

EUREKA TOWNSHIP
Dakota County, State of Minnesota

TOWN BOARD MEETING
JUNE 28, 2021 – 7:00 P.M.
Via Teleconference

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 7:02 p.m. by Chair Palmquist and the Pledge of Allegiance was given.

Supervisors Present: Donovan Palmquist, Ralph Fredlund, Lu Barfknecht, Nancy Sauber.

Others Present: Ranee Solis, Chad Lemmons, Kathleen Kauffman, Mike Callahan, Brian Ahern, Julie Larson, Randy Wood, Debbie Burkhardt, Cindy Trevis, Bill Clancy, Pat Mason, Chad Berg, Bryce Otte, Tim Murphy, TJ Grossman, Brian Emerson, Mark Henry, Beth Eilers and Gary Smith.

Approval of the Agenda

The following changes were made to the agenda:

1. Add under Appointment of Town Board Supervisor: Tim Murphy statement
2. Add under Treasurer's Report: D. Resolution 2021-08
3. Add under Old Business: I. TKDA discussion

Motion: Chair Palmquist moved to approve the agenda as amended, seconded by Vice Chair Fredlund. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye. *Motion carried 4-0.*

Appointment of Town Board Supervisor

Tim Murphy thanked the citizens for re-electing him and the Town Board for appointing a temporary replacement until he is well enough to resume his position.

The Board received one letter of interest for appointment to the Town Board from Kathleen Kauffman.

Motion: Chair Palmquist moved to appoint Kathleen Kauffman as an interim member of the Town Board until such time as Tim Murphy is able to resume his position, seconded by Vice Chair Fredlund. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye; Ranee Solis – 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.

Brian Ahern – 6215 235th St. W. – Public hearing for mining ordinance text amendment
Comments attached

Beth Eilers – 10185 250th St. W. - Proposed commercial development in New Market
Comments attached

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

Citizen Inquiry

Eagle Scouts project

The Board requested for the Clerk to reach out to Ashley Gallagher at the NCRWMO to determine if a permit is needed for the foot bridge project.

Road Report

Road Superintendent – Mark Henry

Due to technical difficulties, Mark Henry was unable to join the meeting.

Road Contractor – Bryce Otte

- Signs are up.
- Started rock today on 265th St.
- Grading other roads after every rain.

Road Maintenance Contractor Quotes/Interviews

The Board agreed it is time for a change. Better cooperation between Road Superintendent and Road Contractor is desired.

Motion: Vice Chair Fredlund moved to appoint Grossman Companies as the Township Road Contractor for the period of July 1, 2021, to June 30, 2022, seconded by Supervisor Sauber. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye.
Motion carried 4-0.

Other Business

Noise complaint – 9235 235th St. W.

The Board agreed that Pat Mason's response to the noise complaint shows they did their due diligence. The Board will continue to notify the pit operator of any issues and requested that they notify the Town Board of any harassing phone calls they receive from residents.

Supervisor Sauber did not participate in this discussion.

IT/Email/Phone/Laptop quote

Brian Emerson from Point North presented quotes for IT and M365 services, laptops and docking stations, and Teams Voice and calling service. The Board agreed that these upgrades are necessary and directed the Clerk to obtain one other quote for the July 12th meeting.

Mining Ordinance text amendment

1. Planning Commission findings and recommendation – Commissioners Wood and Clancy presented the following:

Eureka Township Planning Commission Public Hearing 7pm June 22, 2021 **Findings & Recommendation**

Proposed Text Amendment

Ordinance 6 Mining, Chapter 7, Section 1, Mineral Extraction Performance Standards, removal of language permitting Town Board to reduce 1,000 ft setback from a mine to dwellings.

Proper Public Notice: Given / Published.

Public Participation

- a. Numerous citizens wrote letters prior to the meeting, with many submissions less than one hour prior to Public Hearing. All letters received were read into the record / minutes. Many citizens spoke at the meeting. All citizens (except one speaking for his mining business interest) voiced strong support for the amendment. Citizen reasons will be recapped under “Rationale”.
- b. Several representatives of mining companies spoke at the meeting, asking Planning Commission not to approve the text amendment. Mining commercial interest will be recapped under “Rationale”.

Planning Commission Action

At the closing of the Public Hearing, the Planning Commission discussed the input received. A motion was made, was seconded, and passed to recommend to the Town Board the text amendment be approved.

