

EUREKA TOWNSHIP
DAKOTA COUNTY, STATE OF MINNESOTA

TOWN BOARD MEETING OF OCTOBER 13, 2020

Due to the Peacetime Emergency and social distancing guidelines, the Town Board Chair has determined it is neither practical nor prudent to conduct an in-person meeting. Accordingly, under Minnesota Statute section 13D.021, the following meeting shall be conducted entirely through teleconferencing or other electronic means.

Call to Order

The Eureka Township Town Board meeting was called to order, via Zoom Meetings, at 7:00 p.m. by Chair Donovan Palmquist and the Pledge of Allegiance was given.

Supervisors Present: Donovan Palmquist, Tim Murphy, Lu Barfknecht, Ralph Fredlund and Mark Ceminsky.

Others Present: Ranee Solis (Town Clerk), Chad Lemmons (Town Attorney), Mark Henry, Nancy Sauber, Julie Larson, Randy Wood, Bill Clancy, Mike Callahan, Todd Matzke, Jacob Chapek, Todd Howard, Mike Slavik, Cindy Trevis, Gary Smith, Kathleen Kauffman, Georgie Molitor, Brian Ahern, Jody Arman-Jones, Josh Madson, Andrew Gieseke and Steve Kimmel.

Approval of the Agenda

The following items were added to the agenda:

1. Item A. Daryl and Michelle Johnson under Permit Requests.
2. Item B. Dan and Charlene Adelman under Permit Requests.
3. Item C. Road mileage certificate under New Business.
4. Item E. TKDA – Eureka Estates under Old Business.
5. Item D. Complaint about burning under New Business.

Motion: Chair Palmquist moved to approve the agenda as amended, seconded by Supervisor Barfknecht. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 5-0.*

Public Comment

**The opinions expressed in public comments are those of the authors and may not represent the official positions of the Town Board. The Town Board does not control or guarantee the accuracy of information contained in the comments, nor does it endorse the views expressed.*

Chair Palmquist opened the floor for public comment.

Kathleen Kauffman – 25506 Ipava Ave.

I have noticed a distinct improvement in my road and for once I wanted to come back to the Board and say you are doing something really good. I am seeing the equipment on my road less often and yet the road is looking better. I understand you have hired a professional to help supervise what is going on with the roads and, from my standpoint, it is working. I suspect you are going to be saving the Township money and I applaud that effort.

The mines have been a constant issue in this Township, it looks like they are going to become an issue again, and I would suggest you look at the model you adopted on the roads and try to implement that on the mines. None of us are mining experts, at least as far as I know, and getting someone who speaks the language and is paid to monitor it in a knowledgeable way, with the cost of the monitoring being paid by the mines, would be an excellent idea. Lastly, I have been hearing thoughts about text amendments in various contexts. I have seen a couple go through, and I do not think we are handling them particularly well. The latest model was the radio tower. There was a public hearing on that, and people made comments. Then, on the fly, the Board made a substantial change that never went back to the citizens and, essentially, turned a no into a yes. I am not saying it was not legal, but it was not a great way to legislate. As you look at text amendments in the future, I hope you do it in a more considered manner. The mining amendments are another example where we can have a very well-crafted ordinance and then, in the context of the text amendment, everything kind of gets undone. You had a panel that was balanced between mining interests and citizens that spent two years drafting a comprehensive mining ordinance that covered everything under the sun. Then in 2015, one citizen who wanted to get rid of the limitation on cement and ready-mix plants turned a no into a yes, the prohibition was deleted. It is my understanding that decision was made without public comment, it was just amended, and that very carefully drafted and considered and balanced ordinance, through text amendment, got unbalanced. In my view, if you are going to start changing the ordinance structure in the future with text amendments, I would suggest that you do it slowly and carefully. A public hearing to do a text amendment can quickly pass by. It is a notice of ten days and we are all busy people. Previous Boards have taken an ordinance that was carefully considered for two years, then approve a very quick text amendment that turns a no to a yes. It gets immediately implemented and I think you do great violence to the ordinance. In the future of text amendments, I hope you approach the issue with due consideration of the way in which those ordinances were put in place, which was in general not on a ten-day notice of the public hearing.

Nancy Sauber

Commission Chair Sauber requested Town Attorney input regarding the Clerk's role as Zoning Administrator, as there is no description listed in the Ordinance. The question posed was whether the Clerk, as Zoning Administrator, has the authority to review and reject an incomplete application, or is she required to forward the application to the Planning Commission and Town Board for determination. Due to the 60-day rule, it is important that the applicant is informed within 10 business days of the reason that the application is incomplete, and written instructions on what has to be done. Attorney Lemmons agreed to double check the definition of zoning administrator to see if there is a statutory definition.

