

## Eureka Township Residential Building Right Transfer (Cluster) Procedure

1. **The applicant should obtain the following documents as indicated:**
  - a. "Residential Building Right Transfer (Cluster) Application" form
  - b. "Clustering Agreement" form
  - c. A copy of Eureka Township Ordinance 2013-04 (or the entire Ordinance)
  - d. "Certification of Intent to Acquire Property" form if the destination parcel is not already owned by the applicant
  - e. "Certification of Intent to Acquire a Residential Building Right" form if the building right to be transferred is not already owned by the applicant

These are available for free download on the Eureka Township website. They may also be obtained from the Eureka Town Hall where the printed forms are free but there will be a printing/copying charge for the Ordinance document or the Chapter 3 portion of it represented by Ordinance 2013-4.
2. **The applicant must obtain a map of the entire quarter-quarter section which contains the parcel proposed to receive the building right transfer as well as the quarter-quarter section from which the right is being transferred (sending location).** This may be printed out from the free Dakota County website in the Property section of the website.
3. **The applicant must request a "Wetland Determination" from the Dakota County Soil and Water Conservation District** for the parcel to receive the building right transfer. This is an important first step in identifying possible issues pertaining to the parcel being buildable or if there may be restrictions on any portion of it.
4. **Applicant is advised to request a preliminary review by the Planning Commission.** A request to the Town Clerk to be placed on the agenda needs to be made by the Thursday 10 days prior to the meeting. Applicant is to provide a copy of the Residential Building Right Transfer (Cluster) Application form with seven (7) copies of the map described above and a copy of the Wetland Determination, if already complete, at the time of making the agenda request. Applicant must also specify the quarter-quarter section and Property ID (PID) that is the source of the building right to be transferred.

Page 1 of the Application should be completed except that the status of undeveloped parcels in the receiving Quarter-Quarter Section does not need to be completed at this stage. (The status portion and the upper half of Page 2 will need to be completed at such time as the applicant may request formal consideration for review and approval.)

This provides the opportunity for the Planning Commission to inform the applicant of any zoning-related issues with the proposed receiving parcel, such as driveway access, shore land setback or possible wetlands that may require review by other agencies such as a watershed or a Wetland Delineation from the Dakota County Soil and Water Conservation District.

The Planning Commission will also confirm which other undeveloped parcels (that may exist in the quarter-quarter section containing the proposed receiving parcel) that will need to have their potential grandfathered building eligibility determined.

5. **The applicant has the responsibility to provide evidence that the source parcel for a building right transfer does have a building right.** The current deed or abstract provides evidence of the current Property ID number (PID), ownership, the current survey description of its boundary,

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and whether or not the property has received or lost a building right as the result a transfer or cluster move of any building right. If an undeveloped parcel's current deed or abstract has no indication of a building right being transferred in or out, then the possibility of it having a grandfathered building right needs to be verified. The stub abstract should commence with the most recent deed prior to April 12, 1982, which is the cutoff date for grandfathering. If the pre-1982 deed has the identical survey description of its boundary as the current deed and qualified of buildable size when created, then the parcel has a grandfathered building right.

6. **The applicant has the responsibility to provide evidence that the receiving parcel can accept a building right transfer without exceeding the density cap (limit) of 4 in the Quarter-Quarter Section.** The count must include both existing houses as well as any and all undeveloped parcels that have a grandfathered building right or may have received a building right transfer. Ordinance 3 Chapter 3, Section 3, (the same as 2013-4) explains the criteria that qualifies a parcel to have a grandfathered building right.

As part of the Application, the Applicant must submit a stub abstract for all undeveloped properties in the receiving quarter-quarter Section prepared by a licensed abstractor commencing with deed data used to certify grandfathering. The stub abstract need only contain the deeds transferring title to the property.

