

EUREKA TOWNSHIP

DAKOTA COUNTY

STATE OF MINNESOTA

Eureka Planning Commission Meeting of July 5, 2016

Call to Order

Chair Sauber called the meeting to order at 7:01 PM. In attendance were: Chair Nancy Sauber, Commissioner Fritz Frana, Commissioner Donovan Palmquist, and Commissioner Randy Wood. Commissioner Ralph Fredlund was absent. Supervisor Dan Rogers was present as the Town Board liaison. Attorney Chad Lemmons was also present. See attached sheet for additional persons in attendance. Deputy Clerk Cheryl Murphy recorded the minutes.

Approval of the Agenda

Chair Sauber requested that we remove Building Permit Application Changes under Old Business and to add under Old Business, Ordinance for Planning Commission Chair Discussion. Chair Sauber moved to approve the agenda as amended. Commissioner Wood seconded. Motion carried.

Permit Requests

Duane Breid - 24820 Dodd Boulevard - Revised Site Plan.

Mr. Breid was at the Planning Commission meeting previously and was asked to bring in a revised site plan. The site plan was changed to 10 feet. There is also an inspection report from Building Inspector Gilmer stating that Mr. Gilmer checked the setbacks and the drainage flows east and south and does not flow to the property north of Mr. Breid's property.

Commissioner Frana moved to recommend approval to the Town Board of the revised building permit for Duane Breid, 24820 Dodd Boulevard, Pin #130180080015. Commissioner Wood seconded. Motion carried 4-0.

Chair Sauber moved that this also be put on the Town Board consent agenda. Commissioner Wood seconded. Motion carried 4-0.

Jaren Fitzke (Fitzke Construction)-17721 Formosa Avenue, Lakeville representing Anna and Brady Gustafson, 6410 Humboldt Avenue South, Richfield for Building Permit Application for a new single family two-story home located at 24835 Dodd Boulevard.

Chair Sauber stated that this is a building permit application for the former Dwight and Donna Pederson property on Dodd. The Pedersons lived on the adjacent property and the pole building was on the property the Gustafsons want to build upon. Presumably it is a pre-1982 lot of record. The transference of the pole building and the property around it to the adjacent property with the home cannot take place until the new home is constructed. Otherwise it is changing the boundaries of a pre-1982 lot of record and the Gustafsons would lose their building right.

Chair Sauber looked at the Ordinance and because the Buildable Lot Ordinance has changed, to be able to build on a pre-1982 Lot of Record, there needs to be a Conditional Use Permit which would require a Public Hearing. The Gustafsons would have to prove at the Public Hearing that it is a pre-April 12, 1982 Lot of Record. In addition, because of the width of the lot, it is not meeting the 250-foot setback. Attorney Lemmons stated it would need a variance hearing.

It came to light tonight that the variance was granted by a Board before the Buildable Lot ordinance came into issue and did already include the width at the house site dimension part of it. The current Board had vacated part of that Variance, but it was just for the shared driveway requirement.

Unfortunately, the Newspaper did not publish both of the Public Hearing Notices. On the advice of Attorney Lemmons, the Township cannot hold the Conditional Use Permit Public Hearing.

Chair Sauber stated that the Planning Commission can look at the building permit application and can reschedule the public hearing tonight. Unless the Gustafsons asked for and had to pay for a special meeting, it would be the August meeting before the Board would get it to approve a Conditional Use Permit, if they decided to do that. The Gustafsons don't need a new variance, but they need the building permit application approved. The Planning Commission cannot recommend approval of the building permit application except conditionally on the outcome of the hearings.

Mr. Fitzke asked what is the purpose of the Conditional Use Permit?

Chair Sauber stated the Planning Commission would need a Conditional Use Permit application to reschedule the public hearing. Chair Sauber stated she would first move to the Board that we recommend that they take a 60-day extension because the building permit application was accepted by the deputy clerk on May 23, 2016, and 60 days would be up. The Township can unilaterally request one extension. Were it to go beyond that, both sides would have to agree to another 60-day extension. It is not anticipated it will take that long, nor that the Township would take all of a 60-day extension.

