

TOWN OF EUREKA, DAKOTA COUNTY, MINNESOTA
Ordinance No. 2010-05

AN ORDINANCE FOR PURPOSES OF REGULATING THE SUBDIVISION OF LAND WITHIN THE TOWN OF EUREKA.

The Town Board of the Town of Eureka does hereby ordain:

SECTION 1. PURPOSE. In order to safeguard the best interests of the Town of Eureka and to assist the subdivider in harmonizing his interests with those of the Town at large, the following Ordinance is adopted so that the adherence to the same will bring results beneficial to both parties. It is the purpose of this Ordinance to make certain regulations and requirements for the platting of land within the Town of Eureka, pursuant to the authority contained in Minnesota Statutes, which regulations the Town Board deems necessary for the health, safety and general welfare of this community.

SECTION 2. JURISDICTION. The regulations herein governing plats and the subdivision of land shall apply within the corporate limits of the Town of Eureka.

SECTION 3. INTERPRETATION. The interpretation and application of the provisions of this Ordinance shall be minimum requirements adopted for the protection of public health, safety and general welfare.

SECTION 4. APPROVAL REQUIRED FOR VALID LOT.

A. This Ordinance requires that all land division in the Town of Eureka be accomplished through subdivision of property as described in this Ordinance.

B. No deed for a new lot resulting from a subdivision of property in the Town of Eureka shall be recorded in the Dakota County Records Office unless the lot:

1. is part of a subdivision plat, whether formal or informal, approved by the Town Board under the terms of this Ordinance; or
2. is a separate lot in existence on the effective date of this Ordinance, described by metes and bounds and accompanied by a deed, registered land survey, or equivalent proof of creation prior to the effective date of this Ordinance; or
3. is the result of a division of land creating only parcels 20 acres or more in size and with at least 500 feet or more of public road frontage; or
4. is created by operation of a court order.

C. No building permits shall be issued by the Town of Eureka for constructing any building, structure or improvement on any lot in the subdivision as defined herein, until all requirements of this Ordinance have been met.

SECTION 5. SUBDIVISION APPLICATION. The Subdivider shall prepare and submit twelve (12) copies of each of the following materials in support of an application to subdivide real property.

A. **PLAT.** Except as noted below, the Subdivider may submit either an informal plat or a formal plat to show the proposed division of the property into new lots. If a formal plat is used, the Subdivider should supply paper copies with the application; the mylars specified by statute need not be submitted to the Town. The Subdivider must submit a formal plat under any of the following circumstances:

1. The land being subdivided abuts an existing or proposed County Road or Highway; or
2. The proposed subdivision includes a dedication of land to the public for any purpose; or
3. The proposed subdivision includes a proposed lot of less than 2.5 acres in area; or
4. The proposed subdivision includes four or more lots.

B. **APPLICATION.** The Subdivider shall submit a complete application on a form provided by the Township.

C. **VARIANCES AND USE PERMIT REQUESTS.** Applications for any Variances from the provisions of this Ordinance or applications for Variances or Conditional Uses as provided for in the other Township Ordinances shall accompany the subdivision application. The required fee(s) for such actions must be submitted with the applications.

D. **NOTIFICATION LIST.** A list of all property owners located within three hundred fifty (350) feet of the subject property, obtained from and certified by Dakota County or the Town of Eureka.

E. **SUPPLEMENTAL INFORMATION.** The Subdivider shall also include:

1. If requested by the Town Board, one or more drawings, to scale, prepared by a licensed surveyor or engineer showing:
 - a. The location, widths and names of all existing or previously platted streets or other public ways, showing type, width and condition of improvements, if any; railroad and utility rights-of-way, parks and other public open spaces, permanent buildings and structures, easements and section and corporate lines within the plat and to a distance of one hundred (100) feet beyond the tract.

b. The location and size of existing sewers, water mains, pipelines, culverts or other underground facilities within the tract and to a distance of one hundred (100) feet beyond the tract, Such data as grades, invert elevations and locations of catch basins, manholes and hydrants also shall be shown.

c. Topographical data for the property to be subdivided, including contours at vertical intervals of not more than two (2) feet. Water courses, wetlands, rock out-crops, power transmission poles and lines and other significant features shall also be shown.

