

EUREKA TOWNSHIP
Dakota County, State of Minnesota

SPECIAL TOWN BOARD PUBLIC HEARING
October 27, 2022 - 7:00 p.m.

Call to Order

The Special Town Board Public Hearing was called to order at 7:02 p.m. by Chair Lu Barfknecht and the Pledge of Allegiance was given.

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

Supervisors Absent: Donovan Palmquist.

Others Present: Mark Ceminsky, Carol Cooper, Dan Heyda, Randy Wood, Bill Clancy, Beth Eilers, Anne Marie Henry, Melanie Storlie, Deb Burkhardt.

Zoom Attendance: Ranee Solis, Annie Resop, Julie Larson, Jeff Otto.

Purpose of the public hearing

Chair Barfknecht announced that the purpose of the public hearing is to consider the recodification of the Township Ordinances.

Review of Ordinance recodification

Benefits of recodification

- Ordinances and Resolutions are consolidated, organized, reviewed and updated in accordance with State Law and other ordinances.
- Policies, procedures and practices are reviewed and updated.
- New Code will provide citizens with a more current, complete and accurate Code.
- New Code is more readily accessible by citizens, as it is available in print or online.
- Online version of the Code is integrated with a search engine and other tools that make using the information easier.
- All changes are discussed with an attorney experienced in local law codification.
- Adoption of the updated Code to ensure validity and a base line for legislation. Ordinances not included in the Code, and not specifically excepted, are repealed thereby “cleaning up” the old law.
- Ability to post the ordinances online in between amendments.
- Continued update and review of the Code throughout the years by an experienced firm.
- Citizens can purchase new printed or electronic Codes via online ordering.

General Code Credentials

- Over 55 years of experience working with more than 3,000 local governments.
- High customer service ratings.
- Experienced Account Managers.

- Training and support on an ongoing basis.
- Project Team includes staff of over 100 employees, including attorneys, editors and other codification specialists, producing over 100 new Code projects and over 2,000 supplements annually.
- Code of Engagement: Honesty and integrity; customer satisfaction; efficiency; innovation and creativity; personal responsibility; teamwork.

General Code Scope of Services

- Perform research and editorial and legal review to identify conflicts, inconsistencies and other problem areas in need of updating or correction.
- The incorporation of any necessary revisions.
- The creation of an index.
- The preparation of Code adoption materials and a disposition list to document the final disposition of all Code-relevant legislation.

Organizational Analysis

- Prepare a proposed Table of Contents of the Code and a listing of legislation reviewed, along with any missing material and adoption dates.
- Prepare a manuscript organizing legislation into a logical system, arranged alphabetically by subject matter, into chapters.
- Amendments will be incorporated into the manuscript and repealed or superseded material will be noted.
- The manuscript will show exactly the legislation that is currently in effect.

Editorial and Legal Analysis

- Staff of editors and attorneys will review legislation and provide specific recommendations and input for improvement.
- Identify duplications, conflicts and inconsistencies between or within various sections of the Code.
- Identify duplications, conflicts and inconsistencies with Minnesota statutes.
- Provide any practical recommendations to make legislation more enforceable.
- Provide suggestions regarding fines, fees and penalties.
- Provide suggestions on ways to modernize legislation.
- Draft final Code for review.

Timeline of recodification

- 06/10/19: General Code Agreement signed.
- 11/12/19: Organizational Analysis approved.
- 10/26/20: Legal Analysis workbook completed.
- 09/27/21: First Draft of Code reviewed by the Board.
- 05/24/22: Verification of amendments.
- 08/23/22: Final Draft Code received, forwarded for public hearing.

Public Comment

Mark Ceminsky – 7226 235th St. W.

In light of some things that came up recently on how the Township is organized, I have the following questions:

1. Why are the Code changes not in a different color on the website so the residents could see the changes easier?
2. It does not appear that the fee schedule matches the Building Official agreement with the Township.
3. I understand that there has been a question about the status of the Township in that Eureka is not an urban township. There are two types of townships in Minnesota: urban townships or regular townships. Urban townships have more rights than regular townships. For a regular township, ordinance changes have to go before the electors to be voted on. I do not think a vote can be taken until you verify whether we are a regular township set up in 1858 under state statutes, or an urban township.

Carol Cooper – 26437 Galaxie Avenue

1. There is a paragraph in the beginning part of the recodification that, in other parts of the recodification, it refers to this paragraph that is supposed to list all of the ordinances that are being repealed, but it is blank. That makes it hard to figure out what is happening with the recodification.
2. At a recent meeting I brought up to the Board the status of the Township as a non-urban town. If that is the case, and I understand that previous to that, the common understanding with Township officials was that the Township was an urban town and, therefore, certain ordinances got implemented under that belief. If we are being told it is not an urban town then I do not think you can sign off on this recodification without first getting a legal opinion about whether these ordinances are authorized under state statutes.

Being an item of citizen concern, Supervisor Kauffman offered to address the legal basis for the recodification despite the lack of urban town powers:

It is correct that there is a difference between the powers of towns, in general, and towns with urban powers. The MAT website compares the difference in powers between the two, in general. However, in 1977 the Minnesota legislature passed special legislation, which is still good law, for a handful of towns, which includes Eureka, and states as follows:

“TOWNS; POWERS OF STATUTORY CITIES. The towns of Ravenna, Vermillion, Eureka, Hamilton, Douglas, Empire, Nininger, Marshan, Castle Rock, Greenvale, Waterford, Sciota and Randolph may exercise the powers of statutory cities as provided in Minnesota Statutes”, followed by a long list of statutes which gives us the authority that we need for each and every one of the ordinances that otherwise we might not have authority to enact.

