

**EUREKA TOWNSHIP**  
*Dakota County, State of Minnesota*

**SPECIAL TOWN BOARD MEETING**  
**June 21, 2022 – 7:00 P.M.**

**Call to Order**

The Eureka Township Special Town Board meeting was called to order at 7:00 p.m. by Town Board Chair Lu Barfknecht and the Pledge of Allegiance was given.

Members Present: Lu Barfknecht, Ralph Fredlund, Nancy Sauber, Kathleen Kauffman.

Others Present: Rane Solis, Jeff Otto, Randy Wood, Bill Clancy.

Zoom Attendance:

Chair Barfknecht announced the purpose of the special meeting is to review the Housing Right Transfer proposed text amendment.

Supervisor Kauffman offered that there is one last substantive issue regarding landlocked parcels: Are they going to get their road access by virtue of a permanent easement, a shared driveway, or a fee simple ownership of a 33-foot-wide driveway to a Township road?

Supervisor Sauber asked Jeff Otto to clarify his statement that “it has already been agreed that existing landlocked parcels are grandfathered by the 2013 amendment recognizing that a shared driveway is an acceptable alternative because the purpose is to assure access to structures by emergency service vehicles”. Under that amendment citizens were still required to have road frontage. If we agree to this, it will be the first time that we would be getting rid of the road frontage requirement. Jeff Otto clarified that what he is proposing is that a shared driveway easement would take the place of road frontage.

Supervisor Kauffman expressed it was her understanding that the purpose is that a permanent easement from a landlocked parcel to the road for its driveway, shared or not, would take the place of road frontage. The debate was only whether it would be by fee simple ownership or a permanent easement.

Jeff Otto proposed three options: fee simple, permanent easement or shared driveway. Supervisor Kauffman expressed her opinion that the permanent easement option is less wasteful of property rights. With fee simple ownership, an easement does not take away your mineral rights, right to mortgage it, and any other property rights encompassed with it. All that you have given up is the right to use it for a particular period of time, for a particular purpose in a particular way to a particular person. It runs with the land and can be dissolved with agreement by the parties in interest. The Board agreed that the Ordinance should state that in order to retain the building right the permanent easement needs to remain in place, and all substitutes for road frontage must be recorded with the County.

Supervisor Kauffman will draft a section dealing with easements.

Commissioner Clancy suggested the Board read the pages of the MAT manual on cartways. The Board responded that the Town Attorney will attend the next meeting to clarify the cartway issue.

Master text amendment review:

Page 2

C (8): change to substandard “grandfathered” Lot of Record.

Page 3:

Cap of Four Density Limit: strike Pre-1982 Lot of Record.

Building Permit: add to last sentence after intended lot “before such building is permitted”. Delete “or commit to acquire”.

Add definition of Grandfathered Lot after earth sheltered homes.

Earth-sheltered homes: remove “entirely below ground” as our ordinance does not allow basement homes.

Grandfathered Right: change definition to “a Housing Right recognized as existing on a verified Grandfathered Lot. Building a house on a Grandfathered Lot is not subject to the Cap of Four Density Limit of its quarter-quarter section. Once a house is constructed, the right becomes permanent and is no longer subject to boundary change effects. If a house is not in place, the right may be transferred to another lot in Eureka Township under provisions of this Ordinance.”

Page 4

Native right: change June, 2022 to May 1, 2022.

Page 5

Lot of record: strike language after the first sentence.

Pre-1982 Lot of Record. Delete the definition and incorporate the language into the definition of Grandfathered Lot.

Page 6

Lot Split: conflicting language regarding road frontage. Attorney question.

Page 7

Lot Width: change dwelling setback to dwelling “location”.

Shared Driveway: 4<sup>th</sup> line approved by Eureka Township “and recorded with the County”.

Section 3. A.

Change Pre-1982 to “grandfathered” Lot of Record.

Remove from this section and group it with CUPs in 4.A.1.

Page 9

B. Points 1,2 and 3 can be eliminated. Place in definition of Grandfathered Lot.

Keep A., and C. becomes B.

