

**EUREKA TOWNSHIP**

**DAKOTA COUNTY**

**STATE OF MINNESOTA**

**Eureka Planning Commission Meeting of October 3, 2016**

**Call to Order**

Chair Sauber called the meeting to order at 7:01PM. Planning Commission members present were Nancy Sauber, Fritz Frana, Ralph Fredlund, Donovan Palmquist, and Randy Wood. Lu Barfknecht was the Town Board liaison. 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**

Chair Sauber requested to add "30 Cubic Yards of Material" under Old Business.

Commissioner Wood moved to approve the agenda as amended. Commissioner Palmquist seconded. Motion passed unanimously.

**Permit Requests**

**Blake Rothnem – 24090 Holyoke Path** – Building Permit Application for new single-family residence.

Mr. Rothnem stated he would like to use outbuilding as temporary residence while his home is being built. He did not technically have a garage. Temporary use of the building is only allowed when the building permit has been applied for.

It was noted on Mr. Rothnem's application that he needed to add a completed date (April 2017) and the site plan needs to have arrow to the lot line with the distance to the lot line ("plus 30 feet") listed. It was also suggested to indicate north on the site plan as well. Mr. Rothnem was requested to add that information and to initial and date the application and the site plan.

Attorney Lemmons stated that it would be up to the Building Official to make sure the temporary building conforms.

Commissioner Frana moved to recommend approval to the Board the building permit for Blake Rothnem, 24090 Holyoke Path, PID #132466007060, and the Building Inspector must approve the use of the temporary residence of the outbuilding. Commissioner Fredlund seconded. Motion carried unanimously.

**Joey Miller – 22260 Dodd Boulevard** – Exempt Agriculture Building Permit Application for hay storage and farm equipment. Carol Cooper, Attorney representing Mr. Miller.

Chair Sauber stated that she would recuse herself for this part of the meeting and join the audience as an adjoining landowner to comment on the application. Vice-Chair Frana presided over this portion of the meeting.

Vice-Chair Frana stated that Mr. Miller has an application for an Ag building and one of the requirements for qualifying for an Ag building is to complete the form and Question Number 5, *“Per Minnesota State Statute 273.13, Subd. 23(b), will the building for which you are requesting exemption be located on land that was used during the preceding year for one of the following agricultural Purposes”* has not been checked. The Commission pulled a copy of your Dakota County property records and it indicates that the primary use of the property is residential and secondary use is commercial preferred. In order to be qualified as Ag Exempt, you would have to meet that requirement.

Ms. Cooper stated that her problem with Question Number 5 does not include all of the activities that are defined as agricultural purposes. Under Section 272.13, Subd. 23(e) it defines agricultural land to include continuous acreage of 10 acres or more in the preceding year for agricultural purposes. In that same section it includes storage of machinery or equipment used in support of agricultural production by the same farm entity. Ms. Cooper stated it has been brought up before that the existing buildings have been used for storage of agricultural machinery and equipment and the proposed building will be used to store Ag products. Ms. Cooper stated that unfortunately Question Number 5 on the application does not include all of the statutory conditions for agricultural purposes. Ms. Cooper went on to state that the building that houses the commercial enterprise also houses farm machinery and equipment.

Attorney Lemmons stated that the problem he has with that is the building is not being used primarily for agriculture equipment. It is a split use and in Ordinance 1, Chapter 4 you cannot have split uses. The language in Chapter 4 talks about exclusive use of 10 acres or more of land for production of field crops, livestock, etc.

Attorney Lemmons went on to state that all Mr. Miller needs to do is show the Planning Commission the 10 contiguous acres that are used for exclusive agricultural use and that can include the site of the building which is being used to store agricultural products or agricultural equipment. Mr. Lemmons stated my only point is “Where are the 10 acres?” According to Dakota County tax records, you only have 11.88 acres and you have a racetrack on there as well. If you can show the Planning Commission that you have 10 acres, that will be fine.

**Nancy Sauber – 9445 225<sup>th</sup> Street**

Ms. Sauber stated she would like to point out to the Commission and the Attorney that under Minnesota Statute 326(b).103 Definitions, Subdivision 3, Agricultural Buildings, that Agricultural Buildings means a structure that is on agricultural land as determined by the governing accessor for the municipality or county under Section 273.13, Subdivision 23. We do not have a Township Accessor, therefore our assessor is the Dakota County Assessor and there is no Ag use listed for Mr. Millers 11.88 acres.

