

EUREKA TOWNSHIP

DAKOTA COUNTY

STATE OF MINNESOTA

Eureka Planning Commission Meeting of July 6, 2015 and July 9, 2015

Call to Order

Planning Commission Chair Sauber called the meeting to order at 7:00 PM. Planning Commission members present: Chair Nancy Sauber, Vice Chair Lu Barfknecht, Commissioner Phil Cleminson, Commissioner Donovan Palmquist and Commissioner Fritz Frana. Supervisor Kenny Miller attended as Town Board liaison. See attached sheet for additional persons in attendance. Deputy Clerk Cheryl Murphy recorded the minutes.

Approval of the Agenda

The following items were added to the Agenda

- Other Land Use and Zoning Items - Lonnie and Gail Malwitz –
- Old Business – Between Fence Ordinance and Transfer of Building Rights – add Watershed Escrow
- Old Business –under Recodification Review – add Ulman Transfer of Building Rights correction
- Old Business - Darrin Giles – Attorney Opinion
- New Business – After Website Update Issues – add Ag Building Application Revisions
- Training Opportunities
- Deputy Clerk Issues

It was noted that we did receive the Findings of Fact from Attorney Lemmons. Vice Chair Barfknecht suggested we continue the Planning Commission meeting on Thursday, July 9, 2015 at 7:00 PM.

Chair Sauber made a motion to approve the agenda as amended. Vice Chair Barfknecht seconded. Motion carried unanimously.

Permit Requests

Dave Smith – 6675 245th Street West – New Home Construction. One of the requirements for the Building Permit is a site plan and that was missing from Mr. Smith's application. When the Planning Commission meets on Thursday, Mr. Smith can request to be put on the agenda.

Living Waters Church – 22222 Dodd Boulevard – Represented by Jeff Moors and Steve Hage, Miller Architects and Builders – The Church is adding a small vestibule-that item needs to be checked on the application with the square footage listed. Chair Sauber stated that when she looked at the site plan, the setback for the SW corner is not 30 feet back from the lot line-many years ago the building was situated improperly. Kenny Miller, Township Attorney contact, spoke with the Attorney Lemmons and stated that, if you are staying within the boundaries of the structure, you are fine. Since you are adding the vestibule, you would need a variance. The variance can be handled at the Town Board Meeting. Mr. Moors questioned why adding the vestibule affects the lot line. Chair Sauber to further query Attorney Lemmons this week.

Chair Sauber made a motion to approve the building application for remodeling the large building PIN 13-0600-02-012 or 13-00500-27-011 (Deputy Clerk to check map for correct PIN) with the addition of roughly 18x8 foot vestibule and a parking lot, with the understanding that the Attorney needs to be heard from one more time whether a variance would be required. Vice Chair Barfknecht seconded the motion. Motion carried unanimously.

Land Use and Zoning

Evan Dee – 27075 Galaxie Avenue, and Graham Dee – 27285 Galaxie Avenue-Lot Split Approval Application – Chair Sauber noted a number of issues with the application. The parcels and acreage numbers are incorrect for Parcel A and Parcel B. In addition, it was noted that they are attempting to split 1.41 acres that has a house on it and that would be creating a non-compliant lot. At least two acres is needed for the lot, and the width of the lot is 215 feet and you need at least 250 feet. Chair Sauber also stated that Ag Building permits are no longer over-the-counter, and you cannot put up an Ag building within 250 feet of any residence that you do not own. If you are putting up a pole shed closer than 250 feet, you would not want to do a lot split until it is built, and you would need to have another survey. In addition, you need to have 10 acres in production to build an Ag building. You also need 33 feet for driveway on land owned or a permanent easement. Mr. Dee stated they needed to do more research.

Chair Sauber made a motion to deny the Lot Split Application by Evan Dee, 27075 Galaxie Avenue, as it does not meet Ordinance requirements. Commissioner Frana seconded the motion. Motion carried unanimously.

Mr. Dee requested to be put on the agenda for Thursday, July 9, 2015.

