

EUREKA TOWNSHIP

DAKOTA COUNTY

STATE OF MINNESOTA

Planning Commission Meeting of May 2, 2017

Call to Order

Chair Sauber called the meeting to order at 7:00PM. Planning Commission members present were Nancy Sauber, Ralph Fredlund, Bill Funk, Julie Larson, and Randy Wood. Supervisor 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 Training and Request for Money under New Business
- Under Deputy Clerk Issues to add Forms.

Chair Sauber moved to approve the Agenda as amended. Vice Chair Fredlund seconded. Motion carried 5-0.

Election of Planning Commission Chair and Vice Chair

Commissioner Fredlund moved to nominate Nancy Sauber for Chair of the Planning Commission.

Commissioner Wood seconded.

Ballots were handed in. Nancy Sauber was elected the Chair of the Planning Commission.

Chair Sauber moved to nominate Ralph Fredlund as Vice Chair of the Planning Commission. Commissioner Wood seconded.

Ballots were handed in. Ralph Fredlund was elected the Vice Chair of the Planning Commission.

Permit Requests

Adam Jakes – 25681 Ipava Avenue – Building Permit Application for Accessory Building
Nancy Sauber stated that Mr. Jakes is trying to build a personal storage building. She stated that what was turned in earlier stated he owns 5.64 acres and it is listed as residential. Where Mr. Jakes has the square footage of the accessory building that he is proposing to build is noted on the form, it should say 3,888 square feet. The number 4320 should be

changed. The total square footage of a structure is listed as 6048 square feet. There is one outbuilding there. There is a barn that will be torn down. The maximum area of all accessory buildings shall not total more than 5,000 square feet on 2-5.999 acres and Mr. Jakes falls into that acreage and therefore his building would be too big.

Chair Sauber stated the Planning Commission has to follow what is in the ordinance. Mr. Jakes' option would be to reduce the size of his proposed building. If the old barn needs to be taken down, it should probably be taken down first. The language in the ordinance regarding the \$5,000 escrow I believe applies to residences so I am not sure of the proper way to handle this.

Commissioner Fredlund stated that the old barn would need to be taken down first, otherwise it would be counted as an accessory building.

Attorney Lemmons stated that he does not think escrow is needed under our ordinance. It is required only if you are taking down a residence. The permit should be held until the old barn is taken down. Unfortunately the Planning Commission will need to deny the permit and Mr. Jakes will have to come back to the next Planning Commission meeting.

Commissioner Fredlund moved that the Planning Commission deny the permit for a personal storage building for Adam Jakes at 25681 Ipava due to the fact that the total accessory square footage exceeds 5,000 square feet. Commissioner Wood seconded. Motion carried 5-0.

Paul Carlberg – 22222 Dodd Boulevard – Sign Permit Application for Living Waters Church

Chair Sauber stated there are a few issues with the application. Unfortunately where your sign is currently located is not a legal situation for it. I don't know who inspected it. I do see Gary Stauber's signature on the application.

Paul Carlberg stated that Action Sign Company put the sign up.

Chair Sauber stated that Living Waters Church is attempting to replace the current sign and that sign is not correct. All signs need to be 15 feet back from the road right-of-way.

Paul Carlberg stated that the old sign will be taken down and eliminated and the new sign will replace the current one. We know that the new sign needs to be 15 feet from the Dodd Boulevard Right-of-Way.

Chair Sauber asked if they are aware that the Right-of-Way is now 55 feet from the centerline of Dodd. Chair Sauber stated it needs to be another 15 feet back, making it 70 feet from the centerline of Dodd in this situation. When the County improves a road it is taking a wider Right-of-Way for the future. Short of cutting down trees which Chair Sauber

stated she doesn't imagine Living Waters Church wants to do, the only other possibility she could think of is if Mr. Carlberg went further North. The Church might be able to get it back far enough.

Paul Carlberg stated that he thinks it would be good for Living Waters to take a look at a couple of things. One would be a northern location as Chair Sauber recommended and the other to measure out to the centerline and have a good on-the-ground understanding of where that falls.

Chair Sauber stated that Mr. Carlberg will need to come back to the Planning Commission to show the location of the sign. Mr. Carlberg will also need to resubmit a site plan with the position and give the distance to the property line and the centerline of the road.

Commissioner Wood moved that the Planning Commission deny the sign permit application for Living Waters Church at 22222 Dodd Boulevard because the location of the sign is too close to the Right-of-Way. Commissioner Fredlund seconded the motion. Motion carried 5-0.

