

EUREKA TOWNSHIP
Dakota County, State of Minnesota

SPECIAL TOWN BOARD/PLANNING COMMISSION MEETING
NOVEMBER 15, 2021 – 6:30 P.M.

Call to Order

The Eureka Township Town Board/Planning Commission meeting was called to order at 6:30 p.m. by Chair Donovan Palmquist and the Pledge of Allegiance was given.

Supervisors Present: Donovan Palmquist, Ralph Fredlund, Lu Barfknecht, Nancy Sauber, Kathleen Kauffman.

Commissioners Present: Randy Wood, Bill Clancy, Julie Larson, Deb Burkhardt, Chad Berg.

Others Present: Ranee Solis, Amy Liberty, Stacy Shaw, Nathan Shaw, Dan Heyda, Tavis Wangen.

Zoom Attendance: Theresa Larson, Stacey Simonette, Brian Ahern, Kathy Maas.

Discussion of neighboring municipalities' home extended business ordinances

Chair Palmquist stated the purpose of the special meeting is to discuss the pros and cons of the Scott County Ordinance on home extended businesses. The discussion will be between the Town Board and Planning Commission. There will be a public hearing at a later date where the public can voice their opinion on the matter. The Board encourages anyone who is interested in this to be involved and be active in either making a change or keeping the status quo.

Chair Palmquist offered the following questions for discussion:

1. Is there a problem here to be addressed?
2. Is there a big demand for a change in the Ordinance?
3. If there is a problem how do we define it? I believe the Township authorities want to work with current businesses that are in the Township from the 2004 grandfathered nonconforming use businesses. I would like for the Township authorities to work with the residents to develop a policy and guidelines that are conducive to both parties. Not to a party of no and a party of yes.
4. What is our vision?
 - a. What do we want our Township to be like?
 - b. Do we want it to be a place to thrive or just a place to live and work?
 - c. Do we want peaceful coexistence?
 - d. Do we want privacy and prosperity?

Those are the things I want to advocate for all residents in the Township as we move forward.

5. How do we take advantage of our location? We are close to the metro. We have a lot of resources here without impacting our neighbors.
6. What are the pros and cons?

7. Are there other considerations and solutions to dealing with this?

Commissioner Clancy: The first question is very relevant, what is the problem we are trying to solve here with this change? I understand protecting those people on the nonconforming use list, but I am trying to understand why we are opening this up.

Chair Palmquist: We need to look at impact, what businesses do we want to allow and not allow based on the impact they have on their environment.

Commissioner Clancy: How would we address the difference between someone doing something quietly in his pole barn vs someone storing 25 pickup trucks in his front yard?

Chair Palmquist: We would need to set standards.

Supervisor Sauber: By State Statute, the only way that you can be a nonconforming use or structure is if you were legal and permitted when you started. The registration process in 2004 was never approving the use, it was meant to be holding open a possibility that you could expand and there would have to be a public hearing detailing the extent and intensity of the expansion.

Chair Palmquist: This meeting is just the beginning of the discussion and at some point we should reach out to the citizens. The responsible thing to do would be to get input from the citizens, and not for the ten of us to deem that this is the direction we are going to go in.

Supervisor Sauber: We need to consider our neighbors' quality of life regarding noise, dust, increased traffic, hours of business, lighting, etc. We might also consider that once land is subdivided, that business has to go away.

Supervisor Kauffman: There are legal aspects we have to consider, as well as enforcement.

Commissioner Clancy: Before we consider enacting an Ordinance change of any type, we must first recognize where we are today. We already have a serious problem in that an Ordinance is only as good as its enforcement. The breakdown in the system is the simple fact that citizens will verbally complain quietly but rarely wish to fill out the official citizen complaint form. In reality there is also no trigger to enforcing Ordinances. The citizens view it as the job of Town Board, but they did not sign up to be the citizen complaint board. Who and how are we going to enforce a new Ordinance regarding subtle differences of home business, including decisions to be made on subjects such as no more than one employee working on site, vehicles not exceeding one ton, storage of materials indoors, not more than three customer vehicles at any one time, noise, etc.? Who and how are we going to enforce new Ordinances regarding home extended businesses if today we are not enforcing our clear and simple Ordinances? Separately and additionally, just regarding zoning, how would we accommodate what we are contemplating?

Supervisor Kauffman: There is no question that we need better enforcement. Part of the struggle is we do not have people patrolling the streets looking for violations, nor would I expect we would vote for the budget to have that. The Board is currently looking into having

an administrative system to start fining people. We do not know if it will work, we do not know how many hoops there will be to get it, but that might make enforcement more readily available and if it does, the Ordinances might become more credible.

I have been thinking about if I were to change something, what would I change? I do not believe trucking businesses or repair shops belong in Eureka Township for impact, pollution, or ability to enforce reasons. I believe Scott County's legislative regrets come in this area of opening up the door too wide. But there are other areas with minimal impact I think we could legislate such as window washing businesses, electricians, plumbers, and other tradespeople who do not do work at home but rather the work is done at the customers location. I do not believe in asking them to open their doors to let me see what is going on inside their accessory buildings, and to say that is our standard is problematic.