Lonnie and Gayle Malwitz – 9840 250th Street West – Questions regarding Transfer of Building Rights-Mr. Malwitz has two sons that would like to build houses. One quarter-quarter section already has 5 houses on it, including theirs. The other quarter-quarter has

Friedges and Estrom houses on it. Chair Sauber explained they need to come in for a preliminary review after they have the following information:

- Copy of the Ordinance
- Copy of the Procedures
- Wetland determination
- Maps of the receiving quarter-quarter and the sending quarter quarter parcels
- Has to be land that you own or a Certification of Intent to Acquire a Building Right

Once all items are completed, Mr. Malwitz can request a preliminary review, then a formal review by the Planning Commission and then it will have to go to the Town Board for examination of their request. In addition, Mr. Malwitz would need separate parcels with their own PIN, and a lot split has to be done and recorded with the county first before the transfer. Chair Sauber stated that the variance that Mr. Malwitz is asking for is a change in land use and not a subject for a variance. Minnesota does not allow use variance and that would be a use variance.

Chair Sauber stated she would check with the Attorney regarding a variance and get back to Mr. Malwitz.

Newsletter – Jody Arman-Jones was unable to attend. There was much discussion regarding the Newsletter and how information and feedback is given to the citizens regarding Public Hearings. What vehicle we should use to get information to the citizens-it could be the newsletter, the annual meeting, a robot-call--maybe something we could bring to the Board. We need a better form of communicating with the residents, whether it pertains to them or not. Should we go back to sending out something by USPS to the residents. Need to review our communication process with the Board.

Citizen Concern-Removal of Citizen Involvement at Meetings – Allen Novacek.

Commissioner Cleminson stated that Mr. Novacek could not be present but left a letter in the drop box that he would like read at the meeting.

To Eureka Township Planning Commission:

“I am unable to attend in person tonight due to an out-of-town funeral. There is cause for serious concern about recent changes in the way the Eureka Town Board eliminated public comment as an automatic agenda item. To the best of my knowledge, the Town Board Chair (Brian Budenski) made a private and independent decision to have it removed. This decision was closely preceded by a citizen publicly making accusations as to corrupt actions by two Board Members. Whether the accusations are true or not, removing public comment simultaneously opens the door for scandal, while presenting a disturbing insult concerning citizen input. This concern continues to expand when a person considers that not one of the remaining Board members openly questioned the removal of public comment.

I am asking the Eureka Township Planning Commission to make a recommendation that the Eureka Town Board reinstate the automatic agenda item entitle public comment. This must take place in the form of a motion, a second and a majority vote, or this will have little chance of moving forward. It is my intention to address the Town Board at their next meeting. Please consider the benefit to the entire Township if I am representing all who share this concern.”

Allen Novacek

Chair Sauber stated she did not believe it was a private and independent decision and that it is on the Town Board agenda for the next meeting. There is a citizen input policy and if the Board decides to remove it, they would have to change their policy. It is not our role as the Planning Commission to advise the Board on their policies. It is not our place to recommend what Mr. Novacek is asking. Chair Sauber stated she would decline to foster a motion to that effect.

Town Board Liaison Report – Town Board Supervisor Kenny Miller-Mr. Miller stated he did not feel he could comment on the Town Board Meeting, as the draft minutes have not been approved. Chair Sauber stated she would like Mr. Miller to speak as the liaison and let us know what went on at the Town Board Meeting. Mr. Miller stated there was a concern that we need to put together a committee to study Solar Energy. The Board recommended a moratorium for six months. Chair Sauber stated she would like to recommend to the Board that this would be an excellent time to bring a planner in to help us with Ordinance language and what other communities are doing. We are not solar energy experts.

Minutes Approval

May 14, 2015, Roundtable Meeting – Chair Sauber made a motion to approve the Town Board and Planning Commission May 14, 2015 Roundtable meeting as amended. Vice Chair Barfknecht seconded the motion. Motion carried unanimously.

