

**EUREKA TOWNSHIP**

**DAKOTA COUNTY**

**STATE OF MINNESOTA**

Planning Commission Public Hearings of April 25, 2017

**Call to Order**

Chair Sauber called the meeting to order at 6:30 PM. Planning Commission members present were Nancy Sauber, Ralph Fredlund, Julie Larson, and Randy Wood. Township Attorney Chad Lemmons was also in attendance. See attached sheet for additional persons in attendance. Deputy Clerk Cheryl Murphy recorded the minutes.

Chair Sauber stated that there are three Public Hearings this evening:

- Eureka Township Sump Pump Ordinance
- Square Footage of Accessory Buildings
- Horticulture/Agriculture Language

**Sump Pump Ordinance**

**Allen Novacek, 24030 Iberia Avenue**

Mr. Novacek stated that he does not know anyone in the Township who feels we need a Sump Pump Ordinance. I feel that it is a neighbor conflict with a present Board member. It is not improper but I feel it is unnerving. I also think there is no need for. It is an over-reach of authority. To regulate it seems like you are looking for conflict. There is no need for it and I don't think anyone within the Township wants it.

**Andre Stouevenel – 6565 255<sup>th</sup> Street**

Mr. Stouevenel stated that if there is a question regarding how a sump pump is drained, the State Department of Health and the State Pollution Control Agency and the State Building Inspector could make a determination of how it should be constructed and what the setbacks are. Thank you for your time.

**David Hetchler – 9963 250<sup>th</sup> Street West**

For years I have been in the septic and sewer industry and sump pumps have been draining into septic systems. I don't understand where regulating it to protect our health comes from. I also don't know where 50 feet away from the structure comes from. We are talking about ground water and rainwater. My house is one of a ton of others in the Township that trying to get 50 feet away would not have any drop. I've got a pipe that runs out as far as I can (about twenty feet) but to survive winter without freezing up, once you freeze a pipe you are not pumping water out of your basement. I don't know where the 50 feet comes

from and as far as I know it is covered by the State building codes. Sump pumps are good. If we can't get 50 feet of pipe that will never freeze, do I have to get a variance. I don't think we should be regulating things that don't have a good reason to be regulated. I had trouble finding the Ordinance as it is on the back end of regulations for pools. If we are paying someone to do this, I would expect a little better job. We are not talking about pool drainage.

**Butch Hansen** – chooses to yield.

**Mark Ceminsky – 7226 235<sup>th</sup> Street**

Mr. Ceminsky stated that this is addressed under the State building codes. When you are building a house, drain tiles are required. The thing I want to say is it is already governed by the State under our building codes. The other thing I want to say and this comes from the Minnesota manual for Town government and has to do with the building codes that Eureka township accepted. It states that we are authorized to adopt the State building codes and local governments wishing to impose stricter requirements must base those requirements on geological conditions and receive permission from the State for those restrictions. Has Eureka Township gone to the State to request that we accept this? This is regulated under State building codes and I don't see why we have to make it any stricter. If you start deviating from other Townships and cities, we will have contractors who are putting them in wrong. Thank you for your time.

**Ray Kaufenberg, 24510 Dodd Boulevard**

Mr. Kaufenberg stated that he respects the other comments this evening. I do have an issue when there are strict setbacks in feet and there is nothing written in there for exceptions and common sense. I would suggest that it be less than 50 feet when lots slope and the configuration is taken into consideration. You can put an exception into the Ordinance and it would not be a problem. As far as 30 feet away from adjacent property lines, this would not come into play unless there is high density. In high-density locations, homebuilders tend to put swales between the lots so that water drains between the lots. In that sense you could also have an exception when swales are put in between lots. You do not want to create problems by these strict numbers. I would also suggest that you could put the date the Ordinance was adopted and that it supersedes all other Ordinances and what is still an exception to the Codebook.