Chair Palmquist asked three times if there were any other attendees who would like to make comment and, hearing none, the floor was closed.

Citizen Inquiry

None

Road Report

Road Superintendent – Mark Henry

1. Eureka Estates culvert complaint

Mark Henry addressed an issue on Iberia and Iceland Path, noting that the existing culvert on Iberia has a minor grade from west to east, but the ditch in Mr. Rogers' front yard does not allow the water to continue. It appears that it was mis-graded from the beginning. The water is backing up and causing some of the sediment issues in the pipe and acts as a dam, backing up into the neighbor's yard. They have approximately 200 feet of ditch that is affecting the flow and four inches of sediment that needs to be cleared out. Supervisor Ceminsky expressed concern that this would circumvent the TKDA project. Chair Palmquist responded that addressing this issue now is in line with the entire project. We must address the ongoing complaint of water draining into the resident's yard.

Motion: Supervisor Fredlund moved to authorize Mark Henry to obtain quotes and contract up to \$2,500 to fix the drainage issue related to the culvert at the intersection of Iceland Path and Iberia Avenue, seconded by Chair Palmquist. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Mark Ceminsky – Abstain. *Motion carried 4-0.*

2. Highway 3 construction – Dust proofing

Mark Henry received information about the closing of Highway 3 for 3-5 days for culvert replacement. He reached out to the area DOT manager regarding the approximate two miles of untreated road that Eureka maintains out of concern for transient traffic and the dry conditions we are having. Todd Howard agreed that the County will pick up the tab for dust coating to protect public safety.

3. Road Committee

The Road Committee held a meeting where they discussed creating policies and procedures, potential projects and performing a sign survey.

Road Contractor – Bryce Otte

None

Supervisor Ceminsky questioned hiring another contractor to perform road work in the Township. Chair Palmquist noted that the Ottes' contract with the Township has a non-exclusivity clause which allows us to hire out some of the minor work to other contractors based on bids. The intent is not to take work away from the Ottes, but to try to spend as little as possible and utilize resources in an efficient, responsible way.

Mn Paving & Materials – Mike Callahan

Mr. Callahan met with the Planning Commission and the Township Attorney. One issue discussed was whether MPM would need to amend the existing IUP in order to expand the area. The Planning Commission concluded that they need to apply for a new IUP, which requires going through the standard process of conditions for approval in Ordinance 3, Chapter 4, Section B. Another issue that came up was who could hire the engineer. In reviewing the ordinances, the Planning Commission concluded that the Town Board must approve the engineer who conducts the Environmental Assessment Worksheet (EAW). Mike Callahan commented that in the last conversations with the Town Board, MPM acknowledged that they would proceed with a new IUP application and initiate the EAW process. MPM then hired Bolton & Menke, a very reputable engineering firm, to move

forward with the application process. Attorney Lemmons advised that the Board could now adopt Bolton & Menke as the engineer performing the EAW.

Commissioner Clancy noted that, according to Ordinance 6, Chapter 6, Section 1:

E. A registered engineer licensed by the State of Minnesota and qualified in this field shall review the application. The Town Board shall select the engineering firm. The engineer will submit the results of his or her findings, along with any recommendations for actions, to the Planning Commission; and

F. Within thirty (30) days of receipt of the registered engineer's findings and recommendations, the Planning Commission, together with the engineer, shall prepare an Environmental Assessment Worksheet (EAW), according to Minnesota Rules, Chapter 4410. After this process is completed, the Town Board shall determine within thirty (30) days whether an Environmental Impact Statement (EIS) is required.

Commissioner Clancy indicated that the Planning Commission was not included in the preparation of the EAW.

Supervisor Ceminsky stated that the Town Board gave MPM permission to move forward with the process. The Board did not pick the firm but told them to go ahead and prepare the EAW. Attorney Lemmons advised that the Board can now approve Bolton & Menke to prepare the EAW, but he does not think they can ignore the requirement in paragraph F, which says that the Planning Commission and engineer shall sit down together and prepare the EAW. Vice Chair Murphy added that he feels it would be prudent to obtain a third-party engineering firm to assist the Planning Commission in interpreting the EAW.

