

EUREKA TOWNSHIP
Dakota County, State of Minnesota

TOWN BOARD MEETING
SEPTEMBER 13, 2021 – 7:00 P.M.

Call to Order

The Eureka Township Town Board meeting was called to order at 7:01 p.m. by Chair Palmquist and the Pledge of Allegiance was given.

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

Others Present: Ranee Solis, Martin Norder, Randy Wood, Mark Henry, Dean Trahan, Mike Slavik, Ken Malecha, Ryan Johnson, Ed Endress, Dan Ames, Bernardo Omana.

Zoom Attendance: Jody Arman-Jones, Julie Larson, Brian Ahern, Deb Burkhardt, Georgie Molitor, Carol Cooper and Jim Sauber.

Approval of the Agenda

The following changes were made to the agenda:

1. Add item D. Planning Commission review of limits on residential pole sheds under Permits.
2. Add item F. Pay when attending remotely to Treasurer's Report.
3. Add item E. Petrash letter under Old Business.
4. Add item F. 9390 267th complaint follow-up under Old Business.
5. Add item G. 24840 Dodd Blvd complaint follow-up under Old Business.
6. Add item F. Process for mining reviews under New Business.
7. Add item G. Retention Schedule filing under New Business.
8. Include Flags and Measuring Wheel in item A. under New Business.

Motion: Supervisor Sauber moved to approve the agenda as amended, seconded by Vice Chair Fredlund. *Motion carried 5-0.*

Road Report

Road Superintendent – Mark Henry

- Completed gravel on Essex between 220th and 225th and will finish 250th on Tuesday.
- Due to a conflict with another project, the ditches on 225th will be completed this weekend.

Eureka Estates drainage issue

Mark Henry introduced Dean Trahan, the lead estimator/project manager for Northland, to the Board. Mark met with Dean to explain the drainage problems in Eureka Estates. Dean Trahan read the TKDA feasibility report and took some elevation shots of the entire length of Iceland Path. There is 8 feet of fall from the cul-de-sac to the other end, which only comes out to be about 0.5%, which is pretty flat. It appears that the ditch needs to be regraded to follow

the road at a constant depth. All culverts will also likely need to be redone. Supervisors Barfknecht and Palmquist volunteered to meet with Dean Trahan and Mark Henry tomorrow morning for further discussion.

240th & Cedar – Traffic/signage

Mark Henry informed the Board that the sight line on 240th approaching Cedar Avenue is marginal. He will install a sign if the Board finds it necessary. Supervisor Sauber explained that she would be in favor of a sign due to the pictures received of semis not coming to a complete stop. Supervisor Barfknecht noted that the only time she has seen an issue is in winter when cars are moving too fast and is not convinced that a sign is necessary. Supervisor Sauber reiterated that, in her opinion, it is much more prudent to have the sign to ensure the safety of our roads. Supervisor Kauffman commented that a sign is a small price to pay to shift the burden of proof to a driver who slides into traffic and is in favor of a sign.

Motion: Supervisor Sauber moved for the Road Superintendent to place a “stop ahead” traffic sign on 240th St. heading east to Cedar Avenue, seconded by Vice Chair Fredlund. *Motion carried 5-0.*

Supervisor Kauffman noted that Ipava, which was in perfect shape, now appears as if it has frost boils. Mark Henry advised that the recent all-day drizzle made all roads too slimy to blade. Shaping the roads is an ongoing process.

Public Comment

**The opinions expressed in public comments are those of the authors and may not represent the official positions of the Town Board. The Town Board does not control or guarantee the accuracy of information contained in the comments, nor does it endorse the views expressed.*

Chair Palmquist opened the floor for public comment and asked three times if there were any attendees who would like to make comment. Hearing none, the floor was closed.