**Gayle Klauser, 24595 Essex Avenue**

Ms. Klauser stated she has no idea what the State codes are but a lot of people have sump pumps that are not in the house. The configuration of our property is such that water comes downhill and pools in such a way that it affects the footings in our house. We had to put in a sump pump and we have drain tile that goes out to the field. Our neighbors had had the same problem and had to put in a sump pump and it comes into their driveway and pools there in our driveway and the road. When the next person puts in a sump pump it would be good to have something in the Ordinance and address that. I think a little more work needs to be done on the Ordinance looking at the geographical issues of the property.

Otherwise I just wanted to go on record as saying I think having a sump pump ordinance is a great idea.

**David Hetchler – 9963 250<sup>th</sup> Street West**

Mr. Hetchler stated that one point he failed to point out is that anytime we have an ordinance we have to have someone make sure that it complies and we have to have enforcement of that ordinance. I feel that this is another headache and expense we don't need.

Commissioner Fredlund moved to close the public comment period of the sump pump ordinance. Commissioner Larson seconded. Motion passed unanimously.

Chair Sauber asked three times if there were any further public comments. There were none

Commissioner Fredlund moved to table the matter to the next Planning Commission meeting on May 2, 2017. Commissioner Larson seconded. Motion passed unanimously.

**Public Hearing regarding square footage of Accessory Buildings.**

Chair Sauber state that this Public Hearing has to do with the amount of square footage of all accessory buildings relative to the primary structure square footage. It does not involve Ag buildings.

**Allen Novacek – 24030 Iberia Avenue**

Mr. Novacek stated that a couple of questions to consider when you are working on the ordinance change. It does not affect Ag buildings and why is that? When you consider 200 percent, that sounds like an awful lot. What if you had a very small house that was built a long time ago and you wanted to build an accessory structure and you had five acres of land and have plenty of space. If you had a small house you could not build an accessory structure that a person with a very large house could build. Arbitrarily the Township is saying that a person with a little house can't benefit in the same way as a person with a big house.

**Andre Stouvenel – 6565 255<sup>th</sup> Street West**

Mr. Stouvenel stated that there are some houses in Eureka Township that are 10,000 square feet or more and they could build a 20,000 square foot accessory building. What if an Ag building is converted into an accessory structure and that would be very easy to do.

Mr. Stouvenel stated he does no know what the Planning Commission and Town Board are trying to do besides add additional regulation. It seems they are consuming valuable resources and time.

In Section 3 I am wondering if the Attorney wrote this. Attorney Lemmons stated, yes. Mr. Stouvenel stated that he has checked the Attorney's website and he believes the Attorney is coming up for a review shortly. The IRS has something that's called long-arm transactions and closely held transactions. It is possible that the Attorney is too close to the community and that maybe the community should research other viable options. That is all I have and thank you.

**Butch Hansen – 26120 Highview Avenue**

Mr. Hansen questioned whether we have had problems with this ordinance as it is written. If not, why are we drafting this ordinance? If the answer to that question is yes, I would like to know what the problems have been. I was on the Planning Commission when the ordinance was changed and we had a lot of issues. A lot of people could not build sheds because their houses were 950 square feet. They had more than enough land to build a bigger structure, but they were not allowed to do so because they did not have enough square footage in their home to do so. So again my question is have we had problems with the ordinance as it is written today. That is the end of my comments.

**Mark Ceminsky – 7226 235<sup>th</sup> Street**

Mr. Ceminsky stated that he was on the Board when the Planning Commission looked at this ordinance. We had issues with conflicting ordinances at that time. I have not seen that addressed since the ordinance is still on the books. The residents wanted to have an accessory structure big enough so that what they had outside could be stored inside. We wanted something that would be fair to the residents of Eureka Township. Some of the residents that had only an 800 or 900 square foot home could not build an accessory structure under the 200 percent rule. Through a public hearing and much discussion we adopted that ordinance and thought it would be fair to the residents of Eureka Township. I don't understand why we are reviewing this and attempting to make a change. I would ask that you reconsider changing this, as I believe we have an ordinance that is fair to all the residents of Eureka Township.

Chair Sauber asked three times if there was any other public comment. There were none.

Commissioner Fredlund moved that we close the public comment portion of the public hearing on the square footage of accessory buildings. Commissioner Wood seconded. Motion carried unanimously.