Motion: Vice Chair Murphy moved to select Bolton & Menke to prepare an environmental assessment finding for the Mn Paving & Materials Interim Use Permit, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Mark Ceminsky – Aye. *Motion carried 5-0.*

Motion: Vice Chair Murphy moved to retain TKDA to assist the Planning Commission in the review and preparation of the Environmental Assessment Worksheet (EAW) with Mn Paving & Materials, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Mark Ceminsky – Aye. *Motion carried 5-0.*

Planning Commission Update (Nancy Sauber – liaison)

Planning Commission Chair Sauber provided a summary of the October 6, 2020, Planning Commission meeting:

- Citizen Inquiry for 23930 Cedar Ave regarding 2 lots where one abuts Cedar with the other directly behind it. Discussion included the need to verify that it is a lot of record, a building straddles the two lots which could be taken down, and that there is no road frontage to the second lot. Attorney Lemmons was requested to research the options available for road access to the second lot.
- Permit request for Daryl & Michelle Johnson's application for a pole shed at 24932 Dodd Blvd was recommended for denial based on Ordinance 3 Chapter 4 Section 7A which states you must have at least ten feet between buildings. The Johnsons were encouraged to revise their application and resubmit at the next meeting.

- Permit request for Dan & Charlene Adelman's application to convert their ag building to a residence at 23733 Hamburg Ave was recommended for denial based on Ordinance 4, Chapter 5, Section 5.01C which states that any lot that is created after January 23, 1996, must show two potential septic sites. The Adelmans were encouraged to submit plans for a second septic site, as well as a new Shoreland flood plain letter and resubmit at the next meeting. County records show that it is already being taxed as a residence, but there is no Certificate of Occupancy for the property.
- Discussed updating the wind energy ordinance. Planning Commission members are to present recommendations at the next meeting and the Town Board is invited to provide input as well.

Commission Vice Chair Wood provided a summary of the mining item due to Commission Chair Sauber's recusal:

- MPM application item – MPM was asked who drafted the EAW and who selected the engineering firm. Discussed setbacks, and if amending an existing IUP by expanding it, it must be treated as a new IUP as there is no revision for amending an IUP in the Ordinance. Due to the responses being in conflict with the Ordinances, the item was tabled until the Town Board meeting.

New Business

County Road 86 reconstruction update – Jacob Chapek, Mike Slavik and Todd Howard

The County Road 86 reconstruction project is to begin next year. The project includes paving, adding shoulders, turn lanes, curbs, and drainage in some areas from Galaxie to Highway 3. In Eureka, we will be adding a turn lane at the Collins property on Denmark and will be relocating their driveway. Expected detour traffic: the first year will address the west half, from Cedar to Denmark, and the second year addressing the east half, from Denmark to Highway 3. During construction, contact information will be provided to the townships. If grading, dust coating, etc. are needed, the County will help pay for the issues caused by construction. The Board may reach out to Todd Howard for more plan details.

Cooperative Weed Management Area (CWMA) – Memorandum of Understanding

Todd Matzke explained that he received a grant to put the Cooperative Weed Management Area (CWMA) together. He has invited Eureka to join the committee. There is no fee associated with joining, but the committee does ask each member to provide 40 hours of in-kind service hours documenting weeds, helping put together contract and plans, etc.

Motion: Chair Palmquist moved to adopt the joint powers agreement to join the CWMA based on the terms in the Memorandum of Understanding, seconded by Supervisor Barfknecht. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Mark Ceminsky – Aye. *Motion carried 5-0.*

Permit Requests

Daryl & Michelle Johnson

Motion: Supervisor Fredlund moved to deny the pole shed application for Daryl and Michelle Johnson at 24932 Dodd Blvd on the basis of inadequate distance between the proposed building and existing building, and new assessment from the VRWJPO, seconded by

Supervisor Barfknecht. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Mark Ceminsky – Nay. *Motion carried 4-1.*

Dan & Char Adelmann

Motion: Supervisor Fredlund moved to deny the new residence application for Dan and Charlene Adelmann at 23733 Hamburg Ave, PID 13-00900-50-013 due to non-designation of a second septic site and review by the Dakota County Shoreland and Floodplain, seconded by Chair Palmquist. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Mark Ceminsky – Nay. *Motion carried 4-1.*

Motion: Supervisor Fredlund moved to have the Building Inspector visit the property to inspect for potential occupancy without a Certificate of Occupancy, seconded by Chair Palmquist. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Mark Ceminsky – Aye. *Motion carried 5-0.*

Treasurer's Report

Clerk/Treasurer Solis presented the Treasurer's Report for October 13, 2020. Bank balances as of September 30, 2020: checking account \$69,598.23; outstanding checks \$63,841.72; savings account \$517,570.41; CD accounts \$68,613.18; total accounts \$5911,940.10; Township escrows: \$233,688.96; other escrows \$7,240.74; September claims \$125,951.52; September payroll \$9,348.63; total disbursements \$135,300.15.

