

# EUREKA TOWNSHIP PLANNING COMMISSION

## DAKOTA COUNTY

### STATE OF MINNESOTA

#### Eureka Planning Commission Meeting of October 6, 2014

#### Call to Order

Planning Commission Chair Butch Hansen called the meeting to order at 7:00 p.m.

Planning Commission members present: Butch Hansen, Lu Barfknecht, Carrie Jennings, Allen Novacek and Phil Cleminson. Township Attorney Chad Lemmons was present. A Board liaison was not present. See attached sheet for additional persons in attendance. Deputy Clerk Cheryl Murphy recorded the minutes.

#### Approval of the Agenda

Items added to the agenda:

- Other Business
- Jody Arman-Jones Newsletter
- Board Report
- Consent Agenda

A motion was made by Commissioner Barfknecht to approve the agenda as amended. Motion seconded by Commissioner Jennings. Motion carried by unanimous vote.

#### A. Permits and Land Use Items

##### **1. Brian Storlie-Building Permit, 24310 Cedar Avenue - PID# 13-01500-011-26**

*(Continuation from September 2014 meeting)*

Brian Storlie was present to acknowledge that his building plans were brought in, as requested by the Planning Commission. Chair Hansen also indicated he needed to have a septic plan. Mr. Storlie stated he had a septic plan and will forward it to the Town Hall. Commissioner Jennings had a question regarding ground source geothermal, and Mr. Storlie indicated it was a horizontal trench with loops.

Commissioner Barfknecht made a motion to forward Mr. Storlie's application to the Board for approval. Commissioner Jennings seconded the motion. Motion carried, 5-0.

##### **2. Martin Chromy - Potential purchase of 5050 220<sup>th</sup> Street for use of lawn service**

Martin Chromy stated that he is attempting to purchase the property at the above address for his lawn service business. He has been in business for 18 years and wanted to make sure he will be able to operate his lawn/storage business at that location (formerly State Mechanical). The Planning Commission could not find a non-conforming use registration for the property. Attorney Lemmons stated that if there is not a non-conforming use registration on that property, Mr. Chromy can apply for a conditional use permit at that

location as long as the use is considered a horticultural service. After much discussion, it was concluded that the best alternative for Mr. Chromy would be to register for a conditional use permit.

Commissioner Novacek made a motion to consider Martin Chromy's Lawn Service to be located at the 5050 220<sup>th</sup> Street as a horticultural service and to recommend Mr. Chromy apply for a conditional use permit. Commissioner Cleminson seconded the motion for discussion. While the motion was still on the floor, Commissioner Jennings asked for the motion to be more general, rather than specific to Mr. Chromy's business, and the need to put conditions on the use. She also asked for a proposal from Mr. Chromy including information about his company, such as: 1) number of employees, 2) hours of operation, 3) types of lawn equipment being stored, 4) hazardous chemicals to be used and stored, and 5) how he plans to dispose of the chemicals. A vote was taken on the motion which failed 3-2.

Chair Hansen made a motion to deem a lawn service business a horticultural service, which is allowed under a conditional use permit. Commissioner Jennings seconded the motion. Motion carried 5-0.

The Commission recommended Mr. Chromy apply for a conditional use permit which, as part of the approval process, a business plan will be required. Mr. Chromy was given the option to appear at the November Planning Commission meeting or pay the fee for a special meeting. Deputy Clerk Cheryl Murphy was directed to look for the registered non-conforming use registration file for State Mechanical.

**3. Matthew and Dana Sullivan-24320 Dodd Boulevard – Revision of building permit for garage**

Matthew Sullivan stated that when the excavator came to begin work on the property, it was determined there is a natural waterway and the garage can no longer be built on that specific site. Because the location of the garage has to be moved, the Sullivan's want to increase the size of the proposed building to 36x64. Mr. Sullivan indicated he had received a letter from the VRWJPO. The Commission directed the Sullivan's to provide new building plans prior to consideration by the Town Board, and to fill out a new application (using same permit number) and then reappear before the Planning Commission later at this meeting.