May 19, 2015 and May 21, 2015, Planning Commission Special Meeting – Vice Chair Barfknecht made a motion to approve the Eureka Planning Commission Special Meeting minutes of May 19 and May 21, 2015 as amended. Commissioner Palmquist seconded the motion. Motion carried 4-0 with Chair Sauber abstaining.

June 1, 2015, Planning Commission Meeting – Vice Chair Barfknecht made a motion to approve the minutes of the July 1, 2015 Planning Commission as amended. Commissioner Palmquist seconded the motion. Motion carried unanimously.

June 10, 2015, Planning Commission Public Hearing – Windmill LLC Request for an Amendment for Dry Batch Ready-Mix Plant – Vice Chair Barfknecht made a motion to approve the June 10, 2015 Planning Commission Public Hearing minutes as amended. Commissioner Cleminson seconded the motion. Motion carried 4-0 with Chair Sauber abstaining.

June 15, 2015, Planning Commission Special Meeting – Commissioner Frana made a motion to approve the June 15, 2015 Planning Commission Special Meeting minutes as amended. Commissioner Palmquist seconded the motion. Motion carried 4-0 with Chair Sauber abstaining.

June 23, 2015, Planning Commission Special Meeting – Vice Chair Barfknecht made a motion to approve the June 23, 2015 Planning Commission Special Meeting minutes as amended. Commissioner Frana seconded the motion. Motion carried 4-0 with Chair Sauber abstaining.

Old Business

Kelly Aggregate Findings of Fact – postponed until Thursday, July 9, 2015.

Sump Pump Discharge Ordinance – Vice Chair Barfknecht stated she received the following feedback from Inspector Gilmer. Section R 405.2.3 2015 IRC states a sump pump can discharge into an approved septic system but not into a drain field or daylight. Water discharge to be no closer than 30 feet. Vice Chair Barfknecht stated she is not comfortable adding it being discharged into an approved septic system. She stated most cities said it was not allowed, but this is 2015 International Residential Code and perhaps is a change from what was previously told to us.

Chair Sauber stated that this should be sent to the Board. Supervisor Miller suggested that this might be a question for TKDA. Vice Chair Barfknecht to revise the Sump Pump Ordinance.

Chair Sauber made a motion for Vice Chair Barfknecht to submit finalized language and the Planning Commission requests that the Board forward it to Ron Quanbeck at TKDA for his review. Commissioner Frana seconded the motion. Motion carried unanimously.

Fence Setback Ordinance-to be put on August agenda.

Watershed Escrow Amount – Chair Sauber contacted Attorney Lemmons and he suggested \$750 in escrow amount. Chair Sauber stated she assumed it would cover his basic review and would be a start for any additional questions we ask of him pertinent to a specific request. This is something we need to bring up to the Board—that the Planning Commission is recommending that we put that watershed escrow in the fee schedule.

Comp Plan Committee Makeup and Request for TKDA – it was discussed that the Planning Commission should handle this and we need a starting dollar amount. Supervisor Miller stated that \$10,000 was the amount requested before. Chair Sauber also stated that it would include meetings to present the information to the public. Once the Board approves, we can contact Sherri Buss.

Planning Commission Policies and Procedures Manual –

- Page 10 – General Policies, Ch 1 –Member Orientation and Training, Item A-1 to add after “Beyond the Basics”, “*and/or Your Role as a Planning Commission Member*”.
- Page 25, Appendix B, Paragraph 4, sentence 2, strike “*However*” and replace with “*Therefore*”.

There is still an issue regarding the watershed. It will be discussed again at the Board Meeting. At some point we need to present to the Board that the Planning Commission agreed as a group that the Township Attorney shall be requested to be at all Public Hearings. That has been advised by attorneys in the past.

There was much discussion regarding questions from the residents at Public Hearings.

- Page 20 – Procedures for Public Hearing, Item G, line 2, after question, add “*ask the Attorney to answer the question,*”

It was determined to include the Policies and Procedures Manual on the next Planning Commission agenda to clarify the watershed issues.