Motion: Chair Palmquist moved to approve the Treasurer's Report as presented, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Mark Ceminsky – Nay. *Motion carried 4-1.*

Net Pay and Claims

Motion: Chair Palmquist moved to approve the net pay and claims as presented, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky – Aye. *Motion carried 5-0.*

Receipts and Disbursements

Motion: Chair Palmquist moved to approve the receipts and disbursements as presented, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky – Aye. *Motion carried 5-0.*

MAT one-on-one CTAS and treasurer training

Motion: Supervisor Barfknecht moved to approve the MAT one-on-one treasurer training for Clerk/Treasurer Solis, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Abstain. *Motion carried 4-0.*

New Business

Road Mileage Certificate

Motion: Supervisor Fredlund moved to submit to the County, the road mileage certificate form for 2020 at 41.5 miles, seconded by Supervisor Ceminsky. A roll call vote was taken:

Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky – Aye. *Motion carried 5-0.*

Complaint - Burning

Chair Palmquist received a phone call about a resident on Upper 240th who has apparently set up an incineration business. He has contacted the MPCA, the compliance officer for Dakota County and the regional officer in Rochester to look into this. A previous incident report with the Sheriff's Department at a previous residence will be obtained and forwarded to the pollution agencies. No formal Township complaint has been filed.

Old Business

Complaints Follow Up

1. Mn Paving & Materials – Operating on Saturday

Vice Chair Murphy pointed out that our ordinance, the original IUP and original EAW all state that express written proof from the Town Board is necessary for any operation on Saturdays. If MPM can produce proof of authorization, this would resolve the complaint. Otherwise, they need to either request permission from the Board or cease operation on Saturdays. Mike Callahan responded that MPM has not requested permission to work on Saturdays, nor are they currently seeking to operate on Saturdays. Earlier this year they asked to perform maintenance on Saturdays under the agreement that maintenance is not operational. Randy Wood stated that he has witnessed loaded Fitzgerald trucks leaving the pit on numerous Saturdays and can provide pictures. Mike Callahan responded that he has not been informed of this activity and will contact the pit operator about this. He requested copies of the pictures/videos in order to address this with the trucking company. Fitzgerald is a subcontractor; they have been told not to work on Saturdays and are breaking their contract with MPM in doing so. Mike Callahan and Clint Allen requested that the Clerk contact them immediately with any complaints so that they can address them while they are occurring. The Board will follow up at the next meeting.

2. Holyoke Path – Fencing around the pool

The property owner addressed the complaint, indicating that he has installed a mechanical cover in lieu of a fence, which is accepted by the state. Attorney Lemmons was asked to send the property owner a letter stating the ordinance regarding pool fencing.

3. 250th St. W. – Clean-up of junk and equipment

Supervisors Palmquist and Barfknecht visited the property and reported that it does not appear to be a scrapyards. The property has metal art sculptures but no junk. The County classification of the property should be updated. Since no violation was found, the complaint is considered to be resolved. The Clerk was directed to send a letter to the complainant.

Attorney Update

Attorney Lemmons provided an update on the outdoor assembly complaint. The last hearing on this matter was September 22nd, the court took the matter under advisement but, as of this afternoon, no order has been issued. At this point the judge is still considering it.

Landscaping beds at Town Hall

The Clerk sent requests for quotes with no responses yet. Chair Palmquist volunteered to clean up the landscaping beds before the election. Supervisor Fredlund noted that Plunkett's was called to handle a dead animal at Town Hall and found soffit damage that could be allowing mice to enter. Supervisor Fredlund repaired two places and noted that another gap needs to be caulked.

