

EUREKA TOWNSHIP
DAKOTA COUNTY
STATE OF MINNESOTA

Planning Commission Public Hearing
Brady and Anna Gustafson Condition Use Permit
July 26, 2016
7:00 PM

Call to Order

Planning Commission Chair Sauber called the Public Hearing to order at 7:08 PM. Planning Commission members present: Chair Nancy Sauber, Commissioner Fritz Frana, Commissioner Randy Wood and Commissioner Ralph Fredlund. Commissioner Donovan Palmquist was absent. Township Attorney Chad Lemmons was also present. See attendance sheet for additional residents in attendance.

Chair Sauber stated the purpose of the Public Hearing is to hear from anyone who wishes to speak about the Conditional Use Permit. The reason the Conditional Use Permit is required is the Ordinance requires that a pre-1982 Lot of Record require a Conditional Use Permit. All pre-82 Lots of Record that have not changed in their boundaries are buildable. Even though this one is well beyond the density for the quarter-quarter, it can be built on with a Conditional Use Permit. The Gustafsons are entitled to get a Conditional Use Permit and there may be conditions put on it that are appropriate and that is why neighbors within 1,000 feet are notified. Normally if the house site is less than 250 it would require a variance as well. There was a variance granted in 2007.

Beth Eilers – 10185 250th Street West. Ms. Eilers stated she did some research on groundwater contamination and as you previously mentioned that corner is already overwhelmed. It is supposed to be four houses, but we have five and now there will be six. According to the EPA in a document called, “Getting Up to Speed on Groundwater Contamination”, septic systems are one of the main causes of groundwater contamination. Ms. Eilers stated she and her neighbors have great concern. The greater the distance between the sources of the contamination of the groundwater is more likely a natural process such as oxidation, biological degradation and absorption into the soil and reduces the impact of the contamination before it reaches groundwater. We have six houses where there is supposed to be four.

Ms. Eilers went on to state that each septic system releases a small amount of wastewater into the ground and a large number and widespread use of these systems makes them a serious contamination source. Most, if not all states have local regulations and have developed suitable densities for septic systems. We have a rule of 4 per corner because of this reason. It is too much and we are going to be the ones who suffer when the Planning Commission is wrong.

Our water has great potential to be contaminated and it is not just from septic systems. It is everything else that the ground has to dilute, such as pesticides and crops, active mining, road salt, manure piles and other toxins that pollute the ground. This little area cannot handle another septic system.

Ms. Eilers stated she spoke with Joel Booth, who was the original owner of the property and who built the house. He stated that when he bought it, it was a buildable lot, and when he sold it to the Pedersens, they bought both pieces of land. After they purchased it, they had the lot lines changed. They made it narrower than it was originally. When the Pedersens came to the Planning Commission meeting years ago, they presented to them a lot that was not a Lot of Record in 1982. They presented to them a changed lot. Mr. Booth stated he did not know how that got re-aligned.

With that information, that lot is no longer subject to the 1982 rules, but subject to the rules when Mr. Peterson had it changed. That makes it a non-buildable lot. It is too narrow. Clearly Mr. Peterson presented a fraud on the Planning Commission. There is a lot more information that this Planning Commission needs to know about before they can make any decision. Ms. Eilers stated that the way the lot is designed, the septic system would need to be built on someone else's property.

Chair Sauber asked if anyone else would like to speak.

Anna Gustafson, 6410 Humboldt Avenue South, Richfield, MN and Jaren Fitzke, 177214 Formosa Avenue.

Ms. Gustafson stated that the septic system would not be built on the neighbor's property. Mr. Fitzke stated the easement on the driveway has been vacated and must have been approved because it is in.

He also stated that the septic system would fit concerning the setbacks and the distance away from the property line, the house and the road. Mr. Fitzke has done soil testing and a septic design and the primary site has been approved by the Septic Inspector.

Chair Sauber stated that Attorney Lemmons said that the warranty deed that states the legal description from August 8, 1977 fits the current legal description. They are identical. Ultimately after the Gustafsons build their house the plan will follow what was surveyed before and get a lot split. That section that is currently their property would attach to the next door neighbor's because that pole shed goes with the house. Chair Sauber stated that is how I have always understood it. It is indeed a pre-82 Lot of Record and their deed goes back five years before that, so I believe the adjustment Ms. Eilers is talking about is a misunderstanding. The Petersons could not do the lot split. The buyer would have to build and then do the lot split. That follows the correct procedure.

Ms. Eilers stated she would be more comfortable if the Planning Commission had actual documents from Dakota County. Chair Sauber stated that the Gustafsons do have a certified copy of the deed from Dakota County. Ms. Eilers stated that her arguments still stand regarding the overcrowding of the septic systems.

Chair Sauber again stated that as long as the Septic Inspector, who is certified by the State of Minnesota, says that their plan is adequate, it is up to the Septic Inspector to make sure that the setbacks are met and are the correct distance from the well and the house, they should not be an issue. Chair Sauber stated she understood Ms. Eilers problems with the septic that is not the correct setback. If the setbacks are not, that is a whole other issue. Right now we are talking about the Gustafson's property.

