

**EUREKA TOWNSHIP**

**DAKOTA COUNTY  
STATE OF MINNESOTA**

**PLANNING COMMISSION PUBLIC HEARING OF JULY 22, 2019**  
**Text Amendment for Broadcast Towers**

**Call to Order**

The Planning Commission Public Hearing was called to order at 7:00 p.m. by Chair Ralph Fredlund.

Members Present: Ralph Fredlund (Chair)  
Bill Funk (Vice Chair)  
Julie Larson (Commissioner)  
Randy Wood (Commissioner)

Members Absent: Allen Novacek (Commissioner)

Others Present: Chad Lemmons (Kelly & Lemmons)  
Dennis Carpenter (BOB Radio)  
Ben Blomgren (JTN Communications)  
Ranee Solis (Town Clerk)

**Approval of the Agenda**

*Motion:* Chair Fredlund moved to approve the agenda as presented, seconded by Commissioner Larson. *Motion carried 4-0.*

Chair Fredlund stated the purpose of the Public Hearing is to consider a text amendment to allow the construction and operation of commercial radio and broadcast towers in the Township, as well as amendments to the CUP process to make it a permissible use.

**Explanation of Text Amendment**

BOB Radio owner, Dennis Carpenter, was asked to explain the text amendment request. Mr. Carpenter offered the following:

- Bob Radio receives dozens of complaints, weekly, from listeners about the signal in our coverage area. The tower is currently about 12 miles south of Faribault.
- BOB Radio is the designated FCC licensee to cover emergency alerts, weather information, news, etc. in this area.
- We have identified a piece of land where we could build a galvanized, free-standing tower with a lattice design that blends in with the scenery.
- Lighting would be as required by the FCC, typically one white light for day time and one red light for night, at the top of the tower. Lights are angled up for aircraft, not down for houses.
- The tower would be the minimum height of 300 ft., we are licensed for 500 ft.
- The text amendment request would allow for a free-standing tower on the property of Jerome and Jeremy Phillippe in the SW corner of the Township.
- The Township does not currently have an Ordinance for broadcast towers.

- The proposed tower would provide Emergency Medical Alert access for police, fire and emergency medical systems.

JTN Communications owner, Ben Blomgren, was asked to address the possibility of providing internet service on the proposed tower. Mr. Blomgren offered the following:

- Internet service is a possibility. The tower will not serve the entire Township, but pending line of sight obstructions, could serve most of the SW quadrant of the Township.
- Filling in an area that is not currently serviced by anyone but Frontier introduces competition with other providers. We would be able to provide service to BOB Radio as well.
- Pending working out an agreement with BOB, we would support this entirely to help the residents of Eureka Township.

### **Open Public Comment**

#### **A. Those Signed In**

1. Nancy Sauber of 9445 225<sup>th</sup> St. W. Comments attached.

#### **B. All Others**

1. Jerry Swedin of 27561 Iberia Ave. How will such a tower affect the value of properties in Eureka Township? In my opinion, it will be an eyesore and decrease values and implore you to not allow this.

2. Jerome Phillippe of 10113 28<sup>th</sup> St. W. stated that he researched, thoroughly, before agreeing to allow a broadcast tower on his property. If he felt that this tower would devalue property, he would be concerned as it would affect his property the most. If everyone is against everything, we would not have anything. His research led him to the conclusion that this does not impact the Township at all, but some people will benefit.

3. Nancy Sauber clarified that her comments were not directed to any individual or property.

Chair Fredlund asked if there were any others who would like to speak.

### **Close Public Comment**

*Motion:* chair Fredlund moved to close the public comment period, seconded by Vice Chair Funk. *Motion carried 4-0.*

### **Planning Commission Discussion**

Vice Chair Funk asked if it is possible to apply density limits on the towers? Attorney Lemmons responded that the Township could limit locations by creating an overlay district for commercial towers.

Attorney Lemmons recommended that Section 4, Performance Standards, should include language addressing maintenance, type of structures, landscaping, climbing and noise. And Chapter 1, add definition of commercial and public radio and tv.

Commissioner Larson stated that she feels the Planning Commission should research the topics that have been brought up before we can make a decision on this.

Commissioner Wood asked if the minimum height of 300 ft. could be reduced to 200 ft.? Dennis Carpenter responded that 200 ft. would be under-classed, and would not work for this situation.

