

**EUREKA TOWNSHIP**

**DAKOTA COUNTY**

**STATE OF MINNESOTA**

**Review Transfer of Building Rights Application  
Review Findings of Fact –Kenny Miller Public Hearing**

**Special Planning Commission Meeting of June 23, 2015**

**Call to Order**

Planning Commission Chair Sauber called the meeting to order at 7:05 PM. Planning Commission members present: Chair Nancy Sauber, Vice Chair Lu Barfknecht, Commissioner Phil Cleminson, Commissioner Fritz Frana and Commissioner Donovan Palmquist. Attorney Chad Lemmons was also in attendance. See attached sheet for additional persons in attendance. Deputy Clerk Cheryl Murphy recorded the minutes.

**Review Transfer of Building Rights Application**

Chair Sauber stated the Transfer of Building Rights Application is a complicated procedure and requested it be noted for the Deputy Clerk to take very detailed minutes. Chair Sauber stated the Township used to cluster only with contiguous acres owned by the same person and the applicant needed to have at least 80 acres. A person perhaps had 160 acres and wanted to move the building right from a back quarter-quarter to the front where the road is. One can now transfer from one side of the Township to the other and it is more complicated, as someone could own the building right and someone else could own the land. Chair Sauber stated the Planning Commission should go through all the documents line by line.

**Transfer Ordinance No. 2014-04**

Section 2 A – OK

Section 2 B – Item 5 –There was some question regarding Item 5, which states “*Applicant shall provide evidence that a Wetland Determination has been made by the Dakota County Soil and Water Conservation District as part of an application for a subdivision (lot split), to transfer in a housing right, or an application for a building permit.*”

Chair Sauber stated this was one of the items questioned by a Planning Commission member during one of the reviews. It is required—“shall provide” is mandatory. Not impacting the wetlands must be ensured, but it gives the applicant a feel for what limitations he/she may have on his/her lot. As far as wetland determination-there is a

wetland determination and a wetland delineation and the determination currently does not cost citizens anything, but that may not be the case in the future and Brian Watson would like the Township to take out the word “free.”

Section 3 – Item A-Chair Sauber stated that a PIN is required before the building right is transferred. One could do a lot split first and then later on transfer the right; one could have these two processes in tandem, as long as they are in the correct order. As long as the lot split was filed first, then the building transfer of rights filed next, that would be acceptable.

Item A states, “*The Town Board may approve a Conditional Use Permit for a Pre-1982 Lot of Record which fails to meet one or more of the current standards*”. In that case, there would need to be a public hearing as it is a Conditional Use Permit (CUP), which means if conditions can be applied to it that would mitigate any negative impacts, that person could receive that CUP. It would have to have meet the setbacks and lot dimension standards in effect at the time of the lot creation which is an important factor. If it was too small to be built on when it was created, it cannot be built on now. If it met requirements then, but it is too small for today’s standards, or if there is an issue for some other reason, one could apply for a Conditional Use Permit and the Board would have to approve it.

Chair Sauber stated that Section 3, Item B was created because there were two lots, one of which was being built on and one that was vacant and had been combined, allegedly, by the County Assessor. The son of the owner wanted to split off the lot and build a house next to his dad. Because they had combined the parcels, that was a problem. It was a Lot of Record and once the boundaries are changed, you lose the building right. Item B sets if up that if one can recreate the original lots with the exact same boundaries as before, one can go ahead and do this. The whole Item B probably applied to only two people.

Section 3 - Item C – Clustering. There are a few ways you can have full control of a building right:

- A person owns all the land in a quarter-quarter section and no residence has been built—the building right has not been utilized. If one owns an entire quarter-quarter section, there is a native building right that goes with it—so that can be transferrable.
- If one has a pre-1982 Lot of Record, it is considered to have a fully controlled residential building right except if it is substandard--if it doesn’t meet Township standards today. Any pre-1982 Lot of Record that meets Township standards can be built on even if there are eight of them in the quarter-quarter—they are all buildable. However, if there are two substandard lots side-by-side, they have to be combined to make a buildable lot and cannot have a house built on each substandard lot.
- All building rights have to be recorded with the Dakota County Recorder. If one had a parcel in which one had a previously received a residential building right that is

recorded, that would be in full control. One cannot transfer something that is not totally owned.