Chair Sauber state that the Town has a number of places that are much denser than the area Ms. Eilers is talking about. It is up to the Septic Inspector to make sure the system is appropriate and Chair Sauber did not see that as an issue.

Ms. Eilers stated back that the EPA does.

Attorney Lemmons commented that septic systems are a valid concern but if the applicant can show that their septic system meets all the state requirements and have met certain design standards before you are allowed to construct a septic system. If the system they propose meets those standards, then the Town is obligated to grant the Conditional Use Permit.

Ms. Eilers stated the Town is not obligated to grant the CUP. The Planning Commission needs to speak to Joel Booth.

Chair Sauber stated that in all due respect the Planning Commission has a certified copy of the deed from the County. They do have a pre-82 Lot of Record, they have to get the septic system designed, approved and there has to be a second soil test. They have a right to build. Our Town Attorney stated that this legal description meets the current legal description and they are identical.

Attorney Lemmons stated that the lot as presently owned existed prior to 1982. Therefore all they are required under the Ordinances is to obtain a Conditional Use Permit to build a home. They have a right to build a home.

Ms. Eilers stated that the road width of 1982 is completely different to what you are applying now with the 33 feet of road frontage.

Attorney Lemmons stated, no, because in the Ordinances they define a pre-1982 lot as a Lot of Record prior to 1982, and this was a Lot of Record pre-1982. You are ignoring the fact that the lot existed. It existed as an independent tax parcel prior to 1982. That is the

definition of a pre-82 Lot of Record under your Ordinances. The road frontage is irrelevant. It is a pre-existing Lot of Record.

Ms. Eilers stated that she thinks the Planning Commission needs a lot more information and thinks they need to talk to Joel Booth. She also stated that the Planning Commission needs to hear from Dakota County directly that the driveway was approved by them to install.

Chair Sauber asked to respond. She stated that as far as Joel Booth is concerned, to me that is extraneous because we rely on the Warranty Deed, which is a certified, legal document from the County. Our Attorney is telling us that the legal description is exactly the same. So it really doesn't matter what Joel Booth or anyone else might come and say because this meets the test for a pre-1982 Lot of Record. That is the end of this discussion. They have their pre-82 Lot of Record and ultimately once the house is built there can be a lot split as long as it meets the requirements of the road frontage and the variance for the 200 feet. After the house is built the only question is will the lot split result in a non-compliant lot. By itself the part with the pole shed would not be correct, but we can condition the lot split that it must be attached to the property next door.

Attorney Lemmons stated that we have been talking about the buildings that are on the property. They are on the property subject to an existing easement dated May 1, 2015. That is an easement, it is not a transfer of land. Before that easement area can be transferred as a separate parcel, it will have to be approved by the Town. If it is not approved by the Town, the split will not occur. The mechanics are that at the present moment, the pre-1982 lot has not changed. It is the same legal description and before it can change, that change has to be approved first by the Planning Commission and then the Town Board. If they don't approve it will not occur.

Ms. Eilers state that she hoped the Planning Commission and the Town Board do not approve it. They need to take into consideration the people that live there right now. One more house is not a good plan for that corner.

Chair Sauber stated that what Attorney Lemmons was talking about was the lot split with the easement. Right now the Gustafsons have a pre-82 Lot of Record and if they can meet the requirement for the house and meet the Septic Inspector's requirements, there is no way we can tell them they can't build a house.

Ms. Eilers stated that she thinks the Planning Commission needs to postpone their decision.

Chair Sauber stated that we rely on the expertise of the Septic Inspector and he would not approve the design for that place unless the lot and the area could handle it and it has to be kept pumped and compliant.

Attorney Lemmons said there are three approvals going on. One is the Conditional Use Permit that gives them the right to apply for a building permit. To obtain the building permit they have to meet all the requirements, one of which would be the Septic System you are discussing. If they can't meet it they can't get the building permit.

Ms. Eilers asked if Mr. Booth could produce additional documentation, could this be readdressed. Attorney Lemmons stated no. It would have to have been brought up tonight. Ms. Eilers stated that they need documentation from the County for the driveway.

Attorney Lemmons stated that one of the conditions of the Conditional Use Permit is that the use will not cause traffic hazards or congestion. If there is evidence that Dakota County has granted an access, it is presumed the traffic issue has been dealt with. They would need documentation. All the Commission does is make a recommendation to the Board.

Chair Sauber asked if anyone else would like to speak.

Larry Kaplan – 24875 Dodd Boulevard. I live right next door. When we were signing papers for the house, Attorney Nord made all the paperwork on the driveway and he said it was going to be a joined driveway and I said no. They went to the County and got the approval as far as I know because when they built Dodd they put in an approach.

Mr. Kaplan stated there was one thing that you said that concerned him. Can they decide not to change the line and then the building goes to them.

