

**EUREKA TOWNSHIP**  
*Dakota County, State of Minnesota*

**TOWN BOARD MEETING**  
**OCTOBER 12, 2021 – 7:00 P.M.**

**Call to Order**

The Eureka Township Town Board meeting was called to order at 7:05 p.m. by Vice Chair Fredlund and the Pledge of Allegiance was given.

Supervisors Present: Donovan Palmquist (via Zoom), Ralph Fredlund, Lu Barfknecht, Nancy Sauber and Kathleen Kauffman.

Others Present: Ranee Solis, Chad Lemmons, Deb Burkhardt, Randy Wood, Howard Storlie, Maxine Storlie, Tim Giles, Carol Cooper, Stacy Shaw, Nathan Shaw, Don Oreskovich, Cindy Oreskovich, Matt Gray, Dave Wheeler, Steph Reposa, Dan Heyda, Vern Lang, Jerome Phillipe, Tavis & Alexis Jansen.

Zoom Attendance: Julie Larson, Brian Ahern, Pam Cappetto, Theresa Larson.

**Approval of the Agenda**

The following changes were made to the agenda:

1. Add Meeting Protocol ahead of Road Report.
2. Add item D. Bachman watershed under New Business.

*Motion:* Supervisor Sauber moved to approve the agenda as amended. Seconded by Vice Chair Fredlund. *Motion carried 5-0.*

**Meeting Protocol**

Supervisor Barfknecht reminded all that if you wish to speak you must address the Chair and obtain permission first.

**Road Report**

Eureka Estates drainage proposal

The Board agreed that Mark Henry should obtain a 2<sup>nd</sup> quote for the Eureka Estates ditch drainage project.

Status of “Stop Ahead” traffic sign for 240<sup>th</sup> & Cedar

The Clerk provided that the stop ahead sign has been ordered but not yet received.

Crack sealing status

Mark Henry is obtaining a quote for crack sealing in Eureka Estates and Jersey Court.

### Road Committee tour

The Road Committee toured the Township on October 7<sup>th</sup>. They noted amounts of gravel needed for each road, tree removal under the bridge, and other items to be part of the 2022 budget.

### **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.*

Vice Chair Fredlund opened the floor for public comment.

### Carol Cooper – 26437 Galaxie Ave

Ms. Cooper noted that the public packet did not contain the Administrative Hearing memo and General Code draft as noted on the agenda.

### Dave Wheeler – 9320 267<sup>th</sup> St. W.

Regarding the auto repair shop agenda item: I am the next-door neighbor of that facility and I experience no more noise from them than I do from tractors in the field or traffic on the roads.

### Dan Heyda – 9390 267<sup>th</sup> St. W.

Regarding the auto repair shop agenda item: I am the owner of the facility and want to address the letter I received citing my property for noncompliance. I have been paying commercial property tax to Dakota County for years. I am hoping we can find a reasonable path for continuation, or we will likely have to close our business and sell our property which will be an extreme financial hardship for me and my family. I would like to see the formal complaint. I find it concerning that there seems to be a winners and losers circle in the Township, there are several other businesses operating in the Township that are also in nonconformance. We pay taxes and should have a reasonable use of our property. We need to enforce this unilaterally and equally, and not be picking the favorites.

### Matt Gray – 9101 247<sup>th</sup> St. W.

Regarding the auto repair shop agenda item: I am a shop foreman in Elko and the company I work for utilizes the services that this repair shop provides. They provide a very beneficial service to this and surrounding communities. I would hate to see their business get pushed out of this great Township because it is hard to find these businesses and I would love for them to stay here.

### Vern Lang – 27249 Ipava

Regarding the auto repair shop agenda item: I use a lot of these people who provide services around here. I am a retired farmer/landowner on a fixed income, and I use these people because they can cut the costs for my operation. I would like them to stay and help me if I need help with my equipment.

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

## **Citizen Inquiry**

### Pam Cappelto – Parker Properties revised garage plans

Vice Chair Fredlund asked what the procedure should be regarding revised garage plans. The Board agreed that any time there is a change in a proposed structure it must go through the Planning Commission and Town Board process. The Board offered that a Special Planning Commission meeting can be requested and held in time to be on the October 25<sup>th</sup> Town Board meeting agenda for approval.