Section 3 Item 2, Number 2 states, *“The quarter-quarter section which contains a receiving parcel is limited to a maximum of four (4) building-eligible lots of record within the quarter-quarter section. The maximum number of residential building rights that may be transferred to receiving land within any single quarter-quarter section is four minus the number of existing single-family homes and undeveloped building eligible Pre-1982 Lots of Record existing in the quarter-quarter section at the time of transfer.”*

Chair Sauber stated there was one instance where someone wanted to cluster in the old sense of contiguous parcels into another quarter-quarter section. There weren't four houses there, but there were four building rights because there was a pre-1982 Lot of Record—so currently that quarter-quarter has five potential building sites, three of which had been utilized.

The Clustering Agreement shall be recorded by the landowner within ninety days of its approval by the Town Board with the Dakota County Recorder and written proof of that has to be presented to the Town Clerk within one-hundred and twenty days after the approval of the cluster agreement by the Township.

Section 3, Item 3 c) states, *“The Clustering Agreement must be executed and recorded by the landowner(s) and written proof of such recording presented to the Town Clerk before the Town will consider any application for a building permit, or before transfer of any of the lands described in the cluster agreement, whichever occurs first.”* This is very important—it has to be recorded before it is official, and before you can use that building right.

The Transfer Task Force stated that, if one has a pre-1982 Lot of Record, since it is buildable, one does have a building right that can transfer. If it is transferred, it can no longer have a grandfathered right. Once the grandfathered right is used, then it is gone and a building right cannot be transferred in again.

Section 4, Item E states, *“All dwellings shall be separated by at least 250 feet from the nearest agricultural building, however this restriction shall not apply where the dwelling and the agricultural building are in common ownership”.* This protects the farmer and his right to farm and also protects the neighbor. However the Ag building does not have to have animals, one could store hay.

Section 5-A, Item 3-Chair Sauber stated if the Township does change the Ordinance, we should add to Sentence 3-***‘of the agreement’*** for clarity which states, *“Legal evidence of such an alternate private agreement shall be recorded with Dakota County referencing the involved parcels and maintenance arrangement, and a copy **of the agreement**, with a copy of the recording receipt shall be presented as part of the building permit application and be clearly referenced on the site plan”.*

Section 5-B, Item 4 – Chair Sauber stated that Item 4 should not be there and needs to be removed from the Ordinance. She requested Attorney Lemmons makes sure that this is removed.

Section 6 – Fees and Costs, states, *“Applicant shall arrange and pay for title research when a determination of possible Pre-1982 Lot of Record status is required. A certified copy of Dakota County records proving the status shall be provided to the Township as part of the application.”* Chair Sauber wanted to point out to the Clerk and Deputy Clerk that if it is not submitted as part of the application, it is not considered complete and should not be accepted and should not come before the Planning Commission or the Board. If applications are not complete, the Township has 15 days to provide in writing a letter stating that it is not complete and why it is not complete. This is an important part of the process.

Third paragraph, Line 2, states *“This amount shall be paid to the Town Board before the final plat is endorsed by the Township officials and before it is recorded in the Office of the Register of Deeds.”* The recording must be paid for.

Section 7-A Item 1 Proof of ownership. There was considerable discussion on this item between Chair Sauber and Attorney Lemmons, as well as Eureka resident Jeff Otto. Attorney Lemmons suggested this is something he needs to look into. Chair Sauber stated that it is very unclear. Attorney Lemmons stated that perhaps the wording needs to be reviewed.

Section 7, Item C- There was discussion regarding the Purchase Agreement and the fact that the notary may not have seen the purchase agreement, but is notarizing the signature(s) and verifying that these are the people who signed the document.

Section 8, Item C – The Planning Commission needs to be aware of how important Item C is-it states, *“The Residential Building Right Transfer Agreement shall be executed and recorded by the landowner(s), and written proof of such recording presented to the Town Clerk, before the Town will consider any application for a building permit, or before transfer of any of the lands described in the transfer agreement, whichever occurs first.”* Chair Sauber stated if someone does this, it has to be officially recorded and proof brought in to the Township and then they can apply for a building permit.

Next item examined was the Residential Building Right Transfer Cluster Application.

- It is very important to make sure that the PIN numbers are on the application. It cannot take place without those PIN numbers
- Need to attach a property map of the described quarter-quarter section and indicate the status of each parcel. This does not have to be done for the preliminary review, but has to have been carried out by the formal review.

- Supporting Documentation-three items are required-The Cluster Agreement, a copy of the Wetland determination (from Dakota County Soil and Water Conservation District) and a map of the quarter-quarter section receiving the transferred building right.
- Residential Building Right to be transferred (clustered) – For the sending parcel, one either owns the land or has the certification of the intent to acquire the building right.