2. The text of any proposed restrictive covenants intended to apply to the new lots on the property following subdivision.

SECTION 6. FEES AND COSTS.

A. APPLICATION FEE AND ESCROW. The Town Clerk shall accept an application for subdivision only upon payment of the established fee and deposit of a cash escrow. The base fee for a subdivision application shall be established by the Town Board from time to time and published with all other Town fees and charges. This fee is non-refundable. In addition to the base fee, the Subdivider shall deposit funds with the Town for payment of expenses incurred through staff time and from all outside sources including, but not limited to, engineers, attorneys, and outside consultants employed specifically for review and processing the application. The deposit shall be based on the Town clerk's estimate of staff and consultant time required, but in no case shall the deposit exceed one percent (1%) of the current-year market value of the land to be subdivided, as determined by the Dakota County Assessor. Any amount over the base fee not expended by the Town will be refunded within thirty (30) days of final action on the application (i.e. final plat approval or application denial). Expenses in excess of the filing fee and deposit that the Town incurs shall be borne by the Subdivider and paid prior to final approval.

B. COST-SHARE AGREEMENT. The Subdivider shall also execute with the application a Cost-Sharing Agreement indicating the Subdivider's understanding that he/she agrees to reimburse the Town for all expenses incurred through staff time and from all outside sources including, but not limited to, engineers, attorneys, and outside consultants employed specifically for review and processing the application.

SECTION 7. STANDARDS APPLICABLE TO ALL SUBDIVISIONS.

A. LOT DIMENSIONS. The lots proposed in a subdivision application must comply with the minimum lot dimensional standards of Town Ordinance 3, Chapter 3, and all other applicable provisions of the Town Zoning Ordinance.

B. OTHER MINIMUM STANDARDS. The lots created within a subdivision must meet, or be capable of meeting, setback, design and engineering standards stated in other

Town Ordinances, or in Dakota County Ordinances which apply to development in the Town. Such ordinances include, but are not limited to, the County or Town septic-system ordinance and water management or stormwater control ordinances applicable to land in the Town.

C. PROPOSED ROADS. Any roads proposed for public dedication must meet or exceed the Town road standards established by Town Ordinance 4, Chapter 2.

D. LOT LAYOUT RESTRICTION. Double frontage, or lots with frontage on two (2) roughly parallel streets, shall be avoided except where lots back on an arterial street or highways, or where topographic or other conditions render subdividing otherwise unreasonable. Such double-frontage lots shall have an additional depth of at least twenty (20) feet in order to allow space for screen planting along the back lot line.

E. NO CREATION OF SUBSTANDARD LOTS. Any lot remnants below the minimum size required by Ordinance 3, Chapter 3 left over after subdividing of a larger tract must be added to adjacent lots rather than being allowed to remain as unusable parcels.

F. CONTINUOUS UTILITY EASEMENTS. Utility easements shall connect with easements established in adjoining properties. These easements, when approved, shall not thereafter be changed without the approval of the Town Board.

SECTION 8. REVIEW PROCESS FOR SUBDIVISION APPLICATION.

A. RECIEPT OF APPLICATION. The Town Clerk shall not accept a subdivision request until receiving all the materials specified in Section 5, and the payments required by Section 6. Incomplete applications shall be returned to the Subdivider within ten (10) business days after receipt. Upon receipt of a complete subdivision application and payment of fees and escrow, the Town Clerk shall:

1. Send a copy of the Subdivision Application to each member of the Planning Commission.
2. Refer copies of the application to the Watershed Organization, County, State, or other public jurisdictions for their timely review and comment, where appropriate and when required.
3. Schedule a public hearing on the application before the Planning Commission, preparing notices of hearing for newspaper publication and mailing to the owners of property within 350 feet of the proposed subdivision. The notices must be published and mailed at least ten (10) days prior to the scheduled public hearing.

B. STANDARDS FOR APPROVAL. A subdivision plat shall not be approved unless it:

1. Conforms to the Comprehensive Plan and related plans of the Town, as approved by the Planning Commission and Town Board;
2. Conforms to the requirements of this Ordinance and the Town Zoning Ordinance; and
3. The lots created by the subdivision meet, or are capable of meeting, the design and engineering standards set forth in this Ordinance and other applicable Town Ordinances.