Rationale for approval of text amendment- Public and Planning Commission comments crossed a wide variety of topics

- a. Quality of life
 1. Concerns exist about noise. The noise level resulting from a mining operation adversely affects residents’ ability to enjoy their property. It interferes with their ability to sleep, carry on outdoor activities, to live undisturbed. Maintaining distance between homes and a mining operation allows the noise to dissipate.
 2. Concerns exist about dust. Personal health; the level of dust created by a mining operation can create health issues in that it affects individuals’ ability to breathe uncontaminated air. Maintaining setbacks will allow the dust to settle before reaching adjoining homes. Beyond personal health, possible impacts on crops due to fugitive dust. Environmental concerns include potential for groundwater quality being compromised, as well as possible impact on wetlands and wildlife.
 3. Concerns exist about traffic. The traffic of both inbound and outbound trucks can contribute to noise as well as create safety issues at entrance, exit, turn lanes, intersections, or anywhere on roads in the area with increased use. Mining representatives stated that actions can be taken to mitigate concerns (different back-up beepers, berms, placement of excavation equipment versus more noisy processing equipment, etc.).
- b. Impact on home value. Concerns exist about the negative impact an active mine, which often operates for decades, has on home values. Home values often represent a major portion of citizens’ financial assets. Operating mines can be unsightly if not properly screened.

Mining representatives referred to former mines that have been developed into beautiful neighborhoods with expensive homes as proof mines do not negatively impact home values over time. Citizens were referring to active mines negatively impacting their home values present day, not decades later upon reclamation completion. Citizens pointed out reclamation actual progress in active mine lags significantly.

- c. Mine expansion. Mining representatives reiterated the need for aggregate. It appeared all parties agree that pressure for mining will continue / grow in Eureka Township.

Eureka Township is surrounded by four Townships, two of which do not permit multiyear commercial mining, and two which limits to Mining districts. Eureka does not limit mining to a Mining District and allows anywhere. Mining is permitted via an Interim Use Permit. Mining often continues for decades with recent EAWs requesting up to 40 years operational duration.

Citizens expressed concerns about “unchecked” aggregate mining expansion. Citizens referred to prior complaints / quality of life issues. Citizens complained of “the financial benefit of a few at the disadvantage of those residents living close by”. One household reported they are on the verge of selling their home for fear of mining expansion and impact on their home value “due to anguish and despair.” Citizens complained “.... there are already too many former or dormant mines site in the township that are improperly reclaimed.”

- d. Town Board Discretionary Power to reduce Setback below 1,000 ft. This is the heart of the issue and text amendment removes that power. Citizens were clear with comments including:

“...not be negotiable by any sitting Township Board.... too much at stake....at its sole discretion.”

“...intrusion....no elected governing body should have the power to make these exceptions on its own.”

“...closing the loophole.”

Citizens expressed concern that granting one reduced setback sets a new precedent “.... that will most likely become a new standard township wide”.

- e. Existing Text Amendment language-
 1. The exact origin of the language in question is undocumented. Citizens who served on the original task force developing the language could not explain at what point this language became included in final ordinance. The 2000 public hearing for the proposed final draft ordinance did not have any language for a waiver / flexibility of the 1000 ft setback at Town Board discretion.
 2. As an example, the current landowner and resident (Virginia Windschitl) who still lives in the original farmhouse immediately adjacent to the MPM Mine, and, whose family sold the property that today is owned by Chard and operated by MPM, commented how important the existing 1000 setback was to them and how they never foresaw it being reduced below 1,000 ft to allow any expansion.
 3. The language allows a Town Board to operate under very subjective interpretations of the wording; in its nature allows broad discretion. This creates opportunity for legal challenges to the Township. This creates uncertainty for citizen homeowners in terms of quality of life and home value concerns, as well as potential buyers of homes.

Conclusion

Planning Commission took action to recommend to Town Board the text amendment be approved; based on rationale outlined in items 1 through 5 above.

The Township has always and continues to attempt to strike a reasonable balance between the interests of resident citizens and local landowners with mining interests. This text amendment strives to better balance. This action was well characterized in a citizen’s letter:

“.....The text amendment allows people that actually live here a means to try to coexist with mining. It gives current and future residents a degree of certainty that mining activity will be no closer than 1,000 ft from any dwelling. Certainty that the rug is not going to be pulled out from underneath them unexpectedly by a creative application of this loophole anywhere in the Township. The existence of this loophole potentially places current, & more importantly, future Township Boards in the position of being pressured or possibly even intimidated by large corporations to greatly reduce or effectively eliminate the 1,000 ft setback anywhere in the Township. The amendment closes this loophole.”