Chair Sauber moved to recommend to the Board to take a 60-day extension of the Gustafsons' building permit application. Commissioner Palmquist seconded. Motion carried 4-0.

The paperwork that Ms. Gustafson had was not the certified copy of the deed required. Attorney Lemmons suggested that Ms. Gustafson contact Premier Title and let them know she is looking for the deed prior to 1982 that has the same legal description as the one in their deed. They will be able to give Ms. Gustafson a document number and she can go to Hastings to get a certified copy of the deed.

Commissioner Frana moved to recommend approval to the Board for a building permit application for Brady and Anna Gustafson, 24835 Dodd Boulevard, Property ID#130180052015, subject to the changes that are required on the building permit application and subject to the outcome and recommendations from the Public Hearing requirement of a Conditional Use Permit for the property. Commissioner Palmquist seconded. Motion carried.

The Public Hearing for a Conditional Use Permit was rescheduled for Tuesday, July 26, 2016, at 7:00 PM.

Chair Sauber moved to recommend to the Board that the Gustafsons only be charged for one publication fee, one application fee and one escrow, based on the newspaper issue. They have the variance needed. Commissioner Wood seconded. Motion carried 4-0.

Matt Marschall – 7429 280th Street West – Building Permit Application for residential garage. Mr. Marschall was advised that the addition is to be used for personal use only.

Chair Sauber moved to recommend approval for the garage addition for Matt Marschall, 7429 280th Street West for property ID#130340053012. Commissioner Palmquist seconded. Motion carried 4-0.

Resident Inquiry – Hyponex (Scotts) – leasing additional land to expand their operation. No representative in attendance.

Resident Inquiry – Jordan Webinger – Inquiry of property at 220th and Flagstaff.

Mr. Webinger had some questions for the Planning Commission. Chair Sauber stated he would need two acres to build a residence and it has to be at least 250 feet wide at the site of the house and must have a minimum of 33 feet of road frontage to provide for a driveway. The Planning Commission answered several other questions regarding Transfer of Building Rights and quarter-quarter density.

Hyponex-Scotts Revisited

Chair Sauber wanted to address the Hyponex (Scotts) inquiry. They have no representation tonight, but Chair Sauber stated she and Supervisor Brian Budenski received an email from Melanie Vodnick requesting to meet to talk about Scotts' plans to lease additional land to expand their operation. They had requested of the Clerk to appear before the Planning Commission this evening. Chair Sauber stated she would like the

Planning Commission to discuss this and make a recommendation to the Board because it does affect land use. Attorney Lemmons stated that because it was on the agenda for tonight's meeting, it would be appropriate to discuss.

The Settlement Agreement for this property is in the Planning Commission packets. Chair Sauber stated that from the Township point of view the Settlement Agreement is specific to that property, what was then known as Country Stone on 225th and Highview Avenue.

Chair Sauber said the Township treated them as if they were non-conforming. For purposes of our discussion, in Chair Sauber's opinion, it wasn't a legal use when it started, so it was not a non-conforming use. Further, it was misrepresented by the person who was the representative. Unfortunately that representation was not recorded in the minutes, therefore the Township did not have them to rely upon during litigation.

Chair Sauber stated that, in her opinion, the use should not be there at all. She does not see any opportunity for them in the Settlement Agreement to allow them to lease other property in an Ag zone to allow them to store additional business material. The Agreement states it is stored outside on the property. Chair Sauber also stated she felt that it would be exacerbating the impact of this use to allow it to expand. The Planning Commission (without Chair Sauber as she recused herself) and the Board just turned down a gravel text amendment on the basis that it would increase industrial use in the Township, which is an Ag zone. Chair Sauber stated the only way she could see this happening is if the Township would re-negotiate a Settlement Agreement and she does not see why the Township would ever desire to do that. It is not a permitted use and it is not a conditional use that we would allow. Additionally, the Township would have to change the Comprehensive Plan and zoning ordinances to even allow an expansion. The property and use are limited by the Agreement.