## **Planning Commission Update – Deb Burkhardt**

### Summary of the October 5, 2021, Planning Commission meeting

- Citizen inquiry from Josh Malowitz regarding building eligibility.
- Citizen inquiry from Robert Biebl regarding a proposed pole shed.
- Recommended denial of the TC Construction new residence permit for lack of pre-1982 Lot of Record verification.
- Recommended approval of Jerome Phillippe lot splits and housing right transfer.
- Discussed Ordinance 3, Chapter 3, Section 5 text amendment and will prepare rationale for recommending no change. There are too many unknowns and ramifications that could potentially happen.
- Developed a plan for Mining pit review. Drafting communication to be sent to encourage them to complete the review process, and possibly get them to submit their IUP which lists what they must submit.
- Discussed the Scott County home occupation zoning ordinance and will obtain information from Empire Township.
- Discussed US mail delivery delays and determined the need to send out post cards for public hearings with 10 days' notice instead of 5.
- Discussed delays in completing permits due to supply chain issues and determined no need to extend beyond 180 days.
- Discussed over-the-counter permit fees and possible need to change the fee schedule.

Supervisor Kauffman pointed out that, regarding public hearing notifications, publication is the triggering event. The statutory requirement is 10 days publication in the newspaper. Supervisor Sauber added that it is a Board policy to send postcards, they are not mandatory.

Supervisor Barfknecht explained the Town Board tasked the Planning Commission with drafting a text amendment to come up with a means to allow landlocked parcels to build without having road frontage by allowing combined driveways.

Chad Lemmons stated that you can have a shared driveway but still need the road frontage or a person can petition the Township to put in a road. The cartway statute generally states that if a property lacks access to 33 feet of road frontage they can petition the Township for a 33-foot cartway.

Supervisor Barfknecht asked whether a shared driveway would satisfy the statutory requirement. Chad Lemmons offered to review the statute and report back at the next Town Board meeting.

## **Permit Requests**

### TC Construction, 26480 Galaxie Ave, PIN 13-02700-04-011 – New Residence

Supervisor Barfknecht noted that this parcel was discussed at the last Board meeting where Carol Cooper informed the Board that the lot lines were moved by the County and the residents recorded a declaration of easement. Also noted was that if it is a pre-1982 lot of record and the owner is rebuilding on the same footprint, the application can be approved by the Clerk and Planning Commission Chair after verifying the setbacks.

Carol Cooper presented warranty deeds from 1960, 1970 and 1979, showing that the warranty deed in 1979 contains the same legal description that appears today.

Supervisor Sauber noted that there were four other owners between 1979 and now. Carol Cooper responded that she did not think they were necessary but could provide those deeds as well. She attempted to obtain a typed stub abstract but was told it would not be available until December. Chad Lemmons advised that it is up to the Board, but a simple worksheet from an abstractor is generally sufficient.

Supervisor Sauber noted that the lot width of 208 ft. along 265<sup>th</sup> is not sufficient as the ordinance calls for a minimum lot width of 250 ft. at the lot setback. Unless the house is placed on the wider portion, it is a substandard lot and would require a Conditional Use Permit. Carol Cooper pointed out that the address is Galaxie Avenue, not 265<sup>th</sup>. Chad Lemmons noted that the ordinance states dwelling setback, which has been customarily defined as the front of the house. If the front door faces Galaxie there should be no issue. Mr. Giles explained that with the well and septic already in place, he would not be able to reposition the home to face Galaxie.

The Board discussed rebuilds after a fire. Chad Lemmons advised that under state statute, if you do not rebuild within 6 months of a fire you lose the legal nonconforming status and must build the home in compliance with the current ordinance. Chair Palmquist offered that this is a rare and unique situation and questioned what the practical purpose would be to require that the front door face a certain direction. Chad Lemmons advised that there are practical solutions to this issue, one of which would be to grant a variance.

*Motion:* Supervisor Kauffman moved that TC Construction be permitted to build a house through a variance on the exact footprint of the house that burned down at 64480 Galaxie Ave. Seconded by Chair Palmquist.

Supervisor Sauber stated that they would need to apply for a variance and the variance ordinance calls for notice to all residents within 1,000 feet as well as a public hearing. Supervisor Kauffman expressed that we are elevating procedure over substance. It is the duty of this Board to recognize the heart of the ordinances and to take care of our citizens. If we make them submit a variance and come back at a later date, we will be in the same place we are now. We will not have any more knowledge, just more time will have passed. We are all up to speed on the facts, and a variance is the right thing to do. Supervisor Barfknecht added that in the past we have allowed residents to fix paperwork on the spot and present it to the Board.