Bill Clancy, Planning Commission Vice Chair, 6-23-21

The Board requested clarification from the Planning Commission on the following:

- A. Lu Barfknecht: Were any appraisals done on home values? Bill Clancy: No, a hedonic model study was presented.
- B. Lu Barfknecht: Do you have any factual documentation about effects of dust from mines? Kathleen Kauffman: Carrie Jennings’ submission included information about dust.
- C. Lu Barfknecht: Did the Planning Commission engage in discussion prior to its findings? Randy Wood: There was discussion prior to the vote, as reflected in the draft minutes.
- D. Lu Barfknecht: Why did the Planning Commission decide to allow only one speaker per address? Randy Wood: We expected a large turnout and, for brevity purposes, we limited it. This was provided in the packet, posted on the website and disclosed in the opening statement to allow each address/group to come prepared to make a statement.

2. Town Board determination

- a. *Motion:* Vice Chair Fredlund moved to waive the reading of the text amendment, seconded by Chair Palmquist. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Recuse. *Motion carried 3-0.*
- b. Chair Palmquist opened the floor for public discussion.

Kathleen Kauffman – 25506 Ipava Avenue

I am very much in favor of the text amendment. The language being deleted is the furthest thing from a well-crafted ordinance. It is loose and ambiguous. It could be used by mining interests to demand an expansion and it could be used by the Board to deny it. As drafted, it grossly favors mining interests and their desire to make a profit over landowners’ desire to peaceful enjoyment of their property. I strongly urge that the text amendment be adopted without change. In addition, I recommend another committee be formed for any future changes to the mining ordinance.

Pat Mason of Dakota Aggregates– 2500 W. County Road 42, Burnsville

When the ordinance changed in the 1990s there were a handful of pits that were grandfathered in under the existing ordinance. If there is an ordinance change here, I request that the Board consider adding that all existing permits for mining operate under the existing ordinance language. I also ask that consideration be given for potential reduced setbacks for mineral extraction, not for processing.

Mike Callahan of Mn Paving and Materials– 5100 235th St. W.

In 2019, the Met Council presented, through TKDA, that Eureka was one of five townships within the Met Council left with sand and gravel reserves. The reason that they brought this up to the Township at that time was so that history would not repeat itself, referring to Apple Valley. They did not anticipate such an explosive increase in population resulting in those reserves getting covered up by housing developments.

Bill Clancy – 25511 Ipava Avenue

To provide some perspective of daily life: The perimeter of the Town Hall, including the parking lot and storage building, is only 955 feet; From Supervisor Palmquist's attached garage door to Granada is only 952 feet; From Supervisor Barfknecht's home in Eureka Estates to the first curve to the right is 1,000 feet; From the roof of Supervisor Fredlund's home to the roof of the first structure of the compound to the east is only 540 feet. 1,000 feet is such a minimal distance when related to quality of life in our rural community. Anything less provides no protection to the citizens. Thank you for considering the text amendment exactly as written.

Ralph Fredlund – 23680 Jersey Court

I live more than 1,000 feet from an operating gravel pit and can hear that noise through the woods and the berms every day. I believe that the comparison that the mining pits are using is an invalid comparison because those buyers knew what they were getting into. We owe it to our residents to do whatever we can to protect their current interests and adopt the text amendment.

Brian Ahern – 6215 235th St. W.

An appraisal was done on a home near a pit in 1999 showing a reduction in value of 20-30%.

Chad Berg – 23930 Cedar Avenue

I recently moved here from Lakeville with my family and cannot imagine having mining near my home. I am strongly in favor of the text amendment.

Chair Palmquist asked three times if there were any others who wished to make comment.

Motion: Chair Palmquist moved to close public comment, seconded by Vice Chair Fredlund. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Recuse. *Motion carried 3-0.*

c. Town Board discussion

Supervisor Barfknecht questioned whether the Board had any interest in considering language exempting the existing mines from the new language. Chair Palmquist felt doing so would undo everything the Planning Commission worked on.

Vice Chair Fredlund recalled complaints against the Brosseth and MPM pits over the years, stating that these are the two pits affected by the text amendment. Adopting the text amendment would help eliminate those complaints.

Supervisor Barfknecht questioned whether the text amendment would eliminate the ability to request a variance provided for in mining section. Chad Lemmons advised that a person can appeal to the Board of Adjustments for a variance as a statutory right.

d. *Motion:* Vice Chair Fredlund moved to adopt the mining ordinance text amendment as presented, seconded by Chair Palmquist. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Recuse. *Motion carried 3-0.*

Chad Lemmons was asked to draft a summary of the ordinance to be published and present it to the Board for approval at the next Town Board meeting.

