for a Conditional Use Permit as stated in Chapter 4, Section 14(A) of this Ordinance; and
4. construction on the lot will comply with the other standards of this Section.

B. Standards Applicable to All Lots:

1. The quarter-quarter section in which the lot is located is not subject to a density restriction created pursuant to Section 3(C) of this Ordinance or a prior Town Ordinance governing Clustering.
2. A home can be built on the lot that complies with all dimensional and setback requirements contained in Section 4 of this Chapter, unless the lot meets the criteria of Sections 2(A) and 3(A) of this Chapter.
3. The lot will support a sewage treatment system consistent with this Ordinance and State, Local, and Federal requirements for the same.

4. The lot is a separately conveyed parcel with a separate legal description and its own Property Identification Number (PIN) assigned by the Dakota County Assessor's Office.
5. Applicant shall provide evidence that a Wetland Determination has been made by the Dakota County Soil and Water Conservation District as part of an application for a subdivision (lot split), to transfer in a housing right, or an application for a building permit.

### **SECTION 3. PLATTING OF LAND, CLUSTERING, AND LOT/PARCEL SPLITS**

- A. The Town Board may approve a Conditional Use Permit for a Pre-1982 Lot of Record which fails to meet one or more of the current standards in Section 4 of this Chapter, but met the setback and lot dimension standards in effect at the time of lot creation. In reviewing an application for a CUP on such a lot, the Town Board must find that the lot has been held in separate ownership since April 12, 1982. Any substandard Pre-1982 Lot of Record abutting other land under the same ownership following April 12, 1982 must be combined to form buildable lots that are not substandard. (Ordinance 2010-06, December 13, 2010)
- B. A lot of record that after creation and recording was subsequently consolidated with an abutting lot for the purposes of real estate sale or county tax consolidation, shall be deemed a buildable lot for single-family residential purposes provided it meets all of the following requirements: (Resolution No. 54, 4-9-2007, Resolution 59, 8-13-2007, Ordinance 2010-06, 12-13-2010)
  1. The lot(s) involved in the consolidation shall be re-created to conform to the exact boundaries and dimensions as they existed when the lot of record was originally created. (Resolution No. 54, 4-9-2007)
  2. The re-creation of the lots shall be completed through an approved lot split that shall be approved by the Eureka Township Board and filed in the Office of the Dakota County Recorder prior to application for any building permit. (Resolution No. 54, 4-9-2007, Ordinance 2010-06, December 13, 2010)
  3. Any use or structure currently existing on the re-created lots shall conform to all building setback and driveway requirements of this ordinance. (Resolution No. 54, 4-9-2007)
- C. Clustering. The intended purpose of this Section 3C is to set the standards by which an owner of a parcel with full control of a residential building right may transfer the residential building right to other land or to another owner subject to the limitations and restrictions contained herein. It may be transferred only to other land in the Township provided all the following conditions are met:
  1. The source of the residential building right is fully controlled by the property owner in the following circumstances:

- (a) When all of the land in a quarter-quarter section is under the same ownership, and no residence has been built within the quarter-quarter section.
  - (b) Pre-1982 Lots of Record have a fully-controlled residential building right except any substandard Pre-1982 Lot of Record abutting other land under the same ownership following April 12, 1982, must be treated as combined to form buildable lots that are not substandard. Only the resulting parcels that then would be buildable lots have a building right that may be transferred and all component parcels must have it recorded as described further below that they do not have a residential building right after the transfer is made.
  - (c) Parcels that have previously received a residential building right transfer that is recorded with the Dakota County Recorder.
2. The quarter-quarter section which contains a receiving parcel is limited to a maximum of four (4) building-eligible lots of record within the quarter-quarter section. The maximum number of residential building rights that may be transferred to receiving land within any single quarter-quarter section is four minus the number of existing single-family homes and undeveloped building-eligible Pre-1982 Lots of Record existing in the quarter-quarter section at the time of transfer.
3. The landowner(s) shall execute a Clustering Agreement consented to by the Township, which shall be recorded by the landowner(s) within ninety (90) days of its approval by the Town Board with the Dakota County Recorder.
  - (a) The Clustering Agreement shall identify the Pre-1982 Lot of Record or the parcel and quarter-quarter section from which a building right has been transferred, and shall state that any residential building right on that Pre-1982 Lot of Record or parcel and quarter-quarter section no longer exists and has been clustered onto other land. The agreement shall identify by legal description the parcel to which the residential building right has been clustered.
  - (b) The Clustering Agreement shall be recorded against all properties required to be identified by paragraph 3(a) above. Written proof of such recording must be presented by the landowner to the Town Clerk within one hundred and twenty (120) days after the approval of the cluster agreement by the Township.
  - (c) The Clustering Agreement must be executed and recorded by the landowner(s), and written proof of such recording presented to the town clerk, before the Town will consider any application for a building permit, or before transfer of any of the lands described in the cluster agreement, whichever occurs first.
4. Each dwelling unit and lot proposed for construction pursuant to a Clustering