Commissioner Wood asked if BOB Radio would have any issues allowing multiple uses on the tower? And would there be a charge to the Township for access? Dennis responded that the charge to the Township would be \$1, and they could build the tower to accommodate other antennas.

Commissioner Wood asked, regarding the idea of an overlay district, could that be developed at any time? Attorney Lemmons recommended that it be done at the same time as adopting the text amendment.

Vice Chair Funk asked if the Township has any liability for neighboring communities? Attorney Lemmons responded that the Township is not liable.

Attorney Lemmons stated that Section 13 (A) of Ordinance 3, Chapter 4, was adopted to conform with federal laws on cell towers, that Federal Regulation does not deal with radio towers, and suggested adding a separate section for adopting commercial radio/public television.

Chair Fredlund stated that he is not sure what kind of a fit adding another commercial use into our Agricultural District gives us. He was hoping that the internet use would be agreeable with the Township by providing a benefit to more than one person, but there is no guarantee that the use will come about with this tower. Now is time to prevent this from happening in the Township if we do not want broadcast towers.

Chair Fredlund read a comment received from a farmer in the proposed area, stating that any 360 ft. towers could interfere with aerial spraying for farmers in that area. Chair Fredlund stated that we have some height limitations in the northern area of the Township because of the airport. This text amendment would open it up to having one tower every other block unless we do the overlay district that has been suggested.

Commissioner Wood stated we have a lot of utilities running through the Township, such as pipelines and power lines.

#### **Recommendation to the Town Board**

*Motion:* Chair Fredlund moved to forward the text amendment request to the Town Board with the recommendation to deny the request, seconded by Commissioner Larson. *Motion carried 2-1*, with Vice Chair Funk opposed and Commissioner Wood abstaining.

#### **Adjournment**

Commissioner Larson moved to adjourn the public hearing, seconded by Chair Fredlund.

The Public Hearing adjourned at 7:40 p.m.

Respectfully submitted,

Ranee Solis

Ranee Solis, Town Clerk

Minutes Officially Approved By: William Funk on: 8-6-19  
Planning Commission Vice Chair Date

Nancy Sauber. 9445 225<sup>th</sup> St. W., Lakeville

I have several points to make regarding this evening's application for a Text Amendment for radio towers.

1. First and foremost, the Township doesn't have anything to gain by this zoning change. There is a benefit to radio stations to increase their listenerships and, consequently, their ad revenues. The landowners in this case stand to gain rental money and others in the future might do the same or even sell their land. But the Township and its citizens in general do not benefit in any significant way.

2. It's simply impossible to mitigate the negative visual impacts of this use. We are talking about 300' towers. There is no screening possible to hide such structures.

3. Once this use is in our zoning, the Township will be unable to deny any other applications to follow. That's why I say the application is for radio towers, plural, not just this one near 280th. Remember that by putting this use into the Ordinance, these towers can exist anywhere and everywhere in Eureka. That is what this Text Amendment would do; allow these uses Township-wide. Is that the effect we want?

4. As a municipal government, we make two types of decisions which are very different in character. One is legislative and the other is quasi-judicial. A legislative decision is generally up to the government in question. Such an entity can decide whether it wants such a use or not and pass laws or legislate in accordance with its will. We allow the uses and structures that we do in what is our agricultural district because we agreed as a community through Ordinance adoption to do so. The history of the courts show that they generally acknowledge this ability of a municipality such as ours and back up legislative decisions.

Quasi-judicial decisions are another thing altogether. The Township makes a quasi-judicial decision when it grants a CUP or an IUP and places conditions on the use. If the applicant is willing to agree to any such conditions that have been found to be reasonable, related to the negative impacts possible, and roughly equivalent to those impacts, the governmental authority must allow the use. All a CUP or an IUP,

once allowed, enables government to do is to place such conditions. It still must allow the use. A denial can be challenged in court based on the Finding of Facts in each instance. In the case of conditions, not just any conditions are even okay, and they can also be challenged through a lawsuit. The conditions cannot be so limiting as to remove the efficacy of the use. Requiring a restaurant to have adequate parking is reasonable and related. The parking lot must be of a defensible size-adequate to do the job but not over-sized. It would be not likely that a municipality could demand certain construction materials or paint colors as conditions. If it had such performance standards, they would have to be legally defensible.