**4. Bill Funk, 23690 Jersey Court – Building permit for pole barn**

Mr. Funk appeared before the Planning Commission to request permission to build a pole shed. Chair Hansen stated that building plans need to be submitted for the proposed building.

Commissioner Barfknecht made a motion to approve the permit for Bill Funk for the pole barn at 23690 Jersey Court, on the condition that he provide building plans prior to

consideration by the Town Board. Commissioner Jennings seconded the motion. Motion carried 5-0.

**5. Organica Gardens – 24797 Highview Avenue – Potential medical marijuana manufacturing operation proposal**

Representatives of Organica Gardens did not attend the meeting. Commissioner Jennings questioned whether the operation would be an allowed use. Attorney Lemmons stated that, in his opinion, at the time Organica Gardens presented the zoning verification form, it was a permitted agricultural use. A manufacturing facility was not part of the verification being requested. Attorney Lemmons also stated that a moratorium on this issue could be put in place to allow the Planning Commission and the Town Board time to study the issue.

Commissioner Jennings made a motion to recommend a moratorium on medical marijuana manufacturing operations to allow time to discuss the issues surrounding the presence of a medical cannabis facility in the township. Commissioner Novacek seconded the motion. Attorney Lemmons noted that a moratorium would have to be prepared, reviewed by the Commission and then forwarded to the Town Board for consideration and ultimate approval. He stated he could prepare procedures for the Commission to follow.

Commissioner Jennings withdrew the motion.

Commissioner Barfknecht made a motion to request approval by the Town Board of a moratorium regarding medical marijuana manufacturing operations, and to direct the Township Attorney to provide the Planning Commission with the procedures that should be followed to implement the moratorium. Commissioner Jennings seconded the motion. Motion carried 5-0.

**6. Continued from previous discussion.** The Sullivan's submitted their revised application, changing the size and location of their proposed accessory structure.

Chair Hansen made a motion to approve the 36x64 accessory structure for Matthew and Dana Sullivan at 24320 Dodd Boulevard. Commissioner Cleminson seconded the motion. Motion carried 5-0.

**7. Consent Agenda – No items.**

**B. Approval of Minutes**

- **August 18, 2014** - Commissioner Jennings made a motion to approve the minutes to the August 18, 2014 Planning Commission meeting minutes as amended and corrected. Chair Hansen seconded motion. Motion passed by unanimous vote.

- **September 2, 2014** - A motion was made by Chair Hansen to approve the September 2, 2014 Planning Commission meeting minutes as amended and corrected. Commissioner Barfknecht seconded the motion. Motion passed by unanimous vote.
- **September 11, 2014 Special Planning Commission Meeting** - Commissioner Jennings made a motion that the September 11, 2014 Special Planning Commission meeting minutes be approved as amended and corrected. Chair Hansen seconded the motion. Motion passed by unanimous vote.
- **September 11, 2014 – Joey Miller Public Hearing** – Al Novacek stated he wants it stated that he objects to the second paragraph in Mr. Kuntz’s letter regarding “illegal use”. It was determined that it was what Mr. Kuntz said in his letter, and his comments cannot be changed. Chair Hansen made a motion to approve the minutes from the September 11, 2014—Joey Miller Public Hearing. Commissioner Jennings seconded the motion. Motion passes 4-1 with Commissioner Novacek voting nay.

### **C. Old Business**

Chair Hansen suggested to change Item 1 and Item 2 in the agenda under Old Business. There were no objections.

#### **1. Joey Miller non-conforming use**

Attorney Chad Lemmons stated he went through all the materials and determined that the Planning Commission would be considered the Finder of Facts. He stated the Commission needs to ask the question, “Did the structure in use exist as of September 7, 2004?” He noted there is a registered non-conforming use on record, but he believes it was just for the racing team. He further explained that the next question to be answered is, “Were any of the uses discontinued for a period of one year at any point in time?” Attorney Lemmons went on to state that he believes there is more than one non-conforming use and only one of the uses is registered. Chair Hansen stated there is a non-conforming registered use on file for a specific use for the property. Attorney Lemmons suggested a list of the uses be made and adopted.