Other Land Use and Zoning

Jerome Philippe - 27798 Jamaica Avenue - Lot Split Application

Chair Sauber stated that the Township has proof of the filing with the County. Chair Sauber stated that on the application Parcel A should be the whole parcel of 74.75 acres. Mr. Philippe needs to change, initial and date the applications.

Attorney Lemmons stated that one parcel is 34.75 acres and the other is 40 acres and each has over 500 feet of frontage on Jamaica Avenue and each parcel is over 20 acres. Therefore under statute this does not require Township approval. The Transfer of Building Rights has been filed with the county and when the new PIN is issued, Mr. Philippe will need to file an amendment with the county correctly identifying the property. Clerk to follow up.

Chair Sauber stated that Mr. Philippe will be entitled to his application refund and the clerk will inform the Treasurer.

Gloria and Erland Anderson - 8635 267th Street - Residential Building Right Transfer

Chair Sauber stated that because of the alleged pre-1982 Lot of Record, the building right is attached to that. There does have to be a transfer before the building can be built. Before the Planning Commission can consider a building application the transfer has to be completed and recorded and the proof of filing has to be returned to the Township. Chair Sauber verified with Attorney Lemmons that it does require a transfer even though there was not a PIN. Chair Sauber also stated that when she talked with Attorney Lemmons he

stated they needed a copy of the deed conveying that parcel and fee title to the county, not the easement, but the deed.

Attorney Lemmons stated that an easement does not separate off the ownership. There has to be a deed that separates out the ownership of that property from the adjoining property.

Ms. Anderson stated that their attorney, Mr. Voss, asked would that really exist if we don't have a different PIN. They haven't divided that out. Not Parcel A or Parcel B, but one unit.

Attorney Lemmons stated he is assuming at some point in time instead of just getting an easement to the property, the County acquired a deed title.

Ms. Anderson stated that the County said no.

Attorney Lemmons indicated then that is the problem. That property for title purposes is still part of the overall parcel and there is only one tax parcel number. I am not sure why they show it on their maps the way they do. You would have to ask them.

Ms. Anderson stated that Attorney Lemmons is saying one thing and the County is saying another.

Chair Sauber stated that because there wasn't a splitting off and re-assignment of ownership, there was no Lot of Record.

Attorney Lemmons indicated that a Lot of Record could be created only by a separate deed or by an actual transfer of deed title. An easement does not transfer deed title. Attorney Lemmons stated that there was a decree in the file and he must have missed that. He suggested that he take a closer look at that. Attorney Lemmons also stated that he wants to be fair and that he would like to talk with the Andersons' attorney and get a feel of exactly what happened. Attorney Lemmons stated that the Andersons' tax classification is not their zoning classification. Eureka Township is zoned Ag.

Chair Sauber moved to table the Erland and Gloria Anderson transfer of building right application subject to the Attorney's clarification of and the status of the parcel as to whether there is a building right to be transferred showing the fee title and that the legal requirements are met. If that is the case and found to be true, the Planning Commission would recommend to the Board.

Commissioner Fredlund seconded. Motion carried unanimously.

David and Lois Peterson – 6010 245th Street and Walter Hawke – 221 Walnut Street, Farmington - Lot Split Application

Chair Sauber stated that what the Petersons have for the description of Parcel B on the form is the same as Parcel A on the survey. That needs to be noted so the Board has an understanding. Parcel A on the form is really a combination of Parcels A and B. Parcel C on the form is really the same as Parcel B on the survey. The application form will also need to be initialed and dated.

Chair Sauber moved to recommend approval of the lot split application at for David and Lois Peterson at 6010 245th Street, PIN 13-01-400-50-020. Commissioner Fredlund seconded the motion. Motion carried unanimously.

Resident Inquiry

Nate Gainey – 10245 250th Street West – regarding dog kennel license.

Mr. Gainey had some questions for the Planning Commission regarding a private dog kennel license.

Mr. Gainey read the definition of a kennel. *“Where dogs or other companion animals are adopted by the owner for personal use.”* Mr. Gainey asked if he had a dog in for breeding or a litter, does that fall under the “shall keep” part of six or more. If he personally owns five dogs and a dog is in for breeding, does that put him over the ordinance meaning six or more.

Attorney Lemmons answered Mr. Gainey by stating in the Township definition of “shall keep” is the permanent possession of dogs. If the dog is only there temporarily it would not be an issue.

Mr. Gainey also asked that if a friend or family member brings their dog over when visiting, does that fall under the same part?

Attorney Lemmons stated that the dog is only there temporarily and it is not Mr. Gainey’s dog.

Chair Sauber added that if there is a litter, Mr. Gainey could keep them up to six months and after that they have to be off the property. After six months they would count as your personal dogs.