Supervisor Sauber posed a question to the attorney. Since a variance can only be given for practical difficulties, would the circumstances of this situation qualify under the law as something unique to the property? Chad Lemmons responded that if we ask whether the prior owner could have applied for a variance, would we have to grant it? We probably would. Case law states that if the prior owner could have done it, the current owner could do it too. We cannot simply grant one tonight, but because the prior owner had the right to a variance, so does the present owner. Supervisor Sauber asked the attorney if he were suggesting that Supervisor Kauffman's motion could be passed appropriately under the law. Mr. Lemmons responded that he is suggesting that, ultimately, you are going to have to grant it to him.

Supervisor Kauffman reiterated that she does not feel the procedure ought to take precedent over the substance of what we need to accomplish. The Board will have to grant the variance, and this is the second meeting we have discussed this. What purpose would be served to require that they come back to another meeting? Carol Cooper agreed that this is elevating form over substance. There is a distinct difference between this situation and the earlier permit requests because this landowner has an absolute right to the variance.

Supervisor Kauffman called the question, seconded by Supervisor Barfknecht. Motion carried 5-0.

Vote on the original motion: Donovan Palmquist – Aye; Kathleen Kauffman – Aye; Ralph Fredlund – Nay; Lu Barfknecht – Aye; Nancy Sauber – Nay. *Motion carried 3-2.*

Supervisor Sauber noted her nay vote is due to not following ordinance procedure and she does not believe the Town Board has the authority to subvert that. Vice Chair Fredlund noted the same.

Supervisor Barfknecht requested that the vote indicate approval is subject to having a completed variance application on file

*Motion:* Supervisor Barfknecht moved to approve the new residential building permit for TC Construction at 26480 Galaxie Ave with PIN 13-02700-04-011 as proof it is a pre-1982 lot of record, and subject to a completed application for a variance. Seconded by Supervisor Kauffman. *Motion carried 4-1*, with Supervisor Sauber opposed as it does not follow procedure.

*Motion:* Supervisor Sauber moved for Carol Cooper to submit the intervening warranty deeds for attorney review. Seconded by Vice Chair Fredlund.

Supervisor Kauffman took judicial notice of the fact that this is a pre-1982 lot of record. She stated that in reviewing our ordinances there is no requirement to submit a stub abstract, nor a chain of title, as proof of a lot of record and she accepts the level of proof that Ms. Cooper has offered. If we have always made our citizens provide a stub abstract then we have always made our citizens work too hard.

Chair Palmquist noted that the attorney spent quite some time years ago going over housing right transfers, and stub abstracts have always been part of it. Carol Cooper offered that she did not submit all of the deed transfers because the configuration today is the same as it was in 1982. However, she can provide the remaining deed transfers.

*Motion carried 4-1*, with Supervisor Kauffman opposed, stating that the ordinance does not require a stub abstract, and the Board should accept the offering as proof.

### **Land Use Requests**

#### Jerome Phillipe, 27798 Jamaica Avenue – Lot Split for PIN 13-03100-77-016

*Motion:* Supervisor Barfknecht moved to approve the lot split for Jeffrey and Jerome Phillipe for Parcel 3 consisting of 18.01 acres and having PIN 13-03100-77-016 to be split as follows: Parcel C consisting of 10.01 acres, and Parcel D consisting of 8.00 acres, as described in the survey attached via Jacobson Engineers and Surveyors dated 9/21/21. Seconded by Vice Chair Fredlund. *Motion carried 5-0.*

#### Jerome Phillipe, 27798 Jamaica Avenue – Lot Split for PIN 13-03100-76-010

*Motion:* Supervisor Barfknecht moved to approve the lot split for Jeffrey and Jerome Phillipe for parcel 2 consisting of 59.92 acres and having PIN 13-03100-76-010 to be split as follows: Parcel A consisting of 55.43 acres, Parcel BB consisting of 1.495 acres, Parcel CC consisting of 1.495 acres, and Parcel DD consisting of 1.495, as described in the survey attached via Jacobson Engineers and Surveyors dated 9/21/21. Seconded by Vice Chair Fredlund. *Motion carried 5-0.*