Commissioner Frana suggested that the Commission needs to make sure there is a building right to be transferred and there is a map of the quarter-quarter section of the sending parcel to give us better assurance. Attorney Lemmons stated that would be a good idea. That item will be added under the Supporting Documents item on Page 2 of the application.

Under the Section “Do Not Write Below this Line” – it is important for those items to be checked-CUP (Conditional Use Permit) or NCU (Non-Conforming Use) because those items can affect these situations.

Under Approvals Required – the second item should add Recommendation so it reads, “*Planning Commission Recommendation*”. Also change “*Approved*” to “*To Approve*” and “*Denied*” to “*To Deny*”. The Planning Commission does not approve or deny, it just gives a recommendation.

Under Fees –The filing fee would be the fee with the County. Discussion regarding having an escrow account and having our Attorney review all the documents between the time the Planning Commission has gone through the formal review and recommends approval, before it is submitted to the Board. The Attorney review should be added to the fee section of the application and Attorney Lemmons can give an estimate of what that cost would be. The fee schedule would need to include an escrow amount that would cover the attorney review and an additional amount for other questions which may come up in the transfer. That escrow amount would need to be paid before the formal review can take place.

Chair Sauber made a motion to amend the Residential Building Right Transfer (Cluster) Application form as discussed, which would include adding the map of the quarter-quarter section of the sending parcel. Also under Supporting Documents, change “*Copy of Wetland Assessment*” to “*Wetland Determination*”, the changes discussed under Planning Commission Recommendation and To Approve or To Deny, and under Fees to add an Attorney escrow amount once Attorney Lemmons provides the information. Vice Chair Barfknecht seconded the motion. Motion carried unanimously.

Chair Sauber wanted to make it clear to the Clerk and Deputy Clerk that the applicants need the following documents so they come in well prepared:

- *Residential Building Right Transfer (Cluster) Application form with the Procedures*
- *Clustering Agreement Form*

- *A copy of Eureka Township Ordinance 2013-04*
- *Certification of Intent to Acquire Property form if the destination parcel is not already owned by the applicant*
- *Certification of Intent to Acquire a Residential Building Right form if the building right to be transferred is not already owned by the applicant*
- *Eureka Township Residential Building Right Transfer Summary.*

Chair Sauber stated that the Procedures page should be consistent with the wording. Jeff Otto to get back to the Board after he reviews it.

It was mentioned that Item 1-D and 1-E in the Procedures page is only required if the applicant does not already own it, or if the Building Right is not already owned. On Item 4, change “6 copies of the map” to “7 copies of the map”.

Chair Sauber stated again that it is extremely important for all the items the applicant needs that are listed on the Procedures page are supplied and completed before they request to be put on the agenda for the Planning Commission.

Second paragraph under Item 4, should add at the end, “*at the expense of the applicant*”.

There was much discussion regarding submitting a Stub Abstract. A Stub Abstract is required to be submitted and Attorney Lemmons will need to change the Ordinance to include that wording.

There was also much discussion of Item B on Page 2 of the Procedures – Jeff Otto to work with Attorney Lemmons to change the wording on that item.

Commissioner Frana suggested that Page 1, Item 2 be changed to read, “*The applicant must obtain a map of the entire quarter-quarter section which contains the parcel proposed to receive the building right transfer, as well as the sending parcel building right transfer.*”

Page 2 Item 8, add “*escrow fee*” after application fee to read, “*It is submitted along with the application fee, escrow fee, and all supporting documents and forms relevant to the circumstances.*”

Next item for discussion is the Eureka Township Residential Building Right Transfer Summary. We should add this Summary to the list of items the applicants need.

Last paragraph to add wording to read, “*Once a transfer has been completed and recorded and proof provided to the Township, and a parcel now is fully eligible as a buildable lot, there is no time requirement or limit as to when the owner may choose to seek a building permit for construction.*”

Next item for discussion is Lot Split Approval Application. Under Agreement, there was much discussion regarding what to put in the blank on the first line, where it says, "The owners of the \_\_\_\_\_, request that the Eureka Town Board approve a split of the following parcels. It was determined that it needs to be changed to take out the blank space and replace it to say, "*The owners of Parcel A,*"

Page 2 of Lot Split Approval Application needs to be changed to be consistent, adding "*Planning Commission Recommendation*" and the checkboxes to say "*To Approve*" and "*To Deny*".

Chair Sauber made a motion to change the Lot Split Approval Application to include the changes as discussed. Vice Chair Barfknecht seconded the motion. Motion carried unanimously.