Recodification Review – Chair Sauber stated that we do not have the amendment to the Mining Ordinance. We will discuss this in more detail at our next meeting.

Ulman Transfer of Building Right – Chair Sauber stated the Ulman Transfer of Building Right was not a Transfer of Building Rights, it was actually the signing over of a shared building right.

Darrin Giles – Chair Sauber stated she spoke to Mr. Giles and he was under the impression that he could submit everything at tonight’s meeting. Chair Sauber informed him that he has to have everything in 10 days before the scheduled meeting. He is planning to get on the Agenda for August for the formal review. Town Clerk to make sure everything is complete and to send Darrin an email letting him know he will also need a map of the sending parcel that Commissioner Frana recommended be added to the application.

New Business

Sign Permits – Chair Sauber stated it was her feeling that a sign permit should no longer be issued over-the-counter for the following reasons:

- It is a zoning issue, not a building issue, other than anchoring to the ground
- We need to verify setbacks from the road right-of-way, which varies on different roads

- Total signage on the property not to exceed 200 feet
- Check to see if a CUP is required due to size or lighting

Chair Sauber would like to suggest submitting a motion to the Board that they reverse this as they did Ag Building permits and that it should come before the Planning Commission and Town Board.

Chair Sauber made a motion that this rationale would be presented to the Board and ask that they revert to the Planning Commission/Town Board review of sign permits. Vice Chair Barfknecht seconded the motion. Motion carried unanimously.

Solar Energy Study

Chair Sauber made a motion to present to the Board that TKDA be hired to give us assistance with the Solar Energy Study and the amount determined after discussion with Sherry Buss. Vice Chair Barfknecht seconded. Motion carried unanimously.

Website Update Issues – Chair Sauber stated she would like to have the Board appoint someone or various people to find all the places where we have old names and information-it is very important for our website to be updated with the correct information. Chair Sauber requested the liaison to bring this up to the Board.

Liaison Report Items – Collective for Completeness –

- Special Meeting for Transfer of Building Rights –changes we think need to be made to the Ordinance for clarification – that will need to be updated
- Sign Permit Application – there should be a charge for the Building Inspector to inspect the anchoring and also to check the setbacks
- Adding the map of the sending parcel
- Changes to the Application to say recommendation “to approve” or “to deny”
- Adding escrow to the fees and needs to be added to the fee schedule
- Changes to application and procedures and had a motion to the Board to authorize Jeff Otto to work with Chad to complete those changes
- Lot Split Application Change – what to put in the blank line-Attorney suggested it should say “Parcel A”
- When the formal review application is submitted, that starts the 60-day rule
- Lot split would apply to any permit – using county info map rather than certified copy of the deed-Chad advised to have a certified copy of the deed. These changes do not have to go to the Board
- Ag Building changes – perhaps Attorney should rewrite that
- Notified Living Waters church-common plan of development to go into file
- Suggested a list of the 60 day rule request and when the 60 days would expire so Township can request an extension
- Planning Commission individual township email addresses

Training Opportunities – Government Training Service Basics – Chair Sauber stated there are upcoming training sessions and reminded Planning Commission members to sign up for the October Comp Plan session. Commissioners can apply online and get reimbursed. If three members or more of the Planning Commission attend the meeting, it has to be posted.

Deputy Clerk Issues – suggestion made not to list individual corrections for the minutes.

Chair Sauber made a motion to continue the July Planning Commission Meeting on Thursday, July 9, 2015, at 7:00 PM. Chair Sauber to request Attorney or representative to attend the meeting. Commissioner Palmquist seconded the motion. Meeting adjourned at 9:38 PM and to be continued.

July 9, 2015 – Continuation of Eureka Planning Commission meeting from July 6, 2015

Call to Order

Planning Commission Chair Sauber called the meeting of July 6, 2015 back into order on July 9, 2015, at 7:00 PM. Planning Commission members present: Chair Nancy Sauber, Vice Chair Lu Barfknecht, Commissioner Phil Cleminson, Commissioner Donovan Palmquist and Commissioner Fritz Frana. Township Attorney Chad Lemmons was also in attendance. See attached sheet for additional persons in attendance. Deputy Clerk Cheryl Murphy recorded the minutes.