Motions were made as follows in regard to the findings of fact:

- Commissioner Novacek made a motion that based on the evidence, Joey Miller’s racing did not have a one-year gap. Chair Hansen seconded the motion. Discussion was held and Attorney Lemmons noted that based on written submission, he believes there was a gap that occurred in the racing team operation. The motion was restated as follows:
- **Findings of Fact 1** - Motion made by Commissioner Novacek, seconded by Chair Hansen that the Commission finds there was not a one-year gap in the non-conforming use of the race team operation. Motion passes 3-2. Commissioner Jennings and Commissioner Barfknecht voted nay.

- **Findings of Fact 2** – Motion was made by Chair Hanson that there is a non-conforming use on file for the property that encompasses the race team operation. Phil Cleminson seconded the motion. Motion carried 5-0.

Commissioner Jennings stated she feels that the letters received in testimony are personal letters and would like to see documentation. Chair Hansen stated he would like to see it reflected in the minutes that he has watched Joey Miller race every year. Further discussion was held regarding the registered non-conforming use.

- **Findings of Fact 3** - Commissioner Novacek made a motion that the Commission finds that there were multiple non-conforming use registrations prior to September 7, 2004. Chair Hanson seconded the motion. Discussion was held regarding the number of non-conforming use registrations and the use of office space and whether or not it was used for the home building operation prior to September 7, 2004.

A vote was taken on the motion. Motion carried 5-0.

Further discussion was held regarding the intensity of uses on the property.

Chair Hanson made a motion that the non-conforming use, separate from the registered use, was offices in support of the home building operation. Commissioner Cleminson seconded for discussion. Commissioner Barfknecht asked if the number of offices could be specified. Chair Hansen withdrew his motion.

- **Findings of Fact 4** – Chair Hansen made a motion that there was a legal non-conforming use of office space in support of the home building business operation. Commissioner Cleminson seconded the motion. Motion carried, 5-0.
- **Findings of Fact 5** – Chair Hansen made a motion that there were six (6) race teams in existence in 2004. Commissioner Cleminson seconded the motion. Motion carries, 4-0 with Commissioner Novacek abstaining.
- **Findings of Fact 6** - Chair Hansen made a motion that the registered non-conforming use race team operation has not intensified, based on his observation and the testimony at the public hearing. Commissioner Novacek seconded the motion. Motion carries 4-0, with Commissioner Jennings voting nay.

Chair Hansen made a motion that in the various documents, and from personal observation (having done business with Joe Miller and having attended pre-construction meetings at that location), between the house and the pole shed there were at least six offices. Attorney Chad Lemmons stated that in Joey Miller's Sept 11 2014 letter, it was stated the front 30 feet of the north building was used for office space. Chair Hansen withdrew his motion.

Chair Hansen made a motion that there was 1800 square feet of office space in existence in use as a legal non-conforming use on the Joey Miller property in 2004. There was no second. Motion failed.

- **Findings of Fact 7** - Commissioner Cleminson made a motion to accept the lesser value of square footage of 1,080 square feet of office space (15% of the total building) in existence, based on the September 11, 2014 letter from Mr. Miller. Chair Hansen seconded the motion for discussion. Commissioner Cleminson made a friendly amendment to the motion that it is for legal non-conforming office space for the home building operation. Chair Hansen accepted the friendly amendment. Motion carried, 4-0, with Commissioner Novacek abstaining.
- **Findings of Fact 8** - Commissioner Barfknecht made a motion that in May 2012, the northern building on Joey Miller's property, subject to non-conforming use, was remodeled and doubled in size and intensity of the office space. Commissioner Jennings seconded the motion. Motion carried, 3-2 with Chair Hansen and Commissioner Novacek voting nay.
- **Findings of Fact 9** - Chair Hansen made a motion that the building in the center, which is now, the north building, should have had a permit pulled; therefore, the permit fees should be doubled. Commissioner Jennings seconded the motion. Motion carries, 5-0.