Agreement must meet the requirements as set forth in Chapter 3: Zoning Districts, Section 4: Setbacks and Lot Dimensions. (Entire Section C. Cluster Ord. 2010-1, 6-14-2010) Any lot including a Pre-1982 Lot of Record that is a Substandard Lot whose residential building right has been transferred out is not eligible to receive a transfer in.

#### **SECTION 4. SETBACKS AND LOT DIMENSIONS**

- A. Each dwelling unit shall be located on a separately conveyed parcel which shall equal or exceed 2 acres.
- B. The parcel on which a dwelling unit is located shall have at least 33 feet of frontage along a public road.
- C. Lot width shall be at least 250 feet at the dwelling setback.
- D. All structures shall be setback as follows for permitted and conditional uses:
  - 1. Side yard setbacks for structures: 30 feet
  - 2. Rear yard setbacks for structures: 30 feet
  - 3. Structure Setback from:
    - (a) Township road 100 feet from centerline
    - (b) County road 110 feet from centerline.
- E. All dwellings shall be separated by at least 250 feet from the nearest agricultural building, however this restriction shall not apply where the dwelling and the agricultural building are in common ownership. (Ord. 2010-1, 6-14-2010)

#### **SECTION 5. DRIVEWAYS/ACCESS TO PUBLIC RIGHT-OF-WAY**

##### **A. Access To Buildable Lot**

At the time of application for a permit to erect any structure in the Township of Eureka, the applicant must:

- 1. Demonstrate that the structure has access to a public road across land owned solely by the applicant, in which case the provisions of Ordinance 4, Chapter 2, Section 3(A) – Road Specifications shall not apply; or (Resolution 59, 8-13-2007)
- 2. Demonstrate that a road exists which meets the requirements of Ordinance 4, Chapter 2, Section 3(A) – Road Specifications and provide access from the proposed structure to an existing public road; or

3. Alternate access may be made via permanent easement or right of use for the purpose of joining and sharing a portion of an existing driveway meeting Ordinance 4, Chapter 2, Section 3(A) – Road Specifications requirements. No more than four properties may share a driveway. Legal evidence of such an alternate private agreement shall be recorded with Dakota County referencing the involved parcels and maintenance arrangement, and a copy with a copy of the recording receipt shall be presented as part of the building permit application and be clearly referenced on the site plan; or
  4. In lieu of the foregoing, enter into an agreement with the Town Board to construct a road to meet the specifications set forth above and furnish to the Township a surety bond to guarantee the performance of the road construction agreement, said surety bond to be in an amount determined by the Township Engineer and in a form approved by the Township Attorney.
- B. Driveways shall meet the following requirements: (Resolution 59, 8-13-2007 (B.1.-3.))
1. Driveways that take access on township roads shall be located a minimum of ten (10) feet from the property line or as necessary to provide adequate drainage onto the parcel the driveway serves.
  2. Driveways that take access on County/State highways shall conform to regulations of the County and State, as appropriate.
  3. Driveways must be located a minimum of 300 feet from the intersection of any two or more public roads.
  4. Driveways accessing a township road must be located a minimum of 30 feet from the intersection of said road with another township road. (Ord. 2010-1, 6-14-2010)
- C. All buildings must be served by an approach that meets the requirements for approaches established in this ordinance. (Resolution 59, 8-13-2007)

## **SECTION 6. FEES AND COSTS**

Applicant shall arrange and pay for title research when a determination of possible Pre-1982 Lot of Record status is required. A certified copy of Dakota County records proving the status shall be provided to the Township as part of the application. Where a residential building right transfer is involved, all undeveloped and unverified parcels in the destination quarter-quarter section shall be verified as to status.

In the case of an application to subdivide and/or plat land, the subdivider will pay, in addition to the fees set forth in Ordinance 7, all costs incurred by the Town Board directly relating to the application for the subdivision. These costs shall include, without limiting the generality of the foregoing, the salaries of the Supervisors and Clerk at special meetings called to review or act on the proposed subdivision, fees paid to the Township Attorney and Engineer to review and process the application for the subdivision and the costs of publishing any notice in the official newspaper which may be required in order to act on the application for the subdivision.