Next item for discussion is Lot Split Approval Application Instructions. Under General Requirements, the paragraph needs to be updated.

Under Documents Required for a Complete Application, Item 3, Strike wording and change to "*A Certified copy of the deed is proof of ownership of all parcels.*"

The Attorney was asked and answered that the changes made do not have to go before the Board. The Liaison for the Board can let them know about the changes the Planning Commission has made.

Chair Sauber made a motion to formally request to the Board that Jeff Otto work with Attorney Lemmons to make revisions to the Transfer of Building Rights/Lot Split Procedures and application as discussed earlier in the meeting. Commissioner Palmquist seconded the motion. Motion carried unanimously.

Chair Sauber recused herself for the remainder of the meeting and Vice Chair Barfknecht took over as presiding Chair.

Item up for Discussion--Findings of Fact regarding Application of Windmill, LLC request for an amendment for dry batch ready-mix plant.

Based on the testimony taken and documents produced, the Planning Commission hereby makes the following Findings of Fact:

1. That a Public Hearing was duly called for June 10, 2015 at 7:00 PM at the Eureka Town Hall and notice was sent to all landowners within 1,000 feet of the applicant's property.

2. That Windmill, LLC, a Minnesota limited liability company is the fee owner of the following described real property situated in the Town of Eureka, County of Dakota, State of Minnesota:  
That part of the southwest corner of section 12, township 113, range 20, Dakota County, Minnesota, lying easterly of the four northern natural gas permanent easements described in document No. 1874009, recorded on March 18, 2002 in the office of the County Recorder of Dakota County, Minnesota.
3. That interim use permit was granted on December 10, 2011 for the purpose of allowing aggregate extraction and processing by Windmill LLC and Eureka Sand and Gravel, Inc. pursuant to the provisions of Eureka Town Ordinance 6.
4. That Windmill, LLC has applied for an amendment to the Interim Use Permit for the purpose of allowing it to operate as an accessory use ready-mix concrete plant.
5. That the proposed amendment does not meet or exceed the threshold of any mandatory EAW categories listed in M.R. 4410.4300. That as a result, there is no need to require the applicant to conduct and prepare a new EAW (Environmental Assessment Worksheet).
6. That the proposed ready-mix concrete plant will not result in increased traffic. That it will not intensify the present use of the property as an aggregate extraction and processing operation.

Vice Chair Barfknecht stated that the Commission needs to discuss the testimony and what the recommendation to the Town Board will be.

Commissioner Frana suggested the Commission have a discussion about what conditions to add with their recommendation. Commissioner Frana indicated he would like some clarification of what Attorney Lemmons would consider structural alteration. Attorney Lemmons stated that the proposed dry batch ready-mix concrete plant is not permanently affixed and can be removed offsite. It is an independent unit.

Commissioner Frana stated some of the conditions one of the residents was concerned about were:

- Concrete plant to be located no less than a thousand feet from any dwelling
- Concrete plant to be located no less than 500 feet from any property line
- Hours of operation – Monday-Friday, 7:00 AM – 5:30 PM
- Dust free surface on the area to be traveled to the plant
- Any spills or release relative to the dry ready-mix plant need to be reported to the MPCA, the Township and property owners within 1,000 feet

- Monitor well to be installed to check for leaks in the dust basins-to be installed and tested by an independent firm

Vice Chair Barfknecht stated the applicant does have a permit and it is monitored by the DNR.

Commissioner Frana stated another issue brought up by a resident was the impact of property values. He stated that although the mine is currently there, does adding the dry ready-mix plant have an impact to property values? Attorney Lemmons stated that there would have to be concrete testimony to that fact, or it will be overturned. Attorney Lemmons also stated the only type of evidence that the court will recognize would be from an appraiser to determine the effects on surrounding properties. There was no finding of intensification of use.

Commissioner Frana also stated that Mr. Miller is locating his plant so that it will not be seen from Essex Avenue. He has some repair to do to his berm. There is a tower that is 45 feet tall but if he extends that tower to 60 feet as was stated in the engineer's review, there might be a visual issue. Vice Chair Barfknecht suggested that the Commission consider making that a condition.

Vice Chair Barfknecht stated that almost all the individuals who appeared before the Planning Commission and gave testimony were opposed. She stated that if all the conditions are met is it just a "go" anyway? Is the Planning Commission's recommendation to the Board that the residents don't want it? She asked Attorney Lemmons for guidance on that issue.

Attorney Lemmons stated, if the sole reason for recommending denial is because the residents are opposed to it, it is going to be an invalid decision. Case law is clear. The fact that the residents do not want it is not a basis for denying a permit. Which would be considered arbitrary and capricious.