C. PUBLIC HEARING. The Planning Commission shall hold a public hearing on the proposed subdivision application. Upon completion of the Public Hearing, the Planning Commission shall prepare a report stating the Commission's findings regarding the plat's compliance with the standards stated above, its recommendation for approval or disapproval of the plat, and recommendations for conditions, if any, that should be met prior to a grant of final plat approval.

D. SUBMISSION TO TOWN BOARD. Following receipt of the Planning Commission's report, the Town Clerk shall forward five (5) copies of the subdivision application and the Planning Commission report to the Town Board. If the report of the Planning Commission has not been received so as to provide for compliance with time limits established by law (presently 120 days from receipt of a complete application, unless extended by law or agreement), the Town Board may act without such a report. Any modification or waiver of time limits established by law shall only be made in writing to the Town by the applicant except for extensions by the Town provided for by law.

E. INITIAL ACTION BY TOWN BOARD. The Town Board shall, within the time limits established by law, act upon the subdivision application at a properly convened public meeting. The Town Board's discussion and action shall be formally recorded in the minutes of the meeting. Following consideration of the application, the report of the Planning Commission, and any other materials or testimony presented, the Town Board may:

1. Disapprove the subdivision application, stating on the record the reasons for such denial for inclusion in the meeting minutes; or
2. Grant Preliminary Plat Approval, should the Town Board conclude that the application complies with the requirements of Town Ordinances, but the public interest requires the Subdivider to satisfy certain conditions before recording the subdivision (examples of such conditions are execution of a development agreement, posting of security for required public improvements; changes to the design of the subdivision; or obtaining agreements or permission from other government agencies with regulatory authority over the property); or

3. Grant Preliminary and Final Plat Approval, should the Town Board conclude that the application complies with the standards for approval stated above, and makes the further finding that no additional conditions are necessary to protect the public's interest prior to recording the subdivision plat.

F. TOWN BOARD ACTION ON FINAL APPROVAL REQUEST. If the Town Board gives Preliminary Plat Approval to a subdivision application and sets conditions for Final Approval, the Subdivider shall request Final Plat Approval within six (6) months of that action. The Subdivider shall submit six (6) copies of the materials required to be created, obtained, or altered in order to satisfy the conditions imposed by the Town Board. After the Subdivider has submitted a request for Final Plat Approval, the Town Board shall act on the request within the time limits established by law (presently 60 days from receipt of a complete request, unless extended by law or agreement). The Town Board shall not give Final Plat Approval unless the Final Plat conforms to the terms of the Preliminary Plat with all changes and conditions associated with that Preliminary Plat Approval.

SECTION 9. RECORDING OF APPROVED SUBDIVISION.

A. After a Subdivision Application receives Final Approval from the Town Board, the Subdivider shall record the approved Final Plat with the County Register of Deeds within sixty (60) days after the date of approval. If not recorded within this time period, the Final Approval of the subdivision shall be considered void.

B. The Subdivider shall, immediately upon completion of recording, furnish to the Town Clerk two (2) prints of the Plat or alternate Land Description which show evidence of recording.

SECTION 10. VARIANCES FROM THIS ORDINANCE

A. The Town Board may grant a variance in any particular case where the Subdivider can show that, by reason of exceptional topography or other physical conditions, strict application of a term of this Ordinance would cause an unusual hardship on the use of the land. Such relief may be granted provided there is no detriment to the public welfare and no impairment of intended purpose of this Ordinance.

B. An application for any such Variance shall be made on an official application form available from the Town Clerk and shall be submitted at the same time as the subdivision application is filed for consideration. A variance application shall be accompanied by the required fee(s). Such application shall state fully all facts relied upon by the Subdivider and shall be supplemented with maps, plans or additional data that will aid the Town in the analysis of the proposed project.

C. Upon receiving such application, the Town Clerk shall refer the application, along with all related information, to the Planning Commission for consideration at a duly convened public hearing, a report and recommendation to be sent to the Town Board.

D. The Subdivider or a representative of the Subdivider shall appear before the Planning Commission at its next regular meeting in order to answer questions concerning the proposed Variance.

E. The Planning Commission shall have the authority to request additional information from the Subdivider concerning the Variance or to retain expert testimony with the consent and at the expense of the Subdivider concerning said Variance, where said information is declared necessary to insure preservation of health, safety and general welfare.