Approval of the Agenda

The following item was added to the Agenda:

- In between Evan Dee and Kelly Aggregate, Chair Sauber requests that Attorney Lemmons give his opinion of the Malwitz property.

Permit Requests

Dave Smith – 6675 245th Street West – Building Permit Application

Mr. Smith brought back his site plan to be added to his application. It was noted that it is a sub-standard lot from 1928, with a non-conforming structure that by today's standards would not fit. Mr. Smith is increasing the setback on the east by one foot. There is 70 feet on the west, but it is full of trees, so they are reluctant to cut them down. The property also drops away by the trees. It was determined that Mr. Smith will need to have a variance. He can go ahead with his building permit and apply for the variance at the same time. His application should be checked "repair replacement" since the old home burned down, instead of new construction. The estimated value to be listed on the application is \$205,000.

Chair Sauber made a motion to forward to the Board with the recommendation for approval of the building permit at 6675 245th Street West, Farmington, for the new house including new foyer and garage, with the additional requirement that Mr. Smith apply for a variance at the same time, and that the Attorney has advised us that he can go ahead with his reconstruction and the variance can be dealt with at a later date.

Chair Sauber advised there has to be a legal posting (10 days in advance) for the variance and neighbors have to be notified because it is a hearing, but the Board will hear it. It could be scheduled at the August 2015 regular meeting. There will be a fee for the variance.

Vice Chair Barfknecht seconded the motion. Motion carried unanimously.

Living Waters Church - 22222 Dodd Boulevard – Building Permit Application. The setback of the Southwest side is 27+ feet and should be 30 feet. It was something that was done by the previous owner. Attorney Lemmons recommendation was that if you were staying within the boundaries of the building, you could just go ahead with the Permit. If you add on the vestibule, you would need to apply for a variance. We could approve the Building Permit and you would apply for the variance at the same time, and the variance could be handled at the August Town Board meeting. There is a fee for that (it was determined \$600 plus \$500 in Escrow, to be paid at the same time) and it would also have to be published and neighbors notified. Living Waters stated they are meeting with the architect on Monday and they will determine at that time what they will decide to do regarding the vestibule. The building permit has already been approved.

Chair Sauber made a motion, if Living Waters Church decides they are going forward with the vestibule, that they apply for a variance at the same time. It is their decision as to what they will decide. If they decide not to do the vestibule, they do not need a variance. Commissioner Cleminson seconded the motion. Motion carried unanimously.

Evan Dee - 27045 Galaxie Avenue – Lot Split Approval Application

Evan Dee was absent for the meeting. Attorney Lemmons stated that we can work with the Dees, by adding three acres to their site. They cannot split off the home site and attach to the LLC. Attorney Lemmons stated also that we can work with the Dees, but they also have to work with the Town Board. It is not a variance situation. Attorney Lemmons suggestion to make a motion to approve the building permit subject to the applicant agreeing to apply for and complete a lot split increasing the size of the parcel to the proper 11 acres. Mr. Lemmons stated to add to the Ag Building, you must add site plan information. Remove the clause “and the Minnesota Building Code” and remove the bottom line.

Chair Sauber made a motion to approve the Building permit for Evan Dee’s Ag Building with the condition that sufficient acreage is added to his parcel to bring it to a minimum of 11 acres, thus meeting the Ag exemption minimum acreage. Vice Chair Barfknecht seconded the motion. Motion carried unanimously.

Attorney Lemmons

Chair Sauber asked for Attorney Lemmons opinion regarding the Malwitz property. Attorney Lemmons stated the way he sees it is there are two separate quarter-quarters.

One has five houses and the other has two. He can build in the quarter-quarter where there are two houses and stay within the density. He can transfer two in to the quarter-quarter that has two houses.

Chair Sauber recused herself for the remaining part of the discussion. Vice Chair Barfknecht read the Finding of Fact for the Kelly Aggregate, Inc. request for an amendment for dry batch ready-mix plant.