Page 16

9.A.: Add “may request a 30-day extension from the Zoning Administrator if circumstances warrant”.

Page 11

Section 5 (B) shall have “access to a public road as specified in Section 6” . Strike 33-feet (C) change at the dwelling “setback” to “location”.

Page 12

Section 6(A)(2) Strike reference to Ordinance 4, Chapter 2, it is an obsolete reference.

*Motion:* Chair Barfknecht moved to recess the special meeting to be continue on Thursday, June 30<sup>th</sup> at 6:30. Supervisor Sauber seconded. *Motion carried 3-0.*

Meeting recessed at 9:35 p.m.

### **Reconvened meeting of June 30, 2022**

Call to order

Chair Barfknecht called the reconvened special meeting to order at 6:30 p.m.

Members present: Lu Barfknecht, Donovan Palmquist, Ralph Fredlund, Nancy Sauber and Kathleen Kauffman.

Others present: Bob Ruppe (via Zoom), Jeff Otto and Bill Clancy.

Chair Barfknecht announced the purpose of this meeting is a continuation of the Special Town Board meeting from June 21, 2022 to review and discuss the housing right transfer text amendment.

The Board posed the following questions to Town Attorney Bob Ruppe:

Would the Township be required to maintain a cartway ordered by the Township to a landlocked property pursuant to the cartway statute 164.08?

Bob Ruppe: Under the cartway statute it is very clear that it is the petitioner's responsibility. If they have a landlocked property and the Town Board is mandated to give them access to a public road, they are required to pay for the cost of construction for that road and all of the Town Board expenses in establishing the road (i.e., attorney's fees, special meeting costs, engineering fees, surveyor prepared legal descriptions, wetland delineation).

Once the road is established by the petitioner there are only two ways that the Town could take over the cartway:

- 1) By the Town Board affirmatively adopting a resolution stating that they wish to take it over for the benefit of the public.
- 2) Petition is brought by at least ten taxpayers of the Town to the Town Board and is put to a vote at an annual meeting. Generally, it is brought by a petitioner. If there are other property owners that use that cartway after its establishment there is a mechanism that they can agree on division of maintenance costs. They would bring this to the Town Board to decide on what percentage each person's responsibility is.

Supervisor Kauffman: Does the public, in general, have the right to use the cartway once it is established by the petitioner?

Bob Ruppe: Yes they can. The only recourse the property owner has is to seek to make that a "private driveway" as allowed by statute, but there is no case law that interprets that. If others are using it, they could petition the Town Board to share the maintenance costs.

Supervisor Sauber: The MAT manual states the Town Board can, by resolution, make a cartway into a private driveway and the affected landowner must sign it. After that has happened the Town Board may not use any funds on it, which was interpreted to mean that unless the landowners agree to this then the Town Board might be. Once made into a private driveway it does not matter if anyone petitions the Town Board to spend public funds on it because that is over with. Is that correct?

Bob Ruppe: I would agree with that analysis. Right now, the statute, as written, is the Town Board can take over a cartway and then use road and bridge funds to maintain it. If it is converted into a private driveway under the statute, that statutes say you cannot exercise that right. If it is private, the petition would not be valid.

Supervisor Sauber: We have talked about our density cap of four per quarter-quarter for housing and whether that would stop many landlocked parcels from asking for a cartway. We are assuming that because the petitioner has to come to the local authority to get the cartway, the density limit would govern it? Also, we assume the only reason someone will

request a cartway is if someone wants to put a house on the property. If the lot is empty, can you request a cartway to get access to your landlocked parcel?

Bob Ruppe: Yes, that is typical. Most people asking for a cartway are trying to get access to their property, mainly for hunting. The use of the property is governed by your zoning ordinance. Whether access is granted to that property, if landlocked, can be governed by statute. You do not have to have a use for the property under the zoning ordinance in order to get a cartway. If created, many parcels could petition for a cartway. It does not matter how it became landlocked, just that it is landlocked and meets the statutory requirements for a mandatory cartway.