Commissioner Cleminson made a motion for Findings of Fact that in testimony from Joey Miller, and personal experience in the old North building, there were at least three offices in that building and two offices in the home (which is now the church) that were consolidated into what is now the new north building. There was no second to the motion. Motion failed.

Discussion was held regarding the need for an alteration to the non-conforming use. Attorney Lemmons discussed the terminology used in Ordinance 3, Chapter 1, and Section 5 regarding registered legal non-conforming uses being altered. It was the consensus of the Commission that an alteration to the use is not needed. Chair Hansen said the Commission determined both uses existed, the office space was intensified, and the building was done without permits. It was noted that the Commission liaison for the Board meeting on October 14<sup>th</sup> will speak to the fact that the non-conforming uses and the expansion of the home building offices altered a non-registered non-conforming use.

- **Findings of Fact 10** - Commissioner Barfknecht made a motion that the board clarify the instructions related to the application for an alteration of a legal non-conforming use at 22260 Dodd Boulevard, as the non-conforming uses ordinance does not provide for an alteration, unlike that of the registered, legal non-conforming use. Commission Jennings seconded the motion. Motion carries, 3-2 with Chair Hansen and Commissioner Novacek voting nay.

Chair Hansen made a motion to close the Joey Miller non-conforming use alteration Findings of Facts. Commissioner Barfknecht seconded. Motion carries 5-0.

## **2. Ag-Tourism**

Chair Hansen stated that the postcard for the Town Hall Open House scheduled on October 28, 2014 was sent out on October 2, 2014. Discussion was held regarding the upcoming open house and it was noted that Sherri Buss is preparing a presentation. It was also noted that copies of the three draft ordinances will be available in the lobby of Town Hall, as well as on the website. Discussion was held with Town Board member Mark Ceminsky regarding how the three draft ordinances were put together. Commission members asked that the Agritourism Task Force members be encouraged to attend the open house.

The following suggestions were made for the open house:

- Need to concentrate on the three drafts: How shall they be presented to the public?
- A comment card regarding which draft the public favors should be available.
- Commissioner Barfknecht stated the Commission members should all be prepared and able to answer questions, and she would like to have all Task Force members present if people have questions that the Commission cannot answer.
- Commissioner Barfknecht suggested that refreshments be provided—water, coffee, cider, and cookies.
- Commissioner Jennings asked if will there be a PowerPoint presentation or posters? She also suggested that Sherri Buss should send a draft of her presentation well before the meeting so the Commission members will be informed.
- Chair Hansen will be the contact person and then decide if a meeting a week before the Open House should be held.
- Commissioner Jennings reiterated that the Commission needs to see a draft or questionnaire from Sherri electronically before the Open House. Then it can be decided if there is a need to call a special meeting. Chair Hansen will be the liaison with Sherri Buss.
- Need an assessment questionnaire to address the three draft ordinances and presentation similar to what Sherri Buss presented to the Task Force.

## **3. Road Committee**

Discussion was held regarding recruitment of Road Committee members. Details will be included in the newsletter.

## **D. New Business**

### **1. Process for Assigning New Addresses**

Chair Hansen stated that the process for assigning addresses in the Township is cumbersome and he is requesting that the Commission suggest to the Board that the County take back the assigning of addresses.

Commissioner Jennings made a motion that the Township ask the county to take back the assigning of addressees. Commissioner Cleminson seconded. Motion carries, 5-0.

**2. Newsletter**

The possibility of the newsletter being done electronically was discussed.

**3. Policies and Procedures**

Discussion was held regarding policies and procedures for the Planning Commission. It was agreed that the current policy is outdated and should be reviewed at the next meeting.

Chair Hansen noted that his ordinance book does not match everyone else's Ordinance Book. The page numbers and ordinance references do not match. Attorney Chad Lemmons stated that new ordinance books will be completed by the next meeting

Commissioner Jennings made a motion to adjourn the meeting. Commissioner Barfknecht seconded the motion. Motion carries. The meeting was adjourned at 11:01 pm.

Respectfully submitted,

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Cheryl Murphy  
Deputy Clerk

Minutes approved by the Planning Commission on November 3, 2014