Citizen Inquiry - None

Planning Commission Update – Randy Wood

Summary of the September 7, 2021, Planning Commission meeting

- Recommended approval of a pole shed for Ryan and Kim Johnson.
- Recommended approval of an accessory building addition for Ed Endress.
- Recommended approval of a pole shed for Bernardo Omana.
- Recommended approval of a housing right transfer for Ken Malecha after Chad Lemmons found it to be a pre-1982 Lot of Record.
- Schuhwerck Trust withdrew their lot split application.
- Tabled a housing right transfer and lot split applications for Jerome Phillippe due to errors in the survey for the lot splits.
- Discussed and researched driveway access to public right-of-way Ordinance as directed by the Board. Commissioner Clancy questioned the potential impacts and will draft a direct answer as to why it is not needed right now.
- Continued permit form review.

Overhead projector

Commissioner Wood requested to purchase an opaque projector to display maps and other information at the Planning Commission meetings.

Motion: Chair Palmquist moved to approve for Commissioner Wood to purchase an opaque projector, not to exceed \$300, seconded by Vice Chair Fredlund. *Motion carried 5-0.*

Residential accessory structures

Motion: Supervisor Kauffman moved for the Planning Commission to review the Ordinances with respect to limitations on use of residential accessory structures to determine whether they are appropriate and to ensure that they do not unduly restrict the use of the structure, seconded by Chair Palmquist for discussion.

Supervisor Kauffman stated that she does not want the Board to take on the responsibility of reviewing what people store in their sheds. At the same time, she does not want to open it wide up, granting permission for people to run businesses out of their accessory buildings. The Board should be reviewing the Ordinance to see whether it wants to limit the material that is legal in an accessory building to tools and domestic supplies and equipment, particularly as we allow the size of accessory buildings to be up to 10,000 square feet.

Supervisor Sauber noted that currently, the only businesses allowed under the Ordinance are home occupations which are contained within the primary structure. We do not allow an accessory building to be used for any type of business use and perhaps Supervisor Kauffman's motion should be whether to expand home occupations.

Supervisor Kauffman clarified that we have residents who own small businesses, with their base of operation in another town, who want to store some equipment or material in their accessory buildings. They are not doing business in Eureka, they are not operating out of their accessory building, they have no employees, they are just storing materials and equipment. Supervisor Sauber responded that it has always been the feeling of the Township that they store these items at their primary business. Without expanding home occupation, she would not be in favor of changing the Ordinance to allow business materials in an accessory building.

Supervisor Kauffman noted that, in reviewing the minutes, she read a statement from the Township attorney that said if the structure is legal, we cannot inquire into what they are going to do with it. Supervisor Sauber responded that the attorney advised that we cannot add a condition to a building permit as to how it is being used. We grant the permit and let them know what the legal use is. If they use it otherwise, and a complaint is filed, we follow up on it. Without changing home occupation, you are opening up Pandora's box.

Chair Palmquist added that Scott County has an extended business Ordinance which lists specific kinds of home extended businesses that are allowed. Supervisor Kauffman stated that these uses are happening in the Township. Just because there is not a right answer does not mean that we should not talk about it or look into it. Supervisor Sauber stated that she can see some logical consistency if we look at expanding home occupation Ordinance language. Just because it is happening does not mean we change the Ordinance. Chair Palmquist noted that, under the Ordinance, we do not have home extended businesses. If we want to address it, we

must address the larger issue of having home extended businesses with restrictions. Supervisor Barfknecht agreed that the Supervisors should review the Scott County Ordinance. *Motion withdrawn.*

The Town Board and Planning Commission will review Scott County's Ordinance on extended home business for discussion at the October meeting.

Permit Requests

Ryan & Kim Johnson, 7095 255th St. W., PIN 13-02200-26-019 – Pole shed

The Board confirmed that all setbacks have been met and all buildings have been accounted for in the total square footage listed.

Motion: Chair Palmquist moved to approve the accessory building to be used for personal storage on PID 13-02200-26-019 for Ryan and Kim Johnson at 7095 255th St. W., seconded by Supervisor Sauber. *Motion carried 5-0.*

Ed Endress, 25735 Denmark Ave, PIN 13-02400-75-050 – Accessory building addition

The Board confirmed that all setbacks have been met.