Before the final plat is recorded, the Town Clerk shall certify to the subdivider the amount to which the Township is entitled to be reimbursed under the provisions of this Section. This amount shall be paid to the Town Board before the final plat is endorsed by Township officials and before it is recorded in the Office of the Register of Deeds

## **SECTION 7. REVIEW PROCESS FOR HOUSING RIGHT TRANSFER APPLICATION**

- A. Formal review by the Eureka Township Planning Commission will not commence until a submitted application is complete including any and all required supporting documents. This shall include:
  - 1. Proof of ownership of a qualifying property with an available housing right that is the source of the residential building right to be transferred, or proof of ownership or a Clustering Agreement to acquire a residential building right from another party that is the source of the building right to be transferred, and
  - 2. Proof of ownership of a specific parcel that is qualified to receive a residential building right, or certification of commitment to acquire a property eligible to receive a residential building right transfer, and
  - 3. Proof of the Pre-1982 Lot of Record status, if any, of all undeveloped properties in the destination quarter-quarter section where the residential building right transfer is to be placed, and
  - 4. A copy of the Wetland Assessment for the destination property from the Dakota County Soil and Water Conservation District.
- B. Proof of ownership shall be based on certified copies of current official records on file with Dakota County.
- C. Proof of commitment to acquire a destination property and/or the housing right to be transferred may be satisfied either by a copy of the involved Purchase Agreement(s) or a properly notarized form(s) approved by the Township certifying that such a Purchase Agreement(s) is in place. Any such Purchase Agreement(s) may be made contingent upon final approval of the Housing Right Transfer by the Town Board but in any case must be executed and filed with Dakota County and evidence of Dakota County recording filed with Eureka Township within the time frames prescribed in this Ordinance.
- D. When the Planning Commission completes its review, it makes its recommendation to the Eureka Town Board of Supervisors.
- E. The Town Board reviews the application and Planning Commission recommendation and makes its decision. Approval triggers the start of the time frames prescribed in this Ordinance to complete any remaining private transactions, Dakota County recordings, and proof of recordings to Eureka Township required.

## **SECTION 8. RECORDING OF APPROVED TRANSFER**

- A. The landowner(s) shall execute a Residential Building Right Transfer Agreement with the Township, which shall be recorded by the landowner(s) within ninety (90) days of its approval by the Town with the Dakota County Recorder. The Agreement shall be recorded against all properties required to be identified in the Agreement. Written proof of such recording shall be presented by the landowner to the Town Clerk within one hundred and twenty (120) days after the approval of the transfer agreement by the Township.
- B. The Residential Building Right Transfer Agreement shall identify the Pre-1982 Lot of Record or the parcel and quarter-quarter section from which a building right has been transferred, and shall state that any residential building right on that Pre-1982 Lot of Record or parcel and quarter-quarter section no longer exists and has been transferred onto other property. The agreement shall identify by legal description the parcel to which the residential building right has been transferred.
- C. The Residential Building Right Transfer Agreement shall be executed and recorded by the landowner(s), and written proof of such recording presented to the town clerk, before the Town will consider any application for a building permit, or before transfer of any of the lands described in the transfer agreement, whichever occurs first.

## **SECTION 9. VIOLATIONS AND PENALTY**

- A. VIOLATION. Failure to complete any transactions and recordings required after Town Board approval of a Residential Building Right Transfer or a Clustering Agreement and associated Town Board Consent of the Clustering Agreement shall nullify the approval and the residential building right shall revert to the original sending parcel.

**SECTION 10. DEFINITIONS.** The following words and terms, whenever they occur in this Ordinance, are defined as follows:

**Cluster** –the act of transferring a residential building right.

**Residential Building Right** – the eligibility to build or place a single family dwelling on a qualifying buildable property as described and under the conditions of this Ordinance.

**Residential Building Right Transfer** – the act of moving a residential building right from one property to another within Eureka Township.

**SECTION 11. CONFLICT AND INTERACTION WITH ORDINANCES.** Whenever there is a conflict between minimum standards or dimensions specified herein and those contained in other official regulations, resolutions, Codes or Ordinances of the Town, the most restrictive standards shall apply.

**SECTION 12. SEPARABILITY.** It is the intention of the Town Board that the several provisions of this Ordinance are separable and that if any court of competent jurisdiction shall adjudge any provision of this Ordinance or application thereof to be invalid, such judgment shall not affect any other provisions of this Ordinance not specifically included in said judgment.

**SECTION 13. ADOPTION AND ENACTMENT.** This Ordinance shall become effective upon its passage and publication.

**Effective Date.**

This Ordinance shall be effective upon its passage and the first day of publication.

Dated: July 8, 2013

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Pete Storlie, Town Board Chair

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Nanett Sandstrom – Town Clerk/Treasurer