Treasurer's Report

Net Pay and claims

Motion: Vice Chair Fredlund moved to approve the net pay and claims as presented, seconded by Chair Palmquist. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye. *Motion carried 4-0.*

Quarterly payroll claims

The Clerk presented new claims forms to be submitted for the Town Board and Planning Commission quarterly payroll.

Authorization to apply for Township credit card through New Market Bank

Motion: Chair Palmquist moved to authorize the Treasurer to apply for a Township credit card through New Market Bank, seconded by Supervisor Sauber. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye. *Motion carried 4-0.*

Resolution 2021-08 authorizing the transfer of funds from Castle Rock Bank to New Market Bank

Motion: Supervisor Sauber moved to adopt Resolution 2021-08 authorizing the transfer of funds from Castle Rock Bank to New Market Bank, seconded by Vice Chair Fredlund. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye. *Motion carried 4-0.*

Old Business

Adopt Ordinance 2021-01 regarding assessments

A grammatical change was noted.

Motion: Supervisor Sauber moved to adopt Ordinance 2021-01 as amended, seconded by Vice Chair Fredlund. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye. *Motion carried 4-0.*

Inspectron response to pool MBC change – Ralph Fredlund

Supervisor Fredlund received information from Inspectron stating that the State Building Code has deleted all references to pools and spas. With no language regarding pool fencing in the Building Code, we may follow our existing ordinance. The Clerk was asked to forward Inspectrons' response to the attorney once it is received.

Septic Ordinance review

The Township is obligated to enforce septic pumping every three years, as stated in the Dakota County ordinance. The County has sent notices to residents on the non-pump list, and the Township has sent letters. The next step would be to send out notices of violation. The Board may declare a nuisance, hold individual public hearings and direct staff to have pumping occur. A public hearing is necessary to put the residents on notice. Fees for publishing should be passed on to the residents. Chad Lemmons will provide a detailed explanation of the procedure and prepare the information to be included in the letter.

Motion: Supervisor Sauber moved to empower Chad Lemmons to prepare information for the septic letters, seconded by Vice Chair Fredlund. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye. *Motion carried 4-0.*

2022 Budget review

The Clerk was asked to check on few budget items for the next meeting.

Annual meeting discussion and prep

Tabled until the next meeting.

Litigation calendar

Tabled until the next meeting.

Clarification that an ag building on an ag parcel may exist without a house
Tabled until the next meeting.

Retention schedule
Tabled until the next meeting.

TKDA discussion

Supervisor Barfknecht questioned whether the Township can bill for culverts only to the Eureka Estates residents on the ROW drainage problem project work versus assessing the residents. Chad Lemmons advised that since this involves several residents, the Board must hold a public hearing and adopt an assessment roll. The Board agreed to seek a second opinion on the work to be done to correct the drainage issue before moving forward.

New Business

Complaint – 4628 235th St. W.

Gary Smith explained that the mining pit fence is falling down and gets caught in his hay baler equipment. He rolled the damaged fencing and placed it on the fence post. The Board directed the Clerk to notify the complainant to file a complaint with the Dakota County Sheriff, as trespassing and vandalism are criminal complaints and not a civil violation of the ordinance.

Clerk Matters

Letter/Invoice to Hansen regarding attorney fees

Letter and invoice have been sent.

Letter to Lakeville regarding green buffer zone

Letter has been sent.

Request for Sheriff's Department enforcement of Petter Court Order and Ordinance

Chad Lemmons received a response from the Sheriff's Department and will forward it to the Clerk.

ARPA application status

The Clerk has applied for ARPA funds and registered on SAM.GOV as required.

Consent Agenda: Approval of meeting minutes

- A. April 26, 2021, Town Board meeting
- B. May 10, 2021, Town Board meeting
- C. May 17, 2021, Special Town Board meeting
- D. May 24, 2021, Town Board meeting
- E. June 7, 2021, Special Town Board meeting

Motion: Supervisor Sauber moved to approve the consent agenda as presented, seconded by Chair Palmquist. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye. *Motion carried 4-0.*

Adjournment

Motion: Vice Chair Fredlund moved to adjourn the meeting, seconded by Supervisor Barfknecht. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye. *Motion carried 4-0.*

Meeting adjourned at 10:11 p.m.

Respectfully submitted,

Ranee Solis, Town Clerk

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