Vice Chair Frana stated that it seems based on the discussion that Mr. Miller would have two options. One is that Mr. Miller can prove he has 10 contiguous acres for agricultural use or he could build an accessory structure rather than an Ag building on that property.

Ms. Cooper asked what has changed since the last Ag building was approved on that site?

Ms. Sauber stated that from memory as a citizen at the time of that Ag building being allowed by the Board, it was at the time that the Planning Commission Chair, Mike Greco came up with the Ag Exempt forms. Statutory requirements basically were being overlooked. In her estimation, that Ag Building permit should never have been approved. There are no changes in the Statutes since that time. If there was an error made it was in the past. The Planning Commission and the Town Board are not bound by decisions in the past. Attorney Lemmons agreed.

Vice-Chair Frana moved to deny the Ag permit for Joey Miller of 22260 Dodd Boulevard, PID#130060001010 because Dakota County property records indicate that the property is used for residential/commercial and Mr. Miller has not designated that he has 10 contiguous acres for agricultural purposes.

Commissioner Wood seconded the motion. Motion carried unanimously.

Chair Sauber resumed her role as Chair

**Dan Petersen – 26975 Iberia Avenue** – Building Permit Application for Farm Building. Chair Sauber stated that this is an application for an Ag use Farm Building that is 864 square feet. On the Dakota County property records it can be seen that this is listed as Agricultural Use - Green Acres. It does fit as being assessed Ag by Dakota County. Chair Sauber stated that Mr. Petersen needs to add to the site plan, “greater than 30 feet to all lot lines” and Mr. Petersen needs to initial and date the site plan. Also need to add that all residential houses not owned by Mr. Petersen are in excess of 250 feet from the proposed shed and he needs to initial and date. The well and septic should be located on the site plan and the distances to the new cattle shelter and initial and date the site plan additions. Chair Sauber stated the Ag Exempt form is filled out correctly and completely.

Chair Sauber moved that we recommend approval to the Board for Dan Petersen's application for Ag Exempt building at 26975 Iberia Avenue, PID#130320025010 as it meets all the statute requirements. Commissioner Wood seconded. Motion carried unanimously.

**Donovan Palmquist - 27607 Grenada Avenue** – Building Permit Application for Accessory Building.

For the record Mr. Palmquist recused himself from the building permit application.

Chair Sauber stated that in looking over Mr. Palmquist's application there were some items missing and the Deputy Clerk notified Mr. Palmquist. The total square footage of 4652 needs to be added to the application and on the site plan Mr. Palmquist needs to add 1,060 feet to the centerline. Mr. Palmquist needs to add the well location on the site plan and initial and date the site plan as well.

Commissioner Wood moved to recommend approval to the Town Board the building permit application for an accessory building for Donovan Palmquist, 27607 Grenada Avenue, and PID #130330077010. Chair Sauber seconded the motion. Motion carried unanimously.

### **Resident Inquiry**

**Gloria and Erland Anderson - 8635 267<sup>th</sup> Street West** – Questions regarding Transfer of a Building Right.

Chair Sauber stated that the quarter-quarter that the Andersons want to transfer the building right to has only their house built on it at this point in time. She also stated that there was not a pre-1982 Lot of Record. Chair Sauber stated the Commission's intent is to explain the building right cluster transfer application to the Andersons. Chair Sauber gave the Andersons a copy of the Summary and Procedures and went through the items the Andersons needed to complete on the application. She also stated that they needed to obtain a map of the entire quarter-quarter, which can be printed from Dakota County GIS website, a certified copy of the deed, as well as a wetland determination from Brian Watson at Soil and Water Conservation District in the Extension Building in Farmington. Mr. Watson will print up a document and designate if there is any wetland and will sign it. If everything on the forms is complete and correct, tonight's meeting could count as a preliminary review with the understanding if you come back with an incomplete application, we cannot move it forward. That will put us at the November 14, 2016, Town Board meeting. When you turn in all the forms in November, the Deputy Clerk can give me a call and I will review it for you.