Chair Sauber moved that, with Attorney advice on the Settlement Agreement, the Planning Commission recommends to the Board that it not allow storage of Hyponex (Scotts Miracle-Gro product) outside of the property described in the Settlement Agreement and also would like the Board to follow up with Items D, H, and I in the Settlement Agreement – that the source of materials list has been amended and the data on chemicals has been turned in and that the \$2500 annual compensation fee has been paid. Commissioner Palmquist seconded the motion. Motion carried 4-0.

Town Board Liaison – Supervisor Dan Rogers

Supervisor Rogers reviewed the Town Board Meeting Minutes

Old Business

Solar Ordinance-Attorney Lemmons suggested a couple of changes to the Solar Energy Systems Ordinance. On page 1, Chapter 4, 4th paragraph line 2, "purpose of which is to provide daylight for interior lighting" add "not to include skylights"

Page 2, in the table, last line (CUP) should read “greater than 10KW to 100 KW or less”.

Attorney Lemmons will prep an ordinance adopting the amendment.

Fence Ordinance – Chair Sauber stated that on the posting notice the Board agreed to the following changes:

- First bullet point, last line, remove “*but shall not include fences*”
- Second bullet point, remove “*and fences*”, “*and fences*”, and “*or fence*”
- Third bullet point to read, “*Fences are exempt from structure setbacks*”
- Last bullet point to read, “*Ag fences are exempt from building permits*”

Ordinance 2 for Planning Commission Chair

- Planning Commission decided not to have term limits on Planning Commission Chair. The Board agreed at the Roundtable meeting
- Eliminate “*cannot be Chair two times in a row*”
- Board to select who they feel is most qualified

Chair Sauber requested to Attorney Lemmons that the Planning Commission see the recodification and go through it one more time and that the Township then move ahead with the recodification.

Newsletter – Jodi Arman Jones

Chair Sauber suggested adding the information regarding the Fence Ordinance. The Planning Commission is exempting fences from structure setbacks to eliminate the unintended consequence and that Ag fences are exempt. The Planning Commission is continuing to address other language.

Chair Sauber suggested to put on the newsletter calendar the Public Hearing for the Conditional Use Permit for the Gustafsons and also that the Planning Commission is not going ahead with commercial uses but only for accessory uses (residential and/or farm use).

Minutes Approval

- **June 6, 2016** – Planning Commission Meeting
Chair Sauber moved to approve the minutes as amended and to amend the minutes to change the Pin# for Ken DeMaster to Pin#13020026020 because the Pin# was incorrect on the application. Commissioner Wood seconded. Motion carried 4-0. Attorney Lemmons recommended the Clerk contact Ken DeMaster and Jeannie Nordstrom to amend the Pin# on the application and to initial and date it.
- May 3, 2016 – Public Hearing for Zoning Ordinance for Dan Ames

Deputy Clerk to listen to the recording and include the additional testimony and discussion between Mr. Ripley and Attorney Lemmons. Minutes will be brought back to the August meeting for approval.

- May 3, 2016 – Public Hearing for Fence Ordinance.
Chair Sauber moved to approve the minutes of the Public Hearing for the Fence Ordinance of May 3, 2016 as amended. Commissioner Palmquist seconded. Motion carried 4-0.
- May 10, 2016 – Public Hearing for Solar Energy Systems Ordinance
Chair Sauber moved to approve the minutes of the Public Hearing for the Solar Energy Systems Ordinance of May 10, 2016, as amended. Commissioner Wood seconded. Motion carried 4-0.

Deputy Clerk Issues

Chair Sauber suggested it would be helpful to get the hard copies of the packet on Tuesday rather than Thursday.

Adjourn

Chair Sauber moved to adjourn the meeting. Meeting adjourned at 9:40 PM.

Respectfully submitted
Cheryl Murphy
Deputy Clerk
Eureka Township

Meeting Minutes approved _____.