F. The Planning Commission shall make findings of fact and recommend to the Town Board in writing such actions or conditions relating to the request as it may deem necessary to carry out the intent and the purpose of this Ordinance and shall do so in a timely manner that allows the Town Board to take action within the time limits established by law (presently, 60 days from receipt of a complete application, unless extended by law or agreement).

G. Upon receiving the report and recommendation of the Planning Commission, the Board shall, within the time limits established by law, act upon the application. If the report of the Planning Commission has not been received so as to provide for compliance with time limits, the Town Board may act without such a report. The Town Board shall make findings of fact relating to the Variance request and impose any conditions considered necessary to protect the public health, safety and welfare. The Town Clerk shall promptly notify the applicant of the Board's decision in writing, stating the reasons for denial if the application is denied.

SECTION 11. VIOLATIONS AND PENALTY

A. SALE OF LOTS FROM UNRECORDED PLATS. It shall be unlawful to sell, trade, or otherwise convey any lot or parcel of land as a part of, or in conformity with any plan, plat or replat of any subdivision or area located within the jurisdiction of this Ordinance unless said plan, plat or replat shall have first been recorded in the Office of the Recorder of Dakota County.

B MISREPRESENTATION AS TO CONSTRUCTION, SUPERVISION OR INSPECTION OF IMPROVEMENTS. It shall be unlawful for any person, firm or corporation owning an addition or subdivision of land within the Town of Eureka to represent that any improvements upon any of the streets, or avenues of said addition or subdivision or any sewer or water system in said addition or subdivision has been constructed according to the plans and specifications approved by the Town Board, or has been supervised or inspected by the Town, when such improvements have not been so constructed, supervised or inspected.

C. PENALTY. Any person who violates any of the provisions of this Code shall, upon conviction thereof, be fined not more than the maximum penalty for a misdemeanor

prescribed under State Law. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 12. RULES AND DEFINITIONS. The following words, and terms, whenever they occur in this Ordinance are defined as follows:

DEDICATION - the conveyance of land to the Town of Eureka, or reservation of land for later conveyance, to hold for public use as streets, roads, sewers, electric facilities, gas facilities, water facilities, stormwater drainage, holding areas or ponds and similar utilities and improvements.

OUTLOT - a lot remnant or parcel of land left over after platting for which no non-agricultural development is intended and for which NO building permit shall be issued.

OWNER - any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under this Ordinance.

PERSON - any individual, firm, association, syndicate, or partnership, corporation, trust, or any other legal entity.

PLANNING COMMISSION - the Town of Eureka Planning Commission.

PLAT, FORMAL - a delineation of one or more existing parcels of land drawn to scale, depicting the location and boundaries of lots, blocks, outlots, easements, and dedicated areas, prepared with the data, format and certifications specified by Minnesota Statutes, § 505.021 or successor statute.

PLAT, INFORMAL - a delineation of one or more existing parcels of land drawn to scale, depicting the boundary lines of the existing property and the proposed boundaries and location of lots, outlots, easements, and dedicated areas, along with legal descriptions of the proposed new lots.

PUBLIC IMPROVEMENT- any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement or other facility for which the Town of Eureka does or may ultimately assume responsibility for maintenance and operation, or that may affect an improvement for which local government responsibility is established.

RESTRICTIVE COVENANT – a contract made between private parties as to the manner in which land may be used, which run with the land and are enforceable by any present or future owner of the land owned by the contracting parties.

SUBDIVIDER – the owner or other person seeking approval of a subdivision of land governed by this Ordinance.

SUBDIVISION - the division of an area, parcel, or tract of land into two (2) or more lots or parcels, for the purpose of transfer of ownership or building development that will require the creation of streets and roads, except for those resulting from court orders, or the adjustment of lot lines by the relocation of a common boundary. The term includes re-subdivision and when appropriate to the context, shall relate to the process of sub-dividing or to the land subdivided.

SECTION 13. CONFLICT AND INTERACTION OF 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 14. 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 15. ADOPTION AND ENACTMENT. This Ordinance shall become effective upon its passage and publication.

Attest:

Nanett Sandstrom, Town Clerk

Brian Budenski
Town Board Chair

Passed by the Eureka Town Board this 13th day of December, 2010.

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