### **Dawn Lanning - 9724 267<sup>th</sup> Street West**

Neither Ms. Lanning nor a representative attended the meeting.

Chair Sauber stated that at this point in time Ms. Lanning was intending to apply for a private kennel license. The Planning Commission does not have a filled out kennel application from Ms. Lanning that is signed by the property owner. In her subsequent email she stated she had a signed form from the property owner, but it would have to be on the completed application.

The Planning Commission also requested the addresses of any properties that are within 500 feet of the proposed kennel. Ms. Lanning replied that all dwellings are more than 500 feet, but the Commission requested addresses so they could be verified. At this point the Commission does not have a completed and signed application before us. Attorney Lemmons stated that his advice would be to deny the application as incomplete and there was a lot-of-record verification request that was not turned in.

Chair Sauber moved that the Commission deny the Lot-of-Record Verification Request by Dawn Lanning for the Joe Simon property as incomplete and unsigned. Commissioner Wood seconded the motion. Motion carried unanimously.

Chair Sauber stated that next was the Non-Conforming Use Lot of Record Verification request. Since there was no Conditional Use Permit in the file, Ms. Lanning could not have a public stable, but could have a private stable.

Chair Sauber moved that the Commission deny the Non-Conforming Use Lot Verification Application by Dawn Lanning for the Joe Simon property, as it is incomplete. Commissioner Fredlund seconded the motion. Motion carried unanimously.

Chair Sauber moved to deny the private kennel license application for Dawn Lanning because it is incomplete and unsigned, and in keeping with the 60-day rule. Commissioner Fredlund seconded the motion. Motion carried unanimously.

#### **Town Board Liaison Report – Supervisor Lu Barfknecht**

Supervisor Barfknecht stated that all the suggested approval applications were approved with the exception of Kelly Brosseth. Supervisor Behrendt questioned the primary use of the property where the accessory building is proposed to be constructed. Mr. Brosseth stated the property is adjacent to the Dakota Aggregates site but is not the same property identification number. Mr. Brosseth indicated he did not wish to proceed with an Interim-Use Permit amendment at this time.

Discussion was held regarding the update of the Comprehensive Plan and a possible amendment for rezoning parcels to commercial/industrial. Planning Commission Chair Sauber stated that a fiscal impact study would have to be conducted.

A motion was made by Supervisor Behrendt to direct the Planning Commission to discuss the incorporation of the Township and the Township providing sewer and water services to the MAC property. His question was is the Planning Commission willing to take this on?

Motion was made to direct the Planning Commission to pursue the investigation that was laid out in the motion last month and prepare a plan by next month with costs and a timeframe to be completed within six months.

Attorney Lemmons to contact Dakota County that the Township will not be participating in the waste tire collection.

## **Old Business**

### **2040 Comp Plan Open House – October 17, 2016**

Chair Sauber stated that Sherri Buss would present a PowerPoint Presentation. Chair Sauber requested Commission members review the Plan and the presentation before the Open House. The Planning Commission will meet later that evening to incorporate public input. The Commission also designated October 25, 2016, as an alternate date if the Open House went too long.

### **Fencing Ordinance Update**

Chair Sauber stated Tina Bailey forwarded the Ordinance, but Attorney Lemmons did not have time to proof it before he left the office.

Attorney Lemmons stated that he met with Chair Sauber and they went over some changes:

- Section A-Approval Required. Instead of obtaining a building permit, it was changed to obtaining a fence-building permit. A special permit will be designed for fences.
- Section B-Boundary Lines. A survey is not to be required unless the Building Inspector deems it necessary. If the monuments locating the boundary lines of the property cannot be located, the Building Inspector has the authority to, and shall require, the applicant to submit a survey prepared by a registered land surveyor locating the boundaries of the property.
- Section C-Construction. Title was changed to Materials and Method of Construction. Electrical fences are allowed for agricultural purposes. The party who constructed the fence shall, to the extent practicable, maintain said fence in a reasonable and sound condition. This shall include the cutting of grass and any other foliage which grows next to the fence to the extent said grass and foliage are within the boundaries of the lot or tract of land enclosed by said fence.
- Section C (3) Security Fences: To require that any arm cannot overhang the neighboring property. It has to face inward.
- Section D – Other Terms (1). All fences constructed prior to the adoption of this Ordinance shall be considered exempt from the terms of this Ordinance until 50%

or more of the fence, as determined by the Building Inspector is replaced.