Supervisor Kauffman: The cartway statute is mandatory, we do nothing in our zoning that brings it on us.

Bob Ruppe: Correct.

Commissioner Clancy: My concern is that the decision the Town Board makes here will inadvertently bring cartways upon us. My premise is that involvement in a cartway situation is inherently controversial and ideally avoided by any towns. If a 100-acre landlocked parcel owned solely by one person is sold and divided into twenty 5-acre lots, we have now proliferated those 20 landlocked parcels. When we do lot splits on existing landlocked parcels we must require road frontage. Do not give up the road frontage requirement. Otherwise, we end up with a proliferation of landlocked parcel owners.

Bob Ruppe: Anything is "possible" but generally most communities in their zoning ordinance, if you are going to subdivide, have requirements that you have access to a public road. It is a matter of policy. One, do you want that requirement? Two, what does it look like? Are there so many feet of frontage you have to have against each property? Will you accept a private easement? These are all policy decisions.

Supervisor Kauffman: We have a draft of what the requirement will be if you ask for a buildable lot where we require either a permanent easement or road frontage. What Commissioner Clancy is referencing is not someone trying to create a buildable lot. How could we tell people they cannot subdivide their landlocked land?

Bob Ruppe: Most communities have a provision that you have to have either an easement or fee simple access. Most say if you subdivide, you have to have access for each parcel. They also have a policy of minimum lot size.

Supervisor Kauffman: Is it enough that we require a permanent easement or a fee simple flagpole to the road when someone wants to build on a parcel?

Supervisor Sauber: It sounds like it is not the best idea to get rid of the road frontage requirement.

Bob Ruppe: That is a policy call for you. The cartway statute has minimum acreage for making this mandatory. Currently, towns require a \$25,000 escrow for cartways. If it is appealed, insurance takes the position that the petitioner is responsible for the insurance attorney's time as well, win or lose.

Supervisor Kauffman: You stated most towns have policies. Do you have one our size that you could send as a template?

Bob Ruppe: No, there are none like your unique situation with housing rights, etc. Most towns do not have your level of restrictions.

Jeff Otto: To what extent does our zoning protect us? Is there a way around it? We know that we are 100% zoned one per quarter-quarter, lot splits do not create new housing rights, and we have a cap of four on transfers so you cannot move more than four houses in. If you are not planning to build, does our zoning not protect us from somebody who wants to put in twenty 5-acre lots? If it does not give us that protection, is there a way to reinforce it so that we have the authority to deny it?

Bob Ruppe: Yes, you do have the authority to craft your subdivision ordinance to require minimum lot size. One, you can make it a requirement to have access to a public road. Two, you can put in place minimum size requirements. You, as elected officials, need to decide what the policies will be.

Supervisor Kauffman: Could we also say that if it is a landlocked parcel it must have either road frontage or a permanent easement? Or that landlocked parcels must be less than 5 acres because it is the 5-acre parcel that triggers the cartway?

Bob Ruppe: You have the ability to put conditions for when you can subdivide your property. You can require so many feet of frontage on a public road, you can allow access through a private easement, you can place size restrictions. It is all within your power as the zoning authority.

Jeff Otto: If we want to keep the minimum acreage of two acres, can we add a provision of a quarter limit? Such as no more than four lots regardless of size in each quarter-quarter?

Bob Ruppe: Yes, you can limit the number of divisions. That is a policy issue.

If someone had an easement that was of record and the property went into tax forfeiture or was foreclosed upon by the mortgage company, what would happen to those easements?

Bob Ruppe: That easement can be lost if there is a mortgage recorded against the property ahead of the property owner granting it. If you have a mortgage on your property and grant an easement over your property and your lender forecloses, because the lender did not agree to that easement, they can either honor it or eliminate it.

Utility and drainage easements get the mortgage company to agree to be bound by the easements. They agree that their mortgage will be subordinate to the easement. If you are going to allow easements, you should probably consider inserting this into the ordinance as a protection to the person obtaining the easement. That is the only way I can see to protect that easement.