- A. The current deed or abstract provides evidence of the current Property ID number (PID), ownership, the current survey description of its boundary, and whether or not the property has received or lost a building right as the result a transfer or cluster move of any building right. If there has been a building right transfer in or out, that would reflect the current status and grandfathering is no longer in play.
- B. If an undeveloped parcel's current deed or abstract has no indication of a building right being transferred in or out, then the possibility of it having a grandfathered building right needs to be checked. The stub abstract should commence with the most recent deed prior to April 12, 1982, which is the cutoff date for grandfathering.
  - a. If the pre-1982 deed has the identical survey description of its boundary as the current deed described in A above and meets or exceeds the current minimum lot size of 2 acres, then the parcel has a grandfathered building right.
  - b. If the parcel is sub-standard in size, see Section 3 of Ordinance 3 Chapter 3 for evaluating whether it has a grandfathered building right or not.

It is possible that any grandfathering determination may need review by the Town Attorney. In such cases, applicant will be asked to pay for such review before proceeding. (Note: This is required in the formal phase anyway. If there is any question about grandfathering qualification blocking a transfer, it is better for applicant to have it answered at this point rather than later in the formal process.)

7. **At this point, applicant will have the information to know if the transfer application is viable to proceed formally.** If applicant is unsure of anything, a request for another preliminary review with the Planning Commission may be made. Copies of all additional documentation obtained since the first meeting should be included for Planning Commission review to aid in answering applicant's questions.

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8. **If applicant is acquiring the destination parcel, the building right, or both, the private arrangement should be made.** If any purchase agreement is to be made contingent upon Township approval of the building right transfer, then both parties in each title change need to sign and have notarized the appropriate "Certification of Intent to Acquire" form. The use of these forms avoids the need for the Township to see the actual purchase agreement, preserving the privacy of the terms.
9. **The applicant completes the Residential Building Right Transfer (Cluster) Application form and now may initiate the formal application process.** It is submitted along with the application fee and Town Attorney escrow (if not already paid in Step 6 above) and all supporting documents and forms relevant to the circumstances. Submission must be made by the Thursday at least 10 days prior to a Planning Commission meeting to be placed on the agenda.
10. **Applicant or applicant's authorized representative must attend the Planning Commission meeting to present the application and answer questions.** The Planning Commission will then make its recommendation for consideration by the Eureka Town Board.
11. **Applicant or applicant's authorized representative must attend the Eureka Town Board meeting to present the application and answer any questions.** The Board will then make its decision.
12. **Upon approval, the applicant must then proceed to complete any acquisition involved and file all required recordings with Dakota County and provide copies of the receipt by the County to the Eureka Town Clerk in the time frames specified in the Ordinance.**

# Eureka Township Residential Building Right Transfer Summary

## **Introduction**

Eureka Township, as the zoning authority for all land in the Township, allows an existing “residential building right” (housing right or eligibility) to be transferred (clustered) from one property parcel to another as well as from one Quarter-Quarter Section to another within a large parcel straddling two Quarter-Quarter Sections. This includes allowing the sale or conveyance of a building right from one owner to another, subject to certain restrictions and requirements specified in the Eureka Township Ordinance 3, Chapter 3.

This document is intended as an overview of the steps an applicant needs to follow to apply for a building right transfer. For brevity, this overview does not attempt to duplicate the full detail of the Ordinance and does not supersede any of the specific language or requirements of the Ordinance. An applicant is advised to obtain a copy of the actual Ordinance language, available as a free download from the Eureka Township website at <http://eurekatownship-mn.us/index.html> or a printed version may be purchased at the Eureka Town Hall at 25043 Cedar Avenue.

## **Transaction Privacy**

An applicant *acquiring* a building right from another owner in the Township does so as a private arrangement with that owner, similar to how a land parcel might be acquired. Whether the *ownership* change occurs by cash purchase, trade, gift, or inheritance is private. The Township has no role in the private transaction or determining value.