Chair Palmquist: I am not looking at the Scott County Ordinance to adopt it wholeheartedly. I believe the way this can work is by having an impact-based decision on whether or not we give a conditional use permit or interim use permit. To have a blanket list of what we allow would not be fair to other occupations that do not have an impact. We would need heavy regulation, administrative enforcement, somehow try to accommodate to the best of our ability without impacting property values or creating nuisances. There are businesses along Cedar Avenue, and no one complains because they have zero impact on anyone. I also, do not want to police what goes on in people's buildings.

Supervisor Kauffman: I have a problem with welding shops for the following reasons: It is a heavier industrial application; it involves potential pollutants; our inability to monitor and regulate industrial activities.

Commissioner Berg: Farming can be far worse.

Supervisor Sauber: There is a right to farm in Minnesota. If a business is industrial in nature, it does not belong in an ag district. We allow mining because gravel is a disappearing resource. We do our part to provide that resource, but once the mine has been excavated it goes back to ag use.

Commissioner Clancy: If the Township makes this change, how do we address a business that started off small but has grown?

Audience members were reminded that they are welcome to listen to the discussion, but public comment will be heard at a later time. Chair Palmquist offered to receive any public concerns or input via email.

Motion: Commissioner Berg moved to hear public comment on this topic tonight. Supervisor Barfknecht seconded for discussion. A friendly amendment from Supervisor Sauber to allow 15 minutes at the end of the meeting for the public to be heard was agreed upon.
Motion carried 10-0.

Commissioner Burkhardt: Only 2 of the 13 townships in Dakota County address home businesses. There are ordinances to look at within Dakota County: Marshan Township

addresses nonfarm occupations and Hampton Township has business occupations out of the home. Looking at the Scott County Ordinance is extremely difficult because businesses are under the authority of their law enforcement. Their enforcement processes are probably already in place.

Chair Palmquist: I am not saying we should adopt their Ordinance, for us to come in with a blank sheet of paper would be folly.

Commissioner Clancy: Whatever is decided, if anything, I urge you to consider it as second base and not fail to tag first base. And first base has to be a solution to enforcement, meaning an administrative approach. If we have that in place first, we might have a chance to manage it.

Chair Palmquist: We are already exploring that with the Board to have an administrative judge who deals with citations and letters.

Chair Palmquist: I believe a majority of the Township would be willing to apply for a conditional use permit or interim use permit based on a review of their business and the impact they have. There are many citizens using accessory buildings for business that are not registered.

Supervisor Sauber: In 2004 residents had a full calendar year to register their businesses and very few actually did so.

Supervisor Kauffman: We need to decide if we want an Ordinance that extends the home occupation to something beyond the white- and pink-collar professional in the home. Right now, you can be a farmer, white collar or pink collar professional, and that is it. Do we want to look at expanding the definition and, if so, do we want to list occupations and list a method of considering the impact process? My own preference is to list occupations and then have an upper limit, so we do not have Amazon delivery trucks, etc. I understand slippery slopes, but I am not so afraid of them that I am frozen in place. You deal with slippery slopes by placing upper limits you do not freeze in place. I have a bigger problem with looking at impacts for two reasons: 1. The Board's decisions are subject to an arbitrary and capricious standard and, to the extent that we try to custom fit every approval in every order to an analysis of the facts presented to a different Board every time, it is more difficult to have a consistent history of how we go about approving this and not that. 2. Our Boards change a lot over time. Our Ordinances change too but it is a lengthier process than it is to change our Boards. I have a couple of thoughts: 1. Do nothing until we get our hands around enforcing what we have or 2. Create a list and a generalized impact statement. I prefer the latter.

Supervisor Sauber: You can never do an exhaustive list. Changes in technology will open up new types of jobs. The list would have to include something analogous to those allowed businesses. We must be very cautious of how the Ordinance is worded.

Supervisor Kauffman: I am not in favor of a case-by-case analysis of impact. Nor am I in favor of acreage determining the amount of impact you can have. A business on a 10-acre parcel can still be a nuisance depending on where I am conducting my business.

Supervisor Sauber: If we limit the square footage to 6,000 sq. ft. how are we assured a person is staying within that footage? At some point we need to go through this Scott County Ordinance and shake out some opinions.

Supervisor Kauffman: There is so much in the Scott County Ordinance that does not fit us that I would go to a blank piece of paper.

Chair Palmquist: The Marshan Township Ordinance is more appropriate to us.

Commissioner Berg: What is driving this specific Ordinance to come up?

Chair Palmquist: There are a lot of people in the Township that have home extended businesses who are flying under the radar and are being complained against. I think people would like to have home extended businesses in the Township and currently we do not allow them. I personally believe there is a demand for some type of regulation of home extended businesses that would allow them to work in a building outside of their home. It would possibly keep people from wanting to annex their land to the north.

Commissioner Berg: Our rules and regulations are somewhat self-imposed.

Supervisor Kauffman: Ordinances can either change from grass roots up, or from the Board down.