Commissioner Wood moved to table the discussion until the next Planning Commission meeting on May 2, 2017. Commissioner Fredlund seconded. Motion carried unanimously.

**Public Hearing Regarding Clarification of Horticulture and Agricultural Definitions**

**Allen Novacek – 24030 Iberia Avenue**

I have a written notice of my version of the amendment if I could submit that. This is the Public Hearing that most concerns me.

Just for some background, the whole problem stems from a court case involving one of the residents involving Fur-Ever Wild. The court case was won by the resident. When it was won, the Town Board was not pleased with the outcome and wanted to continue to chase the resident. Even comments about running a resident dry were heard.

They wanted to continue a course of action that in a manner of speaking chased the resident. I am very concerning about running a resident dry financially.

In what followed was a closed special meeting that was held and an attempt was made to appeal the court case. It was found out that would not work, so an amendment was requested to this horticulture definition which would effectively curtail what the resident was doing. I am not saying that what the resident was doing was good, bad or indifferent. There was a deliberate, recordable and verifiable attempt made to stop the resident from continuing the practice. The special meeting was held and it was unanimous that they could not do with an appeal, so they wanted an amendment to this definition of horticulture which was what the Board wanted and not what the residents wanted after they had just lost the court case which cost an awful lot of money. Finding out this information was not easy and there are a lot of people that are not pleased that you are looking for it.

Regarding this definition, I am not exactly sure of some of the specifics, but as a reasonable person, I don't think our Attorney was allowed to come up with that horticulture definition. I think he was directed to come up with the definition. I even heard the Attorney say that the horticulture definition was not good. He had a job to do and he had to do it. For someone to direct him could only be the Town Board or someone on the Town Board. This is a horrible definition that was brought up because the Town Board is chasing a resident of this Township and trying to stop them from making a living. This is causing a great deal of difficulty to people who are running agricultural businesses. These definitions were not thought through. When I read this, it does not solve any problems. The one I placed before you solves the problems for the agricultural people in this community. I think the definition you are proposing should be gotten rid of as soon as possible. Thank you.

**Andre Stouvenel – 6565 255<sup>th</sup> Street West.**

Mr. Stouvenel stated that the State of Minnesota has horticulture listed as a subdivision of Agriculture. We are going to be looking at addressing written State statutes. For the citizens of Eureka Township there is a way that you could control the political influences of the Township with the District Court and it is called Writ of Habeas Corpus. Depending on how elected officials behave, certain judges are more open to hearing Writs and I think that the Planning Commission and the Township Supervisors should research the State statutes on the Writs of Habeas Corpus.

Chair Sauber asked Mr. Stouvenel what does this have to do with this Ordinance proposal?

Mr. Stouvenel replied that what it has to do is you are trying to change State statute and you are trying to control what are peoples' given rights today. We have retail stores in Eureka Township and we have no statutes. They charge sales tax and we have no statutes. You're putting out this little horticulture thing to focus on a couple of residents. It is not hurting anyone else.

I do have a question. We have a couple of large commercial businesses that do horticulture, and do we have laws and inspections that go in those businesses to make sure that they stack up the pallet trays, any ordinance that allows them to sell retaining walls, drain tile, tools, limestone, rock and are they regulated. Because if they aren't, they should be part of this horticulture deal because that's how Bachmans came to Eureka Township. They are in a horticulture business. I don't know the contracts the Township has with Bachmans and other retail establishments in the Township and whether they are compliant or non-compliant. Thank you for your time.

### **Butch Hansen – 26120 Highview Avenue**

There are a whole bunch of pitfalls in this. If the goal is to stop agricultural operations from being able to harvest corn off of somebody's rented land, being able to lease someone's property to put their livestock on, to cut hay on my neighbor's property and be able to sell it to whoever I want. It says in the last sentence "produced on the land at which the sale is occurring". So if rent my land out to somebody who plants corn crops there, the sale of the corn is not going to happen on my property. The sale of the corn is going to happen on his property when he takes it to his elevator and puts it in the drying bin. So that product cannot be sole because that is not on the property it was produced on.