Supervisor Sauber: If no mortgage is involved, with only the easement to access the roadway, is there any way to prevent the owners from dissolving the agreement?

Bob Ruppe: Only if the language of the agreement allows it to be terminated. We must review the agreements and make sure there is no way to wiggle out of it in the future. We must also make sure that if there is an easement agreement for giving access, it states who is going to maintain that easement (snow, gravel, grading).

#### Policy on rebuilds in case of fire

Due to discrepancies between state law and the language in our ordinance, Bob Ruppe has now rewritten our policy on rebuilds in case of fire.

Bob Ruppe: Eureka's current policy is inconsistent with state law. Minn. Stat. Section 462.357 provided that legal nonconforming lots have an absolute right to rebuild on the same footprint or can request a variance. They have to apply for a building permit within 180 days. If they do not meet the timeline, they must now comply with the current zoning requirements. Regarding the language that the Clerk and Planning Commission Chair must review the application, if they meet the zoning requirements it cannot be denied. If it is a legal nonconforming (grandfathered) lot they have an absolute right, there is no coming before the Planning Commission or Town Board.

Nancy Sauber: If they are changing the footprint they would have to come in for zoning review to make sure they meet the setbacks before sending to the building official.

Bob Ruppe: State law says if they are rebuilding they have an absolute right to do that, regardless of whether it burned down, was destroyed by a tornado, or the owner knocked it down with a crane.

Supervisor Kauffman: The housing right text amendment says if a house is destroyed or removed from a property the owner may apply for a permit "at their convenience". This

language is misleading. If they apply at their convenience beyond the 180 days they will be out of luck.

Bob Ruppe: If you are giving people more time, not less, that is being more generous than state law and your ordinance will control.

Jeff Otto: We made the distinction that a housing right is not integral to the zoning of the land itself. A housing right may be used in any timeframe. The 180-day rebuild ties to the zoning of the land and should not dissolve the housing right. I want to clarify that it applies to zoning and not to housing rights.

Bob Ruppe: You would incorporate it into your land use ordinance, a policy is not law. Make sure your policy is reflected in your final ordinance.

Jeff Otto: We need to deal with the nonconforming, 180-day language. But a housing right is a separate entity from the land, and we need to clarify the language.

#### Continuation of the review of the housing rights text amendment

The Board agreed that they must, at some point, adopt a policy to allow private easements without road frontage.

#### Page 12

Section 6, change “structure” to “building”.

#### Page 13

Remove Section 8, Review Process, and use it as a procedural document with the application materials. Section 9 now becomes section 8.

#### Pages 15-16

Section 9, Recording of approved transfer. We must apply a document number to transfers in order to track them. Place a tracking process in the procedure document.

#### Page 16

Section 10. Add time frame reference to Section 8(A).

#### Page 17

Uninhabitable dwellings. Add “For nonconforming structures see Minn. Stat. 462.357 subd. D(1)(e). See also policy for rebuilds in case of destruction”.

B. Application. Change “blank form” to just form.

#### Page 18

C. make standalone paragraph, remove 1.



Page 20

C. Driveway sharing. Remove “jointly owned”.

Page 3

Buildable Lot – remove “or have agreements in place to” to “must possess a housing right”.

Page 7

Lot Split -change “frontage” to “access”

Page 9

Need to rewrite Pre-1982 Lot of Record policy statement. Nancy Sauber and Jeff Otto agreed to work with the attorney on this.

Page 12

Omit E.

Question for the attorney: If we require permanent easements for all lot splits, do we eliminate a cartway threat?

The Board disagreed with Jeff Otto’s suggestion to place a cap of four limit on lot splits.

*Motion:* Supervisor Kauffman moved to adjourn the meeting. Chair Barfknecht seconded.

*Motion carried 5-0.*

Meeting adjourned at 9:45 p.m.

Respectfully submitted,

\_\_\_\_\_  
Ranee Solis, Town Clerk

Minutes Officially Approved By: \_\_\_\_\_ on: \_\_\_\_\_  
Town Board Chair Date