Commissioner Frana stated that Mr. Miller had his certified project engineer here and she was very competent, but she was representing Mr. Miller. He stated he thought we have an obligation to our Township to have our consulting firm review to see if anything is missing. Attorney Lemmons stated that the Planning Commission may want to review it with the Town Consultant if there are remaining questions. Vice Chair Barfknecht stated that could be recommended as a condition.

Some of the residents requested they get a chance to speak as Chair Sauber told them before she recused herself that they would be given that opportunity. Attorney Lemmons stated that the minutes indicate that public testimony is closed. Vice Chair Barfknecht stated this is a special meeting of the Planning Commission and once the Commission members have completed their discussion, she might consider letting the residents have a couple of minutes to speak. Doug Houser stated he has information that he wants the

Planning Commissioner to hear before they make a recommendation to the Board. He insisted that he was told he could speak by Chair Sauber. Vice Chair Barfknecht advised Mr. Houser that the discussion was over.

Commissioner Frana stated that when describing how Mr. Miller reports aggregate use and use of imported materials it seems more complex than what is suggested because there are two accessory uses. Attorney Lemmons stated this is not a conditional use issue, but an ordinance issue and must be complied with. Commissioner Cleminson stated that Eureka Sand and Gravel have to keep records which are reviewed annually by the Township.

Vice Chair Barfknecht stated that considering the recommendations by Mr. Lemmon regarding case law, conditions of the Commission's recommendation to the Board need to be specified.

The following is a list of conditions proposed by the Commission:

1. The concrete plant can be located no less than 1,000 feet from any dwelling
2. The concrete plant can be located no less than 500 feet from any property lines
3. Hours of operation are Monday-Friday from 7:00 AM – 5:30 PM with no Saturday operation
4. Dust free surface on the area traveling to and from the mine
5. Any spills or release relative to the dry ready-mix plant need to be reported to the MPCA, the Township and property owners within 1,000 feet
6. Height of structure shall not exceed the height of the berm and/or screening
7. TDKA review the EAW

Commissioner Cleminson asked the Attorney if there are any complaints by residents, could additional conditions be added at the annual review. Attorney Lemmons stated yes, and that the purpose of the annual review is to discuss things of that nature.

Commissioner Frana stated it would be an advantage to have TKDA review the EAW. Attorney Lemmons stated that they would only be reviewing Mr. Miller's current EAW and the Commission would need to define what they are specifically looking for. TKDA would have to complete their own EAW-that will deal with the issues previously discussed.

Commissioner Frana made a motion to approve the amendment to the Interim Use Permit (IUP) with the seven conditions discussed. Commissioner Cleminson seconded the motion. Motion carried unanimously.

Out of concern for the citizens, Vice Chair Barfknecht allowed comments from the residents.

Charlie Liane stated that in less than a week we will be right back here again for the Kelly Aggregate Public Hearing. His concern is that not all the residents of the Township were notified of what was happening. He offered to pay the fees to send the Public Hearing notice to the entire Township instead of citizens within 1,000 feet. Attorney Lemmons

stated that notifying residents within 1,000 feet is in the Ordinance. Mr. Liane suggested that the Planning Commission recommend to the Board that he would pay to have the notice sent to all residents in the Township. Vice Chair Barfknecht stated that the Public Hearing would occur before the next Board meeting so that would not be possible. Attorney Lemmons stated that Mr. Liane has every right to send out any notice he would like.

Randy Woods wanted to know why tonight's meeting was not published and stated the Public Hearing was not put in any papers. Vice Chair Barfknecht stated that the meeting tonight is not a public hearing and did not need to be published. The Deputy Clerk stated the Public Hearing was posted in the Dakota County Tribune. Mr. Woods stated he wanted to see the confirmation of it being posted. Deputy Clerk to show Mr. Woods the confirmation of the posting after the meeting.

Don Holz stated that Attorney Lemmons needed to speak into the microphone. Attorney Lemmons stated he would make a note of that.

Attorney Lemmons stated that at the reorganization meeting, it was designated to have two official papers for the posting of notices. Attorney Lemmons also stated that as long as it is in one paper, (we have two designated papers) that is sufficient.

Vice Chair Barfknecht made a motion that the special meeting of the Planning Commission be adjourned. Commissioner Cleminson seconded the motion. Meeting adjourned at 9:49 PM.

Respectfully submitted,

Cheryl Murphy, Deputy Clerk

Minutes approved by the Planning Commission on July 6, 2015.