I don't think this is very well thought-out. The reason the judge threw this out was the Township filed an amendment the same time they filed for an appeal and you cannot get an appeal at the same time you file for an amendment. It does not take a lot of intelligence to know this is a mistake. Having said that, the goal to try to figure out a way to regulate a few people in the Township which has sucked us all into the middle of this mess and it has to come to a stop. This ordinance has a whole bunch of pitfalls that is going to affect me and any other farmer that is in this community. Anyone that rents land from his or her neighbor is going to be affected on this. It is not only the one renting the land, but also the one that is renting it out. It is going to be a problem.

### **Mark Ceminsky – 7226 235<sup>th</sup> Street West**

Mr. Ceminsky stated that this has a lot of issues with it. One is that we have a Right-to-Farm Act in the State of Minnesota. We try to regulate what farmers are doing on Ag land as far as producing for sale to the public. We are trying to redefine terms that are defined in the Right-to-Farm Act. I think we have to be very careful on how we do that.

We need to let our farmers produce. We need to let them sell their goods and we need to let them rent out their land. I think we have to spend more time to look at what State statutes are and I believe we need to do more research. Thank you.

### **Ray Kaufenberg – Declined**

Chair Sauber asked three times if there was any other public comment. There were none.

Commissioner Fredlund moved we end the public comment period on the definition of horticulture and agriculture. Commissioner Larson seconded.

### **Butch Hansen – 26120 Highview Avenue**

Mr. Hansen stated he had a Point of Order. He stated the Township advertised a horticulture public hearing and they advertised an agriculture public hearing. They are two separate ordinances and you threw them both together. You opened it as a horticulture ordinance and now you are closing as a horticulture and agriculture ordinance and I have not had an opportunity to speak toward the agricultural one.

Chair Sauber stated she sees what Mr. Hansen is saying. Forgive me.

Mr. Hansen stated these are two separate ordinances.

Chair Sauber stated they both are addressing the same general topic. One is adjusting a definition.

Mr. Hansen stated there is a big difference between the two.

Chair Sauber asked Attorney Lemmons to address:

Attorney Lemmons stated they were designed as two separate ordinances. One for horticulture and one for agriculture. They are distinct. From that standpoint there are two separate ordinances.

Chair Sauber stated that she took the public comments on being both of these together. Was that correct Mr. Lemmons?

Attorney Lemmons stated they really should have been done separately.

Chair Sauber stated that we need to amend the motion.

Commissioner Fredlund stated he will amend his motion to move we end the public comment period on the horticulture definition only. Commissioner Larson seconded. Motion carried unanimously.

Chair Sauber stated that if anyone wants to come up and talk about commercial agriculture they may do so.

**Allen Novacek – 24030 Iberia**

Mr. Novacek stated with all due respect I am distressed that the Planning Commission did not know what was advertised tonight. That is a mistake that should not have been made.

You have a solution as to the definition of commercial ag by what I previously gave you. It is my solution. I would like to comment on something that Madam Chair had said that what is being done in the ag definition is attempting to protect the citizens. As I read it, that is not the case. It is convoluted. What I gave you protects them and I would like you to compare the citizen's input to what I gave you. Secondly I spent a lot of time explaining some of the things that took place prior to this becoming a problem. It wasn't a problem a few months ago. It only became a problem when Eureka Township lost a court case and then as a result the Town Board chasing residents because they were not satisfied with the Court's decision. They created a nightmare for the Township. It didn't just happen. The Court in its decision did not create any problems for anyone exercising ag operations in Eureka Township. It was created by the Town Board of Eureka Township and it was done so deliberately, ineptly or by accident. It was done by the Town Board and now they are trying to correct it and to top it off the Planning Commission did not even know their own agenda.

Chair Sauber stated to Mr. Novacek that that is enough. Is there something you want to address that has to do specifically with the ag ordinance that you haven't already stated?

Mr. Novacek stated, no.