## **Township Approval Requirement**

The actual *transfer* of the building right from one *parcel* to another does require approval by the Township as zoning authority. The Township needs legal evidence of ownership by the applicant, or certified intent to acquire ownership, of both the destination parcel and the building right to be transferred. The destination parcel must meet all other zoning requirements to be a buildable lot and not exceed the density cap of four (4) per Quarter-Quarter Section to be eligible to receive a building right transfer.

If the destination parcel is to be newly created by a lot split (subdivision), the subdivision process must be completed and recorded before a building right transfer to it may occur. The two processes may progress in parallel as long as the recordings are performed in proper sequence and the transfer is completed in the required time frame.

The transfer (clustering) of a building right to a destination parcel, once initiated, must be completed within a specified time period or the transfer is voided. In other words, a building right cannot be removed from one parcel and be held or banked for an unlimited time before placement on a qualified destination parcel.

Once a transfer has been completed, recorded with Dakota County, and a copy of the County recording receipt sent to the Township, the parcel now is eligible as a buildable lot. There is no time requirement or limit as to when the owner may choose to seek a building permit for construction.

**CLUSTERING AGREEMENT**  
**Eureka Township, Dakota County, Minnesota**

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_,  
by and between \_\_\_\_\_ (“Transferor”) and \_\_\_\_\_  
 (“Transferee”).

WHEREAS, Transferor is the fee owner of the following described real property situated  
in the Town of Eureka, County of Dakota, State of Minnesota:

Parcel A (“Sending Parcel”)

WHEREAS, Transferee is the fee owner of the following described real property situated  
in the Town of Eureka, County of Dakota, State of Minnesota:

Parcel B (“Receiving Parcel”)

WHEREAS, Transferor, under Ordinance 3, is allowed to construct a single family  
residence on Sending Parcel;

WHEREAS, Transferee, as owner of Receiving Parcel, wishes to acquire the Residential  
Building Right held by Transferor as owner of Sending Parcel;

WHEREAS, Transferee has applied to the Town of Eureka to transfer said Residential  
Building Right from Sending Parcel to Receiving Parcel;

WHEREAS, the Town of Eureka has approved said transfer as evidenced by that  
Resolution adopted \_\_\_\_\_.

NOW, THEREFORE, in consideration of the Town of Eureka approving said transfer,  
Transferor hereby assigns and transfers to Transferee the Residential Building Right associated  
with the Sending Parcel. That said right may only be used to improve the Receiving Parcel and  
shall run with the Receiving Parcel and shall not be personal to the Transferee.

That by assigning said rights, Transferor on behalf of themselves, their heirs, successors  
and assigns, and the Transferee on behalf of themselves, their heirs, successors and assigns,  
hereby acknowledge that they are bound by the terms and conditions contained in the Resolution  
dated \_\_\_\_\_, by which the Town of Eureka approved such transfer. That in  
addition, the transfer is also subject to all the terms and conditions set forth in Chapter 3 of  
Ordinance 3, as amended from time to time.

This Agreement shall be recorded against both the Sending Parcel and the Receiving  
Parcel in the Office of the Dakota County Recorder within 90 days after the date the Town Board  
approves the transfer. Proof of recording shall be presented to the Town within 120 days after  
the date the Town Board approves the transfer. Failure to satisfy these conditions shall void the

Town Board's Resolution approving the transfer and the Residential Building Right shall revert to the Sending Parcel.

This Agreement shall not be effective unless consented to in writing by the Town of Eureka as evidenced by the Consent attached hereto.

\_\_\_\_\_  
Sending Parcel Property ID (PID)

\_\_\_\_\_  
Receiving Parcel PID

\_\_\_\_\_  
Signature of Transferor

\_\_\_\_\_  
Signature of Transferee

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_  
Notary Public

This instrument drafted by:  
Kelly & Lemmons, P.A.  
7300 Hudson Boulevard, Suite 200  
Oakdale, MN 55128  
(651) 224-3781