Supervisor Kauffman offered to forward the special legislation statute to Carol Cooper.

Mark Ceminsky - 7226 235th St. W.

I did quite a bit of research on this and did not find the statute that Supervisor Kauffman is referencing. But, I did find that the communities around us are listed as regular townships. The statute states that an urban township has to be 6 x 6 square miles. With the Lakeville annexations, we are no longer 36 sq. miles in order to qualify to be an urban town. If Troy Gilchrist is a township attorney, are we second-guessing what a Township attorney is stating on the MAT website? I do not feel the Board can make a decision until this gets cleared up and clarified first. There is one side that shows a statute that may have granted Eureka special rights. But there are a bunch of different statutes that say we are just a regular township and do not have those extras rights granted to us. That needs to get clarified, and once it does, the codification can go through.

Supervisor Kauffman responded that we are not adopting any new ordinances. Nor are we going off into some incredibly new territory based on some new theory. We have two legal firms for the Township. Bob Ruppe is our general counsel and Troy Gilchrist handles special projects and litigation. Both firms are familiar with the special legislation and have assured me that the 1977 legislation continues to be good law. The question of whether we have the authority for these ordinances does not center on the recodification. It exists whether or not we adopt this recodification.

Mark Ceminsky - 7226 235th St. W.

My concern is that I am not sure we had the power, then or now. If we are not an urban township there might be ordinances here that we were not allowed to adopt and would need to go to the citizens for a vote. If you recodify, and the Board did not have the authority to adopt certain ordinances at the time, it creates an issue. I recommend you postpone the recodification and get answers about the urban township issue.

Chair Barfknecht responded that it is her understanding that the Board is not going to vote on the recodification tonight. This public hearing is to provide time for the Board to listen to the residents before a decision is made at the next meeting.

The last recodification occurred in 2017 where there were amendments which were not included that should have been. There are 10 ordinance amendments included in this recodification as follows:

- 2013-06 amending Ord. 1, Ch. 4, adding the definition of impervious surface.
- 2017-01 amending Ord 1, Ch. 4 adding the definition of horticulture.
- 2017-02 amending Ord 3, Ch. 5 (1), adding D regarding the right to store and sell commercial ag products.
- 2017-03 amending Ord. 3, Ch. 4 (8) adding sump pumps.
- 2017-04 amending Ord. 3, Ch. 4 (7)(C) changing accessory building area from “6-10.99” acres to “6 or more” acres.
- 2017-05 amending Ord. 7, Ch. 2, changing pool fees.
- 2018-01 amending Ord. 3, Ch. 4 (1)(F) regarding landscaping in the right-of-way.
- 2020-01 amending Ord. 3, Ch. 2 (1) and Ord. 3, Ch. 4 (13) changing solar energy to 40kw.

- 2021-01 amending Ord. 7, Ch. 1 adding language allowing for delinquent fees to be a lien upon property.
- 2021-02 amending Ord. 6, Ch. 7 (1)(M) regarding mining setbacks.

Supervisor Kauffman added that the 1977 special legislation does not provide that we are an “urban township”. It provides that those on this list have the rights to operate with city powers under the statutes that are listed.

Supervisor Sauber commented that we do not qualify as an urban township because we are not close enough to St. Paul and we do not have sufficient population. This 1977 law is calling out all of the Dakota County townships. Because we are unusual in that the County has given townships zoning authority, that would seem to be the whole purpose of the 1977 law. I would agree that it does not say we are an urban township because we do not qualify under the definition. But, it does say that we have the right to enact those ordinances. If Bob Ruppe told Supervisor Kauffman it is still good law, I am assuming he did not say that lightly.

Dan Heyda – 9390 267th St. W.

Where does the 1977 special legislation leave our township for data practice law? We were denied Freedom of Information Act requests and told it was too burdensome.

Supervisor Kauffman responded that the Clerk and Supervisor Palmquist are working with the attorney to draft a new data practices policy. Since we are not an urban town, the Minnesota Data Practices Act does not apply to Eureka Township.

Annie Resop - 9510 235th St. W.

Most of my questions have been answered. Posting the 1977 special legislation on the website will be very helpful to the citizens.

Bill Clancy – 25511 Ipava Avenue

I would like to compliment the citizen participation tonight; it was excellent and appropriate with good questions civilly presented. Based on the agenda, I did not perceive a Town Board vote would take place tonight. There was a question about a redline version of the recodification and I want to point out that Schedule A, presented in the packet, notes all text changes word-for-word.

Chair Barfknecht asked three times if there were any other participants who would like to make comment. Hearing none, the public comment period was closed.

Town Board discussion

The Board agreed to post the 1977 special legislation and full text of the corresponding statutes on the website for the residents. In addition, Attorney Ruppe will be asked to attend the next Town Board meeting.

Adjournment

Motion: Chair Barfknecht moved to adjourn. Supervisor Fredlund seconded. *Motion carried 4-0.*

Meeting adjourned at 8:00 p.m.

Respectfully submitted,

Ranee Solis, Town Clerk

Minutes Officially Approved by: _____ on: _____
Town Board Chair Date