Motion: Chair Palmquist moved to approve the accessory building addition on PIN 13-02400-75-050 for Ed Endress at 25735 Denmark Ave, seconded by Supervisor Barfknecht. *Motion carried 5-0.*

Bernardo Omana, 8021 267th St. W., PIN 13-02800-56-010 – Pole shed

The Board confirmed that all setbacks have been met, and that Mr. Omana is aware of the number of animal units allowed on his property. Supervisor Sauber questioned whether construction had already started, as she noticed tree removal and lumber on the property. Mr. Omana confirmed that he has only been preparing the land for construction once the permit has been approved. Supervisor Sauber noted that Mr. Omana's estimated project value seems low, and that the value of the project will be set by Inspectron in determining the fee.

Motion: Chair Palmquist moved to approve the accessory building to be used to house horses on PIN 13-02800-56-010 for Bernardo Omana at 8021 267th St. W., seconded by Supervisor Barfknecht. *Motion carried 5-0.*

Land Use Requests

Ken Malecha – Housing Right Transfer, PIN 13-03400-51-010 to 13-03400-01-011

Supervisor Sauber noted that she reviewed a plat map received by Commissioner Wood showing the two 40-acre parcels as one 80-acre parcel. She obtained permission to speak with the attorney, who submitted a memo to the Board. Supervisor Kauffman questioned whether the memo is considered attorney-client privilege as it discusses a difference of opinion which should be resolved before displaying it to the public. Supervisor Sauber insisted that Chad Lemmons offered advice and requested that the Board wait until the next meeting to take any action.

Supervisor Sauber explained that the stub abstract showing two 40-acre parcels was reviewed by the attorney at the Planning Commission meeting. However, plat maps provided by

Commissioner Wood show that when Mr. Schonning owned it, it was one 80-acre parcel. Mr. Malecha responded that he purchased the properties from Mr. Schonning as two 40-acre parcels. The stub abstract, which is the legal doctrine, confirms that. Supervisor Sauber stated that she spoke with the attorney for some time who believes the 80-acre parcel was split into two 40-acre parcels well past 1982.

Motion: Supervisor Sauber moved to postpone review of the Housing Right Transfer application for Ken Malecha until the next Board meeting per attorney advice, seconded by Vice Chair Fredlund.

Ken Malecha asked the Board to move forward with the Planning Commission's recommendation based on Chad Lemmons' opinion that they were split in the 1950s as found in the abstract. Supervisor Sauber responded that we have a further question, and the attorney has advised the Board not to proceed until he can clarify it. If the Board moves forward with approving the transfer, we are not following the attorney's advice.

Vice Chair Fredlund pointed out that the memo suggests a change in the language of Ordinance 3, Chapter 3, Section 3. Supervisor Sauber stated that the language was added due to an issue where the County had combined two Ripley parcels for tax purposes. The new language stated that if you can reestablish the parcels as they were in 1982, in spite of the county taxation combination, they are buildable.

Supervisor Barfknecht pointed out that Mr. Malecha's stub abstract does not show that the lots were combined and then split. If he has documents showing it as two parcels, and he never combined them, why would the Board question that? The first paragraph of the attorney's memo states there were two separate parcels. Supervisor Kauffman added that she is bothered by the language in the memo stating that Mr. Lemmons' opinion is based on historical interpretation, which is not written into the Ordinance. Supervisor Barfknecht added that, additionally, the attorney states that he cannot determine when the lots were split.

Supervisor Kauffman inquired as to why he submitted the paperwork for a Pre-1982 Lot of Record if he has a full quarter-quarter. Mr. Malecha responded that Chad Lemmons advised at the Planning Commission meeting that it would be an easier route, as the stub abstract verified a Pre-1982 Lot of Record. Supervisor Sauber indicated that the sending parcel is not a full quarter-quarter.