Township Density – Mark Ceminsky

Supervisor Ceminsky asked if the Planning Commission has made any progress with researching a density change in the Township. Commission Chair Sauber responded that the Planning Commission did report to the Board a unanimous agreement that, after looking at the zoning maps of Castle Rock, Empire and Greenvale, they do not have areas that are open that are labeled rural residential 1. We could do that if we wanted to around Eureka Estates, but it doesn't change anything going forward. We also discussed that if we were going to change the density, we would have to change our classification and the Met Council would have to approve that. We discussed that they have told us repeatedly that they consider us as ag until 2040, so we do not see any good reason to move ahead because in other townships what they have was preexisting, like Eureka Estates was preexisting for us. We could say that Eureka Estates is a rural residential area, but it does not change anything about the Township density. That was our report to the Board.

Supervisor Ceminsky stated that we keep being told we can't change our Comp Plan which isn't true. We want to consider if it is time to change our density and wanted an honest evaluation. Commissioner Sauber clarified that nobody said we cannot change Comp Plan. The Planning Commission was being practical. If you want to change the density you have to change the Ag zoning, and to do that, you are going to have to go through the Met Council. We have been told time and again that we cannot put ourselves at a higher level of development unless they approve it. They have told us they do not see us changing. You cannot change your zoning or uses without changing the Comp Plan, and you need Met Council approval to do so.

Chair Palmquist requested to invite Wendy Wulff to attend the next Board meeting to explain the procedure and/or ramifications and ability of changing density in the Township to make those changes in a way that is conducive to our 2040 Comp Plan. He would also like to hear from the residents of the Township. We want growth and change but we want to maintain the quality of life here in the Township that is compensative with the amount of taxes we pay. Commissioner Sauber agreed to reach out to Wendy Wulff to attend the next meeting.

Commissioner Clancy asked the Board to state what the driver of this density change would be and how we would begin to quantify the revenue impact.

Vice Chair Murphy commented that a density change would require an amendment to the Comp Plan. As long as we are not requesting sewer hookup, we can amend the Comp Plan to increase density. This is why we asked the Planning Commission to check with Met Council to verify that. In order to combat growing taxes, we need to allow a gradual increase in density until 2040. Gradual increases in density will eliminate the building right issues that we continue to be plagued with. He advocates that building right transfers are not readily available, they diminish opportunities for people to build, and are restrictive to existing

property owners who have large acreage and cannot build because someone else beat them to it. He supports some type of gradual increase in density other than building right transfers.

Other Business

Phillipe broadcast tower update

The Clerk received a letter from Dennis Carpenter at BOB Radio providing an update on the status of the broadcast tower. Mr. Carpenter noted that, due to the pandemic, the FAA is backlogged in processing applications, and does not know the FAA's timetable as to when they will complete their analysis. They have filed the construction permit application with the FCC, which is under review. Another update will be provided when a determination is made by the two federal agencies. The Clerk expressed concern that the CUP states they must show visible progress within 6 months of granting the CUP. If there is no visible progress within that time it becomes null and void. With the delays due to Covid, what steps should they take to ensure their CUP does not expire? Supervisor Ceminsky pointed out that they have performed soil borings and surveying which can be construed as visible progress. The Board directed the Clerk to request that Dennis Carpenter attend the next meeting to provide an update.

TKDA – Eureka Estates Project

Supervisor Barfknecht hand-delivered the TKDA feasibility report to the affected Eureka Estates residents. Chair Palmquist expressed that the Board should consider dividing the project into 3-4 phases, decide which phases to prioritize first, and how to pay for it. Supervisor Ceminsky reminded that at the last meeting, the Board moved to meet with the residents, discuss the study and get their input. Supervisor Fredlund expressed that he would like TKDA to provide a list of each culvert to be replaced and each ditch to be cleaned out in order for the Board to determine priorities. The Board directed the Clerk to request for TKDA to attend the next meeting and provide an assessment that is divided into high, mid, and low phases.

Approval of Meeting Minutes

September 28, 2020, Town Board meeting minutes

Motion: Chair Palmquist moved to approve the minutes of the September 28, 2020, Town Board meeting as presented, seconded by Supervisor Fredlund. A roll call vote was taken: Donovan Palmquist – Aye; Tim Murphy – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Aye; Mark Ceminsky - Aye. *Motion carried 5-0.*

Adjournment

Motion: Chair Palmquist moved to adjourn the meeting, seconded by Supervisor Fredlund. A roll call vote was taken: Lu Barfknecht – Aye; Donovan Palmquist – Aye; Tim Murphy – Aye; Ralph Fredlund – Aye; Mark Ceminsky – Aye. *Motion carried 5-0.*

Meeting adjourned at 10:00 p.m.

Respectfully submitted,

Ranee Solis, Town Clerk

Minutes Officially Approved By: _____ on: _____
Town Chair Date