**Andre Stoevenel – 6565 255<sup>th</sup> Street**

I think the law and ordinance has been defined by the judge. It is something that is very prevalent in today's political process. Resolutions and executive orders get made and judges over-rule and the Township was over-ruled. You don't need to change anything technically, by law.

**Butch Hansen – 26120 Highview Avenue**

What you are requesting is a document that says the crops, and livestock must be produced or raised or located by the person on land either in or outside Eureka Township. That means again if I rent my land out to someone for the purpose of his cattle to be on my property, he can't sell those cattle to someone else in the Township and have those cattle butchered. I would think that goes back to crops also. My suggestion is any person engaged in commercial ag shall have the right store or sell crops, livestock, products which are harvested, raised or bought from land located either within Eureka Township or outside its borders. That means I can go anyplace and buy cattle. I can have anyone rent land from me and have cattle on my land. They can harvest corn off my property. You keep



saying this allows everything to be the way it was but it doesn't because you have to be the producer.

It's pretty simple. It is not much different than what it was when it was first drafted. It still has the same pitfalls as what it had. The best thing for the Township to do is throw it away. We are agricultural first, residential second. So if that is what we are, I don't know why we are trying to limit what farmers and ranchers are trying to do with their property.

**Mark Ceminsky – 7226 235<sup>th</sup> Street**

This goes back to the same instance as horticulture. We are trying to set an ordinance that defines what a farmer or rancher can do on their property. I think we need to be very careful of how we are proceeding with this and I think we need to do more research. We need to promote ag in our community.

**Ray Kaufenberg – Declined**

**Bill Schweich - 20157 Homefire Way**

I'm not aware of the ordinance but what you have here is what I agree with—that you can sell fruits, veggies, flowers as described from land which is non-contiguous which means if I have land on Cedar Avenue I can take it to Dodd Boulevard and sell it. That is the way I am reading it.

In the first section it states the Board recognizes the practices of the citizens. It does not state the landowners, it states citizens who are not the owners. It means they can come in and plant the crops even though they do not own the land. I do not have any objection to that either. Basically you are also stating that it is any person engaged in commercial agriculture. It does not define anyone as the owner of that property. That being said it says you can bring in crops harvested or raised on land either in or outside the boundaries of the Township. I would be in agreement with this. That is all I have to say

**Mark Ceminsky-7226 235<sup>th</sup> Street West**

There is confusion on which part is the ordinance change and which part is the section of process. The ordinance change is in the amendment (2.01) and any person engaging in commercial ag shall have the right to store or sell field crops and livestock products which are harvested or raised by that person. The way I read that is the person who owns the land is the only person that is allowed to do that. I think that is where the confusion comes in.

Chair Sauber stated that the purpose is a different part of the ordinance.

**Andre Stoevenel – 6565 255<sup>th</sup> Street**

The amendment limits the definition of agriculture. It would be suggested that the definition of agriculture as defined by the State of Minnesota would be acceptable along with the definition of horticulture. The definition is vague.

**Allen Novacek - 24030 Iberia Avenue**

I think one of the things that sparked this whole thing is that the Adelmans were prevented from selling firewood on their property that did not originate there. This is not a concern that is theoretic; this is a concern that is real.

**Butch Hansen - 26120 Highview Avenue**

Part of the problem is there are a lot of holes in 2.01(d). It does state in the beginning "any person engaged". But then when you get down into it, it says "by that person". If you change "that" to "any person" then I would agree with it. One word can make a big difference. I would like to submit what I have in writing to you Madam Chair. It is what I think 2.01(d) should read.

Chair Sauber asked if anyone else wanted to provide testimony. Chair Sauber asked three times if there was any other public comment. There were none.

Commissioner Fredlund moved we close the public hearing comment portion on agriculture. Commissioner Wood seconded. Motion carried unanimously.

Chair Sauber moved to table discussion of the comments and the ordinance to the Planning Commission's May 2, 2017, meeting. Commissioner Wood seconded. Motion carried unanimously.

Chair Sauber thanked everyone for coming.

Respectfully submitted,

Cheryl Murphy  
Deputy Clerk