Mr. Gainey thanked the Attorney and the Commission members.

Steve Hartman – 25735 Highview Avenue – questions regarding property and a culvert. Mr. Hartman was not present.

Town Board Liaison Report – Supervisor Lu Barfknecht

A discussion came up regarding the damage to the Chub Lake culvert. Our Township lawyer will pursue trying to find the Faribault location of that person responsible.

The Township received a bill from Frontier for damage repair and that was forwarded to the Otte brothers.

Bryce Otte discussed ongoing road maintenance and garbage pickup.

Darrel Gilmer, Building Inspector discussed ongoing inspections. It was noted that Supervisor Hansen and Mr. Gilmer will inspect the Mahoney property and a report was given on the current status of the cleanup. Discussion was held regarding Ordinance violation. Building Inspector Gilmer was directed to provide pictures and the review is to be continued at the May 2017, Town Board Meeting.

Dan Ames, Vermillion Aggregates – Violation Notification. Mr. Ames was present and discussion held regarding the Ordinance violation of storage of material owned by Scotts Miracle Gro on the mining pit property. Alex Allen discussed the time it would take to remove the 3,000 pallets of material stored on the Vermillion Aggregates site.

David and Amy Tonsager 25700 Granite Path. Re-enrolling application for Ag Preserve was approved.

Pat Mason, Kelly Aggregates, put in a request for temporary extension of hours of operation and the Board approved it.

Applicants Randy Wood, Julie Larson, Allen Novacek, Mark Ceminsky and Bill Funk were interviewed for available Planning Commission positions. Vote by ballot was taken. Randy Wood was appointed to a one-year term. Julie Larson and Bill Funk were each appointed to three-year terms.

Motion was made to authorize the publication of request for sealed bids for road maintenance, gravel chip coating and striping of Town Hall parking lot and Town Hall grounds maintenance.

Motion was made to accept the quote for street sweeping from Terpstra Snowplowing, Inc.

Motion was made to authorize two office chairs and to replace the Cisco router.

The Round Table meeting for the Town Board was set for May 10, 2017, at 7:00 PM.

Motion was made to direct the Township Attorney to draft a letter to Mr. Steinhoff regarding Township Ordinance and State regulations in regard to fences and note that the Township intends to enforce the Ordinance.

Supervisor Jennings addressed the annexation of Airlake Airport property by Lakeville. She stated that ongoing discussions are being held with the city of Lakeville in regard to a Joint Powers Agreement for sewer and water services.

Chair Sauber requested it be documented that the Petersons received a letter from Travis Thiel stating that the 40 acres will be split into two 20-acre lots. One 20-acre lot (the northern lot) will include land and homestead, and one 20-acre lot will include a small strip along the east parcel boundary for a future driveway down to the southern half of the parcel. This is something that does not need to be addressed now as nothing is proposed to be built. However, setbacks from the waterway and the potential wetland should be kept in mind for when potential changes in zoning occur that would allow for a building site on the southern parcel. No permit from the VRWJPO is needed at this time.

New Business

Liaisons for upcoming Town Board Meetings as follows:

2017 - 2018 PLANNING COMMISSION LIAISONS FOR TOWN BOARD MEETINGS			
May 8, 2017	Nancy Sauber	November 13, 2017	Randy Wood
June 12, 2017	Ralph Fredlund	December 11, 2017	Randy Wood
July 10, 2017	Julie Larson	January 8, 2018	Ralph Fredlund
August 14, 2017	Nancy Sauber	February 12, 2018	Bill Funk
September 11, 2017	Bill Funk	March 12, 2018	Julie Larson
October 10, 2017 (Tuesday)	Bill Funk		

Sump Pump Ordinance

Sump Pump Recap

The following was summarized by Supervisor Lu Barfknecht:

March 2, 2015, Planning Commission meeting included discussion on Sump Pump ordinance. Due to the fact that it involves surface water drainage, Planning Commission member Carrie Jennings made a motion to write to Travis Thiel, Brad Becker and Brian Watson and see what they say about what our policies for discharge of water from within a home should be. In addition, our Building Inspector, Mr. Darrell Gilmer was also asked for feedback as it relates to the MN State Statutes and for his suggestions on changes.

Al Novacek was on the Planning Commission when the Board directed the Planning Commission to work on an ordinance. Odd that he now has a different opinion on it. For Mr. Novacek to say that this was only done because of a neighbor dispute is false. In fact, Kenny Miller and Brian Budenski, both Town Board Supervisors at the time, drove through Eureka Estates and noted there was a problem with ditch drainage and surface water. Mark Ceminsky, also a Board Supervisor at the time, also made comment that something had to be done with the ditches in Eureka Estates. The inside ditches drain fine, but the outer ditches do not drain properly. Kenny Miller also made a statement that sump pump discharge cannot flow into the

ditches. Supervisor Barfknecht advised Kenny Miller that the Board of Supervisors years back advised the residents of Eureka Estates (2nd addition) where the discharge of sump pump water should go. Ray Kadlec specifically was the Board member that advised this.