#### Jerome Phillipe, 27798 Jamaica Avenue – Housing Right Transfer from PIN 13-03100-75-010 to PIN 13-03100-77-016

*Motion:* Supervisor Barfknecht moved to approve the residential building right transfer cluster agreement for Jerome & Jeffrey Phillipe with sending parcel 13-03100-75-010 and receiving parcel 13-03100-77-016. As an additional condition, the Phillipe's will record a declaration against the NW 1/4 of the SE 1/4 of Section 31, Township 113, Range 20 stating all building rights related to that quarter-quarter section have been transferred. Seconded by Supervisor Kauffman. *Motion carried 5-0.*

Supervisor Sauber stated that in addition, the Planning Commission asked the attorney for his help in advising them on this application. Chad Lemmons indicated he could give a line item for that expense to be paid by the applicant. Supervisor Barfknecht objected to charging attorney fees stating that the Board approved to have the attorney present at any Planning Commission meetings involving transfers of housing rights because of the complexity of the ordinances, and we have never charged this to a resident. Chair Palmquist agreed that we invited the attorney to aid the Planning Commission, not the applicant. Vice Chair Fredlund agreed it would be inappropriate to charge the Phillipe's being that the attorney counseled other permit issues at that meeting. Supervisor Sauber indicated the Board should install an escrow account for housing right transfer applications as is done for other uses.

### **Treasurer's Report**

Clerk/Treasurer Solis read the Treasurer's Report as on September 30, 2021: Castle Rock Bank checking account \$58.42; Castle Rock Bank savings account \$508,199.87; Outstanding checks

\$21,948.23; New Market Bank checking account \$321,089.34; CDs \$70,022.35; petty cash \$100; Total assets \$877,521.75. September claims \$41,164.35 and September payroll \$4,559.90.

*Motion:* Supervisor Sauber moved to approve the Treasurer's Report as presented. Seconded by Vice Chair Fredlund. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye; Kathleen Kauffman - Aye. *Motion carried 5-0.*

#### Net Pay and claims

The payroll check for Supervisor Sauber was voided per her request and reissued without two site visits erroneously added by the Treasurer.

*Motion:* Vice Chair Fredlund moved to approve the net pay and claims as adjusted. Seconded by Supervisor Barfknecht. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye; Kathleen Kauffman - Aye. *Motion carried 5-0.*

#### Receipts and disbursements

*Motion:* Vice Chair Fredlund moved to approve the receipts and disbursements as presented. Seconded by Supervisor Barfknecht. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Aye; Kathleen Kauffman - Aye. *Motion carried 5-0.*

#### Remaining reports

The Cash Control Statement, Schedule 1, Interim Financial Report, Investment Activity and Outstanding Checks were reviewed by the Board.

#### Phillipe Brothers permit on Inspectron bill

Treasurer Solis explained that Inspectron had to create a building permit in their system in order to issue a final on the permit which originated with Darrel Gilmer.

#### **Attorney Items**

##### Follow-up letter to Petrash

Chad Lemmons is awaiting evidence that they filed a survey with the County prior to April 12, 1982, to confirm their building right.

##### Follow-up letter to 24230 Holyoke Path – Pool fence

A violation letter was sent.

##### Follow-up letter to 25500 Highview – Expected date of equipment removal

The resident is still using the backhoe for personal purposes. Once he is finished it will be removed.

##### Follow-up letter to 9390 267<sup>th</sup> St. W. – Commercial auto repair shop

Chad Lemmons noted he has nothing new to report.

##### Follow-up letter to 24840 Dodd – Excessive vehicles

The violation letter was sent with no response.

### Administrative Hearing process

Chad Lemmons reported that he cannot find a statutory basis allowing for an administrative hearing system other than for traffic issues. He has inquired with other attorneys and with the Minnesota Association of Townships but has not heard back yet. Other municipalities have created them but cannot explain why they are legal.

Supervisor Kauffman expressed that statute lets us declare misdemeanors, nothing says we cannot enforce it, and others are doing it by hiring retired district court judges. Chad Lemmons advised that the State has the power to adopt penal fines which are enforced through the criminal system. Supervisor Kauffman responded that the Attorney General's office offered for their Advisory Council to look at a proposed administrative hearing process for the Township.

### **New Business**