Commissioner Wood insisted that a 1996 plat map shows one 80-acre parcel. Mr. Malecha pointed out that if that were the case it would appear on the stub abstract, and it does not. The abstract is updated through 2018. Chair Palmquist added that the stub abstract, not the plat map, is the legal document. Martin Norder confirmed that the stub abstract shows the PID numbers in 1979 are the same PID numbers listed today.

Call the Question: Supervisor Barfknecht called the questions, seconded by Chair Palmquist.
Motion carried 5-0.

Vote on the original motion: Kathleen Kauffman – Nay; Ralph Fredlund – Nay; Donovan Palmquist – Nay; Lu Barfknecht – Nay; Nancy Sauber – Aye. *Motion failed 1-4.*

Vice Chair Fredlund noted that he voted against the motion because he interprets that the Attorney's advice was meant to apply to the changing of the language in the Ordinance, and not to the Housing Right Transfer application. Supervisor Sauber noted that Chad Lemmons was using the stub abstract as the foundation for the Pre-1982 Lot of Record status.

Motion: Supervisor Barfknecht moved to approve the Housing Right Transfer for Ken Malecha from PIN 13-03400-51-010 to PIN 13-03400-01-011 based on the stub abstract showing that the PIN numbers in the 1970's are the same as the PIN numbers today, seconded by Vice Chair Fredlund. Kathleen Kauffman – Aye; Ralph Fredlund – Aye; Donovan Palmquist – Aye; Lu Barfknecht – Aye; Nancy Sauber – Nay. *Motion carried 4-1.*

Supervisor Sauber noted that she voted against the motion because it goes against the Attorney's advice.

Mike Slavik – Dakota County Commissioner

- In October, the Commissioners will be presenting what they will be doing with the County's ARPA funds. There may be some opportunities to partner with the County on projects. He recommends that we calculate the Township's lost revenue as we can use that money at our discretion.
- The County used CARES Act funds to place a tower in Scott County to extend broadband service. They contributed \$30,000 for wireless to Eureka and Greenvale. They are considering opportunities to improve broadband in the worst areas of the County, focusing on rural areas first. There may be an opportunity for smaller cities and townships to partner with the County to combine their ARPA funds for these larger projects. The County would be the lead, pay the largest portion, and be responsible for the bookkeeping and reporting.
- ACRE program. The County created a groundwater plan in 2019. They determined that there is a nitrate problem in the eastern part of the County and a magnesium issue in the western part, partially due to drainage into aquifers. The data can be found on the County website. The stakeholders will be meeting for the next 7-8 months to research the issues and determine a solution.

Vermillion River Aggregates – Dan Ames

Supervisor Sauber recused herself from this discussion. Dan Ames informed the Board that the pictures included in the last meeting packet are not his pit, they depict where Dakota Aggregates built their own driveway for the Storlie pit.

Martin Norder explained that we need to know if the State pit was still operating as a pit when Mr. Ames purchased it. If the pit were still active it would be a legal nonconforming use. If the pit stopped being active, Mr. Ames would need to apply for an IUP. Dan Ames responded that the legal description shows the same PID number as one of the grandfathered pits on record. Based on the legal description it is a unified, grandfathered pit. It was sold at auction as a mining pit and had not been reclaimed. The Board determined that Mr. Ames will need to submit a reclamation plan for the State pit, as well as updated bond and liability insurance for the 2nd October meeting. The Clerk was directed to draft a letter with a list of the items due.

Treasurer's Report

Clerk/Treasurer Solis read the Treasurer's Report as on August 31, 2021: Castle Rock Bank checking account \$58,42; Castle Rock Bank savings account \$507,385.78; Outstanding checks \$10,795.55; New Market Bank checking account \$349,631.30; CDs \$69,744.69; petty cash \$100; Total assets \$916,124.64. August claims \$58,514.60 and August payroll \$5,360.61.