Chair Sauber stated that if the Planning Commission agrees, the draft ordinance would be ready to go for a Public Hearing, but the Deputy Clerk would need enough time to post and to print and send out the postcards to the Township residents. Commission members indicated they would like to set the date.

Chair Sauber stated that we could have the Special Meeting begin at 7:00 PM on October 25, 2016, and the Public Hearing to start at 8:00 to consider the Fence Ordinance Language.

**Patti Schmidt - Coldwell Banker-** representing Joe Simon property.  
Ms. Schmidt inquired about the state of applications regarding Dawn Lanning.

Chair Sauber stated if the applications were signed and complete, the Planning Commission could move ahead. Only the property owner can submit an application. If Mr. Simon is willing to sign an application to see if Ms. Lanning can get a kennel license before she agrees to buy the property that is fine. Ms. Lanning stated she has more than six dogs over six months of age. She wants a private license. She cannot have a public license, as the Township does not allow public boarding. She stated she will own all of the animals and would use them off-site.

Attorney Lemmons stated that she has to fill out a complete application. Chair Sauber added that not only did it have to be complete, it has to be signed by Mr. Simon or the Planning Commission would not look at it.

Chair Sauber stated that she believes there are two family dwellings in that quarter-quarter. Attorney Lemmons stated that before Ms. Lanning can convert the existing structure into a single-family dwelling she is going to have to purchase a building right. She has not brought in a lot-of-record verification to the Commission. If it were a pre-1982 Lot-of-Record, she can get a certified copy of the deed from the county. Then Ms. Lanning would have a building right. If it is not, there are already two houses there, so she would have to look into buying a building right to transfer there.

It was stated by Ms. Schmidt that Mr. Simon said he believed at one time he had a building permit for each parcel.

Chair Sauber stated that if that were the case then he should have on record at the Dakota County Recorder Office that they were divided and recorded prior to April 12, 1982. It had to be recorded.

### **Recodification**

Chair Sauber stated the Planning Commission members did not get the updated Recodification. Attorney Lemmons has since sent the updated version. Chair Sauber said

the best thing to do is for the Planning Commission members to look at the redline version and see if there is anything else that got omitted. Chair Sauber stated she did find a few things that had not been changed. The Clerk can add that to the posting of the Special Meeting on October 25, 2016. If there is no Open House feedback from the draft comp plan to deal with, we can work on the recodification before and after the 8:00 pm Public Hearing on the Fence Ordinance.

### **30 Cubic Yards of Material**

Commissioner Fredlund stated he talked with Greg Wagner from the Scott County Planning Department. Scott County has Ordinances that go back to 2002. There are a number of restrictions on hauling material in. An exception is less than 50 cubic yards of material and there is an agricultural exception of any amounts over 500 cubic yards. Any amounts over that would require a grading permit.

Chair Sauber suggested Commissioner Fredlund turn that information in to the Deputy Clerk for discussion at the next meeting.

Chair Sauber forgot to add one item to the agenda under New Business. Chair Sauber stated she would like to propose that the Planning Commission request Attorney presence at all regular Planning Commission meetings. The Attorney would receive a copy of the packet ahead of time to review and anticipate issues.

Attorney Lemmons stated that on the first and third Mondays he is not available but Attorney Norder could attend.

Commissioner Palmquist moved to have an Attorney present at all regularly scheduled Planning Commission meetings. Commissioner Fredlund seconded. Motion carried unanimously.

Chair Sauber wanted to remind Commission members that the Deputy Clerk would no longer be doing a monthly summary. It will be up to the appointed liaison to give a brief summary along with a copy of the agenda.

Commissioner Frana stated that before we let Attorney Lemmons leave the meeting we would like some advice about the minutes. We were speaking with Andrew Johnson up at the map and the recorder did not pick up anything that was said. Commissioner Frana wanted to know how we should handle that.