May 2015: More discussion on Sump Pump

June 2015: Sump Pump draft was discussed. Suggestions from Building Inspector Mr. Gilmer were incorporated. Commissioner Frana suggested that Mr. Gilmer review this draft and advise.

August 2015: Discussion on adding item #4 – Section R405.23 of the 2015, IRC.

October 2015: Supervisor Miller talked with Ron Quanbeck from TKDA. Another representative was assigned to supply language. Kenny Miller was to talk with Ron Quanbeck on October 6, 2015. Kenny will have this placed on the agenda for the November Board meeting.

November 2015: Kenny Miller received feedback from Ron Quanbeck. Language update was done per suggestions, sent to clerk to forward to Board for their November meeting.

Town Board Meeting Information

November 2015: Board and Attorney accepted/approved of the language and directed the Planning Commission to hold a Public Hearing.

Planning Commission held a Public Hearing on January 4, 2016 – not a single resident appeared to comment or dispute the proposed ordinance.

2016 Annual Meeting included in the PowerPoint presentation that the work done by the Planning Commission included the Sump Pump ordinance.

No one questioned it at that time either.

Planning Commission Discussion from Public Hearing: Sump Pump Ordinance

- Comments from Chair Sauber included that anyone on the Planning Commission or Town Board can initiate an ordinance change. There was a comment made regarding how this came about.
- A question was raised by a resident about protecting health and the welfare, so having property flooded might not best for your welfare. The Building Inspector had advised about the language.
- A question that Chair Sauber had was raised regarding the Township manual. Chair Sauber asked the Attorney to comment on that. A township must base those requirements on geological conditions in the area and a local government wishing to impose stricter requirements must receive permission from the State for those restrictions. Does this apply to the Sump Pump Ordinance. Attorney Lemmons stated he did not believe so and there is no case law that says it does.

- A comment was raised from a resident about a neighbor's water going down their driveway. Chair Sauber stated that was being taken care of in the Sump Pump Ordinance.
- Another comment received was regarding the 50 feet from a structure being too close or wasn't always appropriate. Commissioner Funk stated they were talking about winter freeze. There was a suggestion that some language be put in about exceptions for the property. Attorney Lemmons stated that would be a problem because the Township would be bound by whatever is stated in the Ordinance. He stated the best way to handle that is to request a variance from the ordinance due to something unique on the property. Chair Sauber stated that would make sense. Chair Sauber asked how the 50-feet was determined. Supervisor Barfknecht stated that it was information that the Planning Commission at the time had gathered from several cities and surrounding communities that have that in their Ordinance.
- Chair Sauber stated that anyone who has a sump pump that is draining into a stormwater ditch would be grandfathered in at this point. Attorney Lemmons stated that would be correct.

Chair Sauber asked the Planning Commission if they had any further questions or concerns.

Commissioner Fredlund suggested we move it forward the way it is written.

There was some discussion about changing the 50 feet to 20 feet.

Commissioner Fredlund moved to recommend approval of the Sump Pump Ordinance with the change from 50 feet to 20 feet. Commissioner Larson seconded the motion. Motion carried 4-0 with Commissioner Funk abstaining.

Square Footage of Accessory Buildings

Chair Sauber stated that she would like it noted that the Planning Commission had actually recommended that the 10,000 square feet be a cap for all non-ag property of any size. That was our recommendation. As the language exists, if you own 40 acres that are not in Ag you have no limit on accessory buildings other than you have to meet the setbacks. The assumption is that if you own 11 acres you are Ag, but that is not the case. You have to have that acreage in production of at least a year beforehand. Just because a parcel is a certain size does not make it Ag. That was the Planning Commission's recommendation but the Board came back with 200 percent.

Chair Sauber stated she would like to comment on some items brought up at the Public Hearing. There was a comment that was made regarding conflicting ordinances. She does not believe the ordinances are conflicting. A smaller house that does not have a garage can add a garage and increase the amount of accessory structure size permitted. It is also not true that people are not able to build their accessory structure. It is not an attempt to punish small homeowners and reward large homeowners, as was someone's suggestion at the Public Hearing. The Planning Commission is attempting to keep accessory uses as accessory. The maximum size of the

accessory structure will be up to the Board. Chair Sauber said there was the comment made about if an owner had a parcel large enough to build an accessory structure and she believes that is irrelevant. An owner may have room to build a lot of things but that doesn't mean they are allowed or that they are not regulated.