Motion: Supervisor Sauber moved to approve the Treasurer's Report as presented, seconded by Supervisor Barfknecht. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye; Kathleen Kauffman - Aye. *Motion carried 5-0.*

Net Pay and claims

Supervisor Sauber had a question about the Phillipe Brothers permit listed on the Inspectron bill. The Treasurer believed it to be an error in the name and will check with Inspectron. Supervisor Sauber also clarified that the solar permit listed on the bill was roof mounted.

Motion: Vice Chair Fredlund moved to approve the net pay and claims as presented, seconded by Supervisor Kauffman. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye; Kathleen Kauffman - Aye. *Motion carried 5-0.*

Receipts and disbursements

Supervisor Sauber questioned the voided receipt for Bernardo Omana. The Treasurer explained that Mr. Omana paid cash, which did not get deposited in August, thus not appearing on the bank statement. A new receipt was issued to satisfy the CTAS program and will be accounted for on the September report.

Motion: Vice Chair Fredlund moved to approve the receipts and disbursements as presented, seconded by Supervisor Barfknecht. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye; Kathleen Kauffman - Aye. *Motion carried 5-0.*

Remaining reports

The Cash Control Statement, Schedule 1, Interim Financial Report, Investment Activity and Outstanding Checks were reviewed by the Board.

Revised Resolution 2021-10, Signers at New Market Bank

Motion: Supervisor Sauber moved to approve the revised Resolution 2021-10 adding Deputy Clerk Liberty as a signer on the account, seconded by Supervisor Barfknecht. *Motion carried 5-0.*

Approval of Meeting Minutes

July 12, 2021, Town Board Meeting minutes

Motion: Chair Palmquist moved to approve the minutes as presented, seconded by Supervisor Sauber. *Motion carried 4-0*, with Supervisor Barfknecht recused.

July 26, 2021, Town Board Meeting minutes

Motion: Chair Palmquist moved to approve the minutes as presented, seconded by Supervisor Sauber. *Motion carried 5-0.*

August 9, 2021, Town Board Meeting minutes

Motion: Chair Palmquist moved to approve the minutes as presented, seconded by Supervisor Sauber. *Motion carried 4-1, with Supervisor Kauffman abstaining.*

August 12, 2021, Special Town Board Meeting minutes

Motion: Chair Palmquist moved to approve the minutes as presented, seconded by Supervisor Sauber. *Motion carried 5-0.*

Attorney Items

Vacate 245th St., west of Dodd to the Scott County line

Minn. Statute 164.07 details the procedure for vacating a road. In summary, a petition must be filed with the Clerk of eight or more voters within 3 miles of the road. Within 30 days, the Town Board must issue an order describing the process. The petitioner must personally serve each occupant of the land, notifying them of the meeting that is scheduled.

Progressive Resources/Friedges Housing Right Transfer

Martin Norder informed the Board that Chad Lemmons' interpretation is that they could not file what they did not have. The Board agreed that the representative would have received the originals on the Tuesday following the meeting. A former Supervisor represented the transaction for the applicant and was aware of the procedure. If the representative did not pick up the original documents, he should not have waited until the approval expired to request another set of documents.

Motion: Supervisor Barfknecht moved to notify the parties associated with the Progressive Resources/Friedges Housing Right Transfer that they need to reapply due to the fact that time has expired in picking up the documents and filing them at Dakota County, seconded by Supervisor Kauffman. *Motion carried 5-0.*

Swimming pool fence complaint

Vice Chair Fredlund was directed to contact Inspectron to find out the date that the pool and spa language was removed from the Building Code.


The remaining agenda items were tabled until the September 27, 2021, Town Board meeting.

Adjournment

Motion: Chair Palmquist moved to adjourn the meeting, seconded by Supervisor Barfknecht. *Motion carried 5-0.*

Meeting adjourned at 10:20 p.m.

Respectfully submitted,


Ranee Solis, Town Clerk

Minutes Officially Approved By:


Town Chair

on: 11/22/21
Date