Attorney Lemmons stated that the Deputy Clerk should add a special addendum to the minutes explaining the issue and that it was not recorded and to the best of the Planning Commission member's recollection, this is what was said. It could actually be an addendum to this meeting's minutes. It could say:

*"The Commission discussed a conversation which occurred at the August 1, 2016, Planning Commission Draft Meeting Minutes*

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Commission meeting regarding questions asked by Andrew Johnson and to the best of the Planning Commissions recollection, here is what was said. The purpose of this addendum is to properly reflect what had occurred at the meeting and should be added and noted in the August 1, 2016, minutes.

### **October Newsletter**

- Township Update regarding Airlake airport possible annexation: The Planning Commission has been tasked by the Board to examine different options the Township has in response to that possibility and that the Planning Commission is doing that examination with TKDA Planner, Sherri Buss and Attorney Chad Lemmons. The examination of these issues will begin in November. Among those issues include Joint Powers Agreement, Incorporation and Orderly Annexation.
- Fence Ordinance Update: There was a Fence Ordinance that was approved by the Board and further language will be examined at a Public Hearing on October 25, 2016, at 8:00 PM.
- Solar Energy Moratorium: The Township no longer has the moratorium but the Planning Commission will permit residential and agricultural accessory solar uses but not primary commercial solar uses at this time.

### **Minutes Approval:**

#### **May 3, 2016 Public Hearing Minutes-Dan Ames Text Amendment.**

Chair Sauber recused herself from this portion of the meeting.

Vice Chair Frana made a motion to approve the May 3, 2016, Planning Commission Public Hearing minutes of the Dan Ames Text Amendment as amended. Commissioner Fredlund seconded. Motion carried 4-0 with Chair Sauber abstaining.

#### **July 26, 2016 Public Hearing Minutes – Brady and Anna Gustafson**

Chair Sauber moved to approve the Planning Commission Public Hearing minutes for July 26, 2016, as amended. Commissioner Fredlund seconded. Motion carried 4-0 with Commissioner Palmquist abstaining, as he was absent from this meeting.

#### **August 1, 2016 – Planning Commission Meeting minutes**

Chair Sauber recused herself for this portion of the meeting.

Vice Chair Frana stated the portion of the meeting in question is on page 3.

### **ADDENDUM TO THE AUGUST 1, 2016, PLANNING COMMISSION MEETING MINUTES:**

The purpose of this addendum is to properly reflect what had occurred at the August 1,  
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2016, meeting for clarification of the response to Mr. Andrew Johnsons' question, as it was not picked up on the recording.

The Commission on October 3, 2016, discussed a conversation that occurred at the August 1, 2016, Planning Commission meeting regarding questions asked by Andrew Johnson and to the best of the Planning Commissions' recollection, here is what was said:

Mr. Johnson wanted to know if his property could be buildable and if there were any restrictions. Vice-Chair Frana stated that the quarter-quarter section currently has no dwelling in the section. If two landowners have property in the quarter-quarter section, the building right is on a first-come first-serve basis. Mr. Johnson also asked about an easement to allow access to the road. Vice Chair Frana responded that Mr. Johnson could apply for an easement.

Commissioner Fredlund moved to approve the August 1, 2016, Planning Commission meeting minutes as amended adding the addendum to tonight's meeting minutes with a notation on the August 1, 2016, meeting minutes to refer to the October 3, 2016, meeting minutes for clarification. Commissioner Wood seconded the motion. Motion carried with Chair Sauber abstaining.

**September 6, 2016, Planning Commission Meeting minutes.**

Chair Sauber moved to approve the September 6, 2016, Planning Commission Meeting minutes as amended. Commissioner Wood seconded the motion. Motion carried unanimously.

Chair Sauber stated that the Planning Commission is saddened by the Departure of Vice-Chair Fritz Frana. Commission Frana has done a wonderful job for the Township. He has always been fair and honest and very professional and the Township would like to thank him for all the time he has put in. On behalf of everyone in the Town Chair Sauber wanted to thank Vice Chair Frana for his contributions.

Chair Sauber made a motion to adjourn the meeting. Commissioner Palmquist seconded the motion. Meeting adjourned at 9:33 PM.

Respectfully submitted,

Cheryl Murphy  
Deputy Clerk

*Minutes for the October 3, 2016, meeting were approved on February 6, 2017.*