FINDING OF FACT

1. That a Public Hearing was duly called for July 2, 2015 at 7:00 PM at the Eureka Town Hall and notice was sent to all landowners within 1,000 feet of the applicant's property.
2. That Kelly Brosseth – Kelly Aggregate, Inc. is the owner of the following described real property situated in the Town of Eureka, County of Dakota, State of Minnesota:
Parcel 1, PID#13-00800-011-25: The Northwest Quarter of Section 8, Township 113, Range 20, Dakota County, Minnesota. Parcel 2, PID# 13-00700-020-02: That part of the South One Half of the Northeast Quarter of Section 7, Township 113, Range 20, Dakota County, Minnesota
3. That an Interim Use Permit was granted on March 9, 2009 for the purpose of allowing aggregate extraction and processing by Kelly Brosseth-Kelly Aggregate, Inc. pursuant to the provisions of Eureka Town Ordinance 6.
4. That Kelly Brosseth – Kelly Aggregate, Inc. has applied for an amendment to the Interim Use Permit for the purpose of allowing it to operate as an accessory use, a dry batch ready-mix concrete plant.
5. That the proposed amendment does not meet or exceed the threshold of any mandatory EAW categories listed in MN Rule 4410.4300. That as a result, there is no need to require the applicant to conduct and prepare a new EAW.
6. That the proposed dry batch ready-mix concrete plant will not result in increased traffic; that it will not intensify the present use of the property as an aggregate extraction and processing operation.

Commissioner Frana had questions for Mr. Brosseth from citizens concerned about groundwater monitoring wells. Mr. Brosseth stated that monitoring is done quarterly and recorded to the Township yearly. American Engineering and Testing. They look for groundwater temperature, pollution, etc. Mr. Brosseth is permitted for a well for 1.1 million gallons per day.

Mr. Frana also asked Attorney Lemmons opinion regarding the Planning Commission and Town Board not being obligated to grant an amendment to the IUP. Attorney Lemmons stated that once you have established conditions, if the applicant meets those conditions, you are bound to grant it to them. If you don't, you are acting in an arbitrary and capricious manner. You have to grant it to them – you do not have the right to say no. Case Law states that just because citizens oppose it, that is not enough to deny it, unless there is objective evidence why they think their objections are justified.

There was much discussion regarding property values, truck traffic and backup alarms and hours of operation with Mr. Brosseth and the Planning Commission.

Vice Chair Barfknecht presented a list of conditions based on what was done previously:

1. The concrete plant can be located no less than 1,800 feet from any dwelling
2. The concrete plant can be located no less than 200 feet from any property lines
3. Hours of operation are Monday-Friday from 7:00 AM – 5:30 PM with no Saturday operation
4. Recycled bituminous dust free surface on the area traveling to and from the mine, the turnaround and area in front of the facility
5. Any spills or release relative to the dry batch ready-mix plant need to be reported to the MPCA, the Township and property owners within 1,000 feet, consistent with MPCA regulations
6. Height of structure shall not exceed the height of the berm and/or screening east of Dodd to Highview
7. No truck hauling to and from mine on Eureka Township gravel roads except for sites within the Township
8. Update of the Development Agreement

Vice Chair Barfknecht made a motion to recommend approving the amendment to the Interim Use Permit for Kelly Brosseth-Kelly Aggregate, Inc. based on the conditions 1-8. Commissioner Cleminson seconded. Motion carried 3-1 with Commissioner Frana voting nay, based on not having TKDA take a look at the EAW.

Commissioner Frana made a motion to approve the Finding of Fact as presented by Vice Chair Barfknecht. Commissioner Cleminson seconded the motion. Motion carries unanimously 4-0.

Vice Chair Barfknecht made a motion to adjourn the meeting. Commissioner Palmquist seconded the motion. Meeting adjourned at 8:32 PM.

Cheryl Murphy
Deputy Clerk

Minutes approved by the Planning Commission on _____.