Supervisor Barfknecht: I think there is a misconception that if you build an accessory structure you can do whatever you want with it. But if it is not for ag use it must be used for personal storage. A landscaper cannot store their equipment and supplies in their accessory building under our current Ordinance. All business-related equipment and supplies must be stored inside the home. Complaints drive discussion, so we are trying to determine what we would allow. A lot of people were not aware of the nonconforming use registration in 2004. Do we allow one day for people to register their business again?

Supervisor Sauber: Registration does not mean you fit under the Ordinance it means you could possibly expand. This has been misunderstood a lot.

Supervisor Kauffman: This path was initiated because of a complaint, and I found out that people cannot store business materials in their pole sheds. To prove compliance, they were opening their pole shed. I do not want to inspect what people store in their pole shed. I would still like to change the Ordinance on whether you can store business-related material in a shed, rather than domestic materials. This is an enforcement obligation that is too intrusive and too much.

Commissioner Burkhardt: We must remember we are a metro county which is different than a grass roots county. Some occupations have inherent nuisances to be dealt with. I do not care to know what is in your building and do not want to be the one enforcing it. We screen wetland impacts now and regulate everything else we do in the Township.

Commissioner Clancy: How we would handle a business that grows?

Chair Palmquist: It will be forced to move out of the Township because it will be unsustainable.

Supervisor Kauffman: I would take a more cautious approach to changing the Ordinance and not approach the problem with a blank slate listing the maximum we can do to have maximum use of our land. Eureka is not business land; it is ag and residential.

Chair Palmquist: Business use most likely already exists, but we do not know what the demand is or level of citizen concern of opening the door to having business move in next door.

Commissioner Burkhardt: Being a new resident, part of why we moved here is that we are zoned ag and residential.

Vice Chair Fredlund: Some people moved here for the country atmosphere, others so they can do whatever they want and have businesses in their pole shed. I feel we could open it up but with limitations.

Commissioner Clancy: Given the limitations of public hearings and surveys I suggest, in parallel, we find separate ways to socialize this issue to hear from a larger portion of the residents.

Public Comment

Tavis Wangen - 9320 267th St. W.

We have a 1st amendment right to free speech. That is what I am here to do. It is easy to pass laws and make decisions with only four people in attendance, I hope that is not the case here. Tonight, you stated you do not want white glove searches of places but at the last meeting complaints were raised with no formal record. This points to white glove searches to some extent. Why not allow pursuit of happiness if done within reasonable means? Farming is a pollutant industry. Is anybody else allowed to be in the community? Farming and mining are allowed, but a welder cannot weld those same farming implements? We are paying the taxes and mortgages, trying to take care of our families with Covid coming down on us. Lakeville will eventually annex you. I guarantee that 90% of the residents are operating businesses illegally. We are all neighbors who want the same thing, to raise our kids and live together in a civilized manner. I have seen other communities interact in a reasonable way, much better than this community interacts. If a mining pit is pounding away it would be reasonable to bring a magnifying glass down on them. Why would it be a terrible thing to have the whole community come to this meeting? It becomes obvious to us that there is a rub going on. We are better served if we all work together. The right to farm does not mean others do not have the right to take care of their families.

Dan Heyda - 9390 267th St. W.

I am on board with Chair Palmquist in that if it has to be a regulatory approach it should be impact based. I would argue that more chemicals go down a hairdresser's drain than do at my shop. Vehicles waiting to be worked on that we have in our lot have large drip pans underneath them. These extended home businesses are a steppingstone. You stay small enough to stay under the radar and do not want to grow anyway. If there was a groundwork to have a conditional use permit and reviews on an annual basis to see your amount of growth,

you would see for yourself that you might only have two years left to stay in compliance with the Ordinance. If someone does not like seeing vehicles I would gladly put up a fence. I have been flying under the radar for six years without complaints. I do my best to work with my neighbors. All businesses are going to be infinitely different and will have to be treated that way.

Chair Palmquist: I believe we are off to a good start. I prefer a grass roots up approach. I am here to serve the citizens and respond to their needs regardless of their affiliation. The Board does not write the rules, we are the umpires of the rules. We want to help people do what they want to do within the context of the law.

Dan Heyda: Can the Township take a tax or annual operating license approach for businesses?

Supervisor Sauber: We do not have taxing authority and we cannot just assign a fee for a conditional use permit; it has to defray our costs.

Dan Heyda: I would be willing to pay for a path to compliance.

Supervisor Sauber: Spread the word for people to be added to the news and notices list. We also post news and notices on the website. It is unfortunate that only four residents are in attendance tonight, but it is not atypical. Unless it affects you, you just go about your business. We are one of two townships that have zoning authority, which puts us in the hot seat.

The Town Board and Planning Commission agreed to scheduling a 2nd meeting on January 18, 2022, at 6:30 pm

Adjournment

Motion: Commissioner Larson moved to adjourn the meeting. Chair Palmquist seconded.
Motion carried 10-0.

Meeting adjourned at 8:51 p.m.

Respectfully submitted,

Ranee Solis
Ranee Solis, Town Clerk

Minutes Officially Approved By:

Rodney Wood on: 1/31/22
Planning Commission Chair Date

Minutes Officially Approved By:

[Signature] on: 2/14/22
Town Board Chair Date