Chair Sauber asked if there was any other discussion on the testimony.

Vice Chair Fredlund moved to forward this to the Board with the recommendation that accessory buildings be limited to 10,000 square feet on 6 acres or more.

Motion died for lack of a second.

Commissioner Wood moved to make a recommendation that the Accessory Buildings as the ordinance reads be forwarded to the Town Board as is.

Vice Chair Fredlund seconded. Motion carried unanimously.

Horticulture Definition

Chair Sauber stated that the horticulture definition in the ordinance states the intent is to allow horticulture products from non-contiguous property to be sold to supplement that which has been raised or harvested on the horticulture property.

The clear intent is that a resident can bring Ag products that haven't been raised on their property to supplement what they are able to raise or harvest on their property. The point that was raised at the hearing that Chair Sauber had was "*produced on the land at which the sale is occurring.*" I believe that was brought up in question regarding Ag. What Chair Sauber stated is that she understands that if you have a horticultural establishment and you have sales there to sell what you raise, you can also bring in horticulture products from other areas and sell them as well.

Attorney Lemmons stated that say for example you are raising and selling apples on your property and you decided to supplement your product with apples raised outside the property, that is allowed and that sale would take place on your property.

Chair Sauber stated there was another horticultural definition that was suggested that said "to allow the production and sale of fruit including apples, grapes and berries, vegetables, flowers or nursery stock including ornamental shrubs, trees including firewood and all legal horticulture items regardless of where they were raised."

Chair Sauber stated that in her opinion this does not improve on the horticultural definition we have.

Chair Sauber moved to recommend to the Board that they adopt Ordinance 1, Chapter 4 having to do with horticultural definition as presented. Commissioner Wood seconded. Motion carried unanimously.

Discussion of Commercial Ag

Chair Sauber said it states, “Any person engaged in Commercial Agriculture shall have the right to store and sell field crops, livestock products, and livestock which are harvested or raised by that person on land located either within the Township of Eureka or outside its boundaries.”

Chair Sauber stated the purpose is to clarify the rights of its citizens to raise and harvest field crops and livestock on property of which the citizen is not the fee owner.

Chair Sauber stated that there were two other possible suggestions made.

The first one says, “Any person engaged in agricultural operations shall have the right to store and sell horticultural, livestock or livestock products regardless of the place of origin”.

The second suggestion stated, “Any person engaged in commercial agriculture shall have the right to store and/or sell livestock products and livestock which are harvested from land in the Township of Eureka or outside its boundaries.”

Commissioner Fredlund moved to forward the recommended language for approval by the Board, substituting the word “and” with “or” for agriculture definition. Commission Larson seconded. Motion carried unanimously.

Supervisor Barfknecht brought up the fact that the Sump Pump Ordinance is currently in Ordinance 3, Chapter 4, Section 9, which deals with pools, not sump pumps. Supervisor Barfknecht spoke with Attorney Lemmons and it was suggested to move it to Ordinance 3, Chapter 4, Section 8.5.

Chair Sauber moved that the Sump Pump Ordinance be moved to its proper place in the Ordinance, at Ordinance 3, Chapter 4, Section 8.5.

Commissioner Fredlund seconded. Motion carried unanimously.

Training for Planning Commission

Chair Sauber read a list of upcoming training sessions coming up, such as:

- Effective Community Engagement for Land Use
- Basics of Planning and Zoning
- Beyond the Basics of Planning and Zoning
- Your Role as a Planning Commissioner

Information will be sent to the Planning Commission for training. Chair Sauber stated if Commission members are planning on attending a class they should request approval from the Board before they attend.

Minnesota Association of Townships – Clerk to order 2017 manuals for all Planning Commission members.

Chair Sauber moved to request to the Board approval to purchase 2017 MAT manuals for all Planning Commission members. Randy Wood seconded. Motion carried unanimously.

Minutes Approval

January 3, 2017 – Planning Commission Meeting Minutes

Chair Sauber moved to approved the January 3, 2017, Special Planning Commission Meeting Minutes as amended. Commissioner Fredlund seconded. Motion carried unanimously.

April, 2017 – Planning Commission Meeting

Chair Sauber moved to approve the April 3, 2017, Special Planning Commission meeting minutes as amended. Commissioner Funk seconded. Motion carried unanimously.

Commissioner Fredlund moved to adjourn the meeting. Commissioner Wood seconded.

Meeting adjourned at 9:33 PM.

Respectfully submitted,

Cheryl Murphy
Deputy Clerk