Attorney Lemmons stated no. I read the easement agreement this afternoon. There is a clause that says that title will be transferred. You have to remember that the transfer is a sub-division of an existing parcel and that requires approval of the Town before you can actually record the deed. That is Statutory Law. The County will not accept a deed that sub-divides an existing tax parcel that creates parcels less than 20 acres in size if and until the municipality that has control over the zoning (in this case the Town of Eureka) approves that. So you still have to get that approval. Attorney Lemmons suggested that Mr. Kaplan go back to Mr. Nord to talk about the easement. Attorney Lemmons pointed out that it is a perpetual easement and he can explain it to you.

Chair Sauber stated that we are the agency that approves the lot splits because we have a sub-division Ordinance that gives us that authority to do that. If we didn't have that Ordinance, the County would be the one to approve that. There usually is not a problem with a lot split, you just need to go through the process.

Chair Sauber asked for any other comments three times. Chair Sauber moved to close the public comment portion of the meeting. Commissioner Frana seconded. Motion carried.

Chair Sauber stated that in granting a conditional use permit, the Planning Commission and Town Board shall consider the effect of the proposed use upon the health, safety, morals, and general welfare of occupants of surrounding lands and water bodies. Among other things, the Planning Commission and Town Board shall make the following findings where applicable:

1. The use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities, which serve or are proposed to serve the area.

It will not create an excessive burden on existing parks, schools or streets.

2. The use will be sufficiently compatible or separated by distance or screening from adjacent agriculturally or residentially zoned or used land so that existing property will not be depreciated in value and there will be no deterrence to development of vacant land.

It is sufficiently compatible-it is a house. The location of the house has to be at the 200-foot width of the property and the variance granted to them allows the building of the house with the 200 feet.

3. The structure and site shall have an appearance that will not have an adverse effect upon adjacent properties.

Certainly another house will not have an adverse effect to surrounding properties.

4. The use in the opinion of the Planning Commission and Town Board is reasonably related to the existing land use.

Yes, it is another use and it is allowed under our pre-82 Lot of Record.

5. The use is consistent with the purpose of the Zoning Ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.

Yes, it is consistent. We have the density that relates to a pre-1982 Lot of Record and our zoning district is Ag, but we allow residential single-family homes.

6. The use is not in conflict with the Comprehensive Plan of the township.

It is not.

7. The use will not cause traffic hazards or congestion.

As long as the County approves a driveway approach. We would make this a condition.

In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission and Town Board may impose, in addition to the standards and requirements expressly specified by Township Ordinances, additional conditions which the Planning Commission and Town Board consider necessary to protect the best interest of the surrounding area or the community as a whole.

Conditions of Approval

In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission and Town Board may impose,

In addition to these standards and requirements expressly specified by this Ordinance, additional conditions which the Planning Commission and Town Board consider necessary to protect the best interest of the surrounding area or the community as a whole. These conditions may include, but are not limited to, the following:

1. Increasing the required lot size or yard dimension;
2. Limiting the height, size or location of buildings;
3. Controlling the location and number of vehicle access points;
4. Increasing the street width;
5. Increasing the number of required off-street parking spaces;
6. Limiting the number, size, location or lighting of signs;
7. Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property; and
8. Designation of open space.
9. Annual review. (Resolution 59, 8-13-2007)

Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the conditional use permit issued, shall require an amended conditional use permit and all procedures shall apply as if a new permit were being issued. The Zoning Administrator shall maintain a record of all conditional use permits issued including information on the use, location, and conditions imposed by the Planning Commission and Town Board, time limits, review dates, and such other information as may be appropriate.

The Planning Commission stated that the criteria on most of them are met, with the condition that the Gustafsons must show written evidence from the County to the Township that a driveway is permitted and where it is permitted on their property.

Commissioner Frana discussed septic systems designs, setbacks and second soil verification. He also discussed the density in that area and stated he doesn't see any difference in the density of the two other housing developments in the Township.

Chair Sauber stated there are rigid standards for septic and pumping and the Township has to enforce it. I will bring it up again and get a status from the Board. Chair Sauber also stated that when they pump the septic, they check to see that it is compliant and a working system. If the septic system is not working or non-compliant, that gets reported. Whatever we get from the County would report any failures and non-compliants. Perhaps the liaison to the Town Board could let them know that we want confirmation that enforcement is taking place.

Chair Sauber stated that the only condition that the Planning Commission would attach would be the documentation from the County that the driveway has been approved. The Planning Commission would need that before the Gustafson start to build, as the building permit was contingent on the Conditional Use Permit and that is a condition of the Conditional Use Permit. Attorney Lemmons stated that it would be best to bring the document into the Town Clerk so it can be put in the packets for the Board before Thursday at 2:00 PM.

Chair Sauber asked Attorney Lemmons if he had everything he needed to draw up the Findings of Fact and Attorney Lemmons stated that he did.

Chair Sauber moved to recommend approval of the Conditional Use Permit to the Board of the Gustafson's property contingent on getting the documentation from the County that the driveway has been approved. Commissioner Wood seconded. Motion carried.

Chair Sauber moved to adjourn the meeting. Commissioner Fredlund seconded. Meeting adjourned at 8:17 PM.

Respectfully submitted,

Cheryl Murphy, Deputy Clerk

Eureka Township

Meeting minutes approved on _____

DRAFT