This action of allowing a Text Amendment or not is a legislative one. You can decide that the Township doesn't want the use. No Finding of Facts is necessary for a legislative decision as it would be for a denial of a CUP, for example. We have zoning authority and it is up to our community in this case if we want to permit such structures.

5. NO communities want such structures. Such uses can co-locate on other towers to accomplish the same thing. A whole new raft of towers is not necessary.

6 People who LIVE in Eureka enjoy our rural quality of life and setting. "Rural" does not mean metal towers sprinkling the skyline or neighborhoods. We must allow wireless communication towers or cell towers because, as you have heard from our attorney, it is a federal requirement. Without such towers the phone network could not function. The same is not true for this use. We are adequately covered for the Emergency Alert System, so there is no necessity here.

7 Think back not long ago to sewer interceptors, pipelines, and 150' electrical towers. The Township had little, if any say, in these instances, and many people felt put upon by the "powers that be." In this case, Eureka is the "power that is." We certainly don't need or want any more "utilities" and you do not have to allow them. You can simply say "no." I encourage you to do so.

Thank you.



## Planning Commission Public Hearing

Attendance

Monday, July 22, 2019

7:00 PM

Printed Name

Address

Marilyn Sauber

Mark's Sodi-Hansen

Lance Hansen

9445 225th St. W. Lakeville

26190 Highview Ave.

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**PUBLIC HEARING SPEAKER LIST**

**EUREKA TOWNSHIP**

July 22, 2019

**Text Amendment for Broadcast Towers  
PUBLIC HEARING  
7:00 PM**

If you would like to make a comment during tonight's public hearing, please provide your name and address below. Speakers will be called in the order they are listed.

If you wish for your comment to be included in the minutes of the public hearing, you must submit your comments in writing to the Clerk.

PRINT NAME

ADDRESS

PRINT NAME	ADDRESS
Nancy Sauber	9445 225th St. W. LKV.
<del>CHARIE MATHIE</del>	<del>8919 220<sup>th</sup> St. W.</del>
JERRY SWEDIN	27561 16TH A
JEROME PHILIPPE	



**EUREKA TOWNSHIP**  
**NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN:** The Planning Commission of Eureka Township will hold a public hearing on Monday, July 22, 2019 at 7:00 PM in the Eureka Town Hall located at 25043 Cedar Avenue. The purpose of the hearing is to consider an application by Jerome Phillippe for a Zoning Ordinance Text Amendment as follows:

**Ordinance 3, Chapter 2, Section 1 (C) Conditional Uses and Structures**

**12. Commercial and public radio and television transmitting towers and antennas, including the transmitter building used in connection with said towers and/or antennas.**

**Ordinance 3, Chapter 4, Section 13 (A) Wireless Telecommunication Facilities**

**3. Permitted and Conditionally Permitted Towers**

**d. Commercial and public radio and television transmitting towers and antennas, including the transmitter building used in connection with said towers and/or antennas.**

**4. Performance Standards, a. Co-Location Requirements, (i)**

**(e) All commercial and public radio and television transmitting towers and antennas facilities shall comply with all FCC and FAA rules and regulations.**

**4. Performance Standards, c. Tower Setbacks**

**(vi) All commercial and public radio and television transmitting towers and antennas, including the transmitter building used in connection with said tower and/or antennas, shall be located on a parcel having a fall zone equal to the height of the tower and/or antennas unless a qualified structural engineer specifies in writing that the collapse of any tower and/or antennas will occur within a lesser distance.**

**4. Performance Standards, d. Height**

**(i) It shall be that the height of all commercial and public radio and television transmitting towers is limited to three hundred (300) feet above ground, and the antennas mounted on the tower may not extend more than twenty (20) percent of the tower height.**

**(ii) Exception to height may be considered if FCC rules and regulation apply.**

**4. Performance Standards, f. Tower Lighting**

**(i) All commercial and public radio and television transmitting towers and antennas, including the transmitter building used in connection with said towers and/or antennas, shall be lighted as required by the FAA or applicable regulatory authority.**

**4. Performance Standards, h. Accessory Utility Buildings**

**(i) All commercial and public radio and television transmitting towers and antennas, including the transmitter building used in connection with said towers and/or antennas, shall comply with all FCC and FAA rules and regulations.**

All persons wishing to be heard on this matter will be allowed to address the Planning Commission.

Ranee Solis, Clerk  
Eureka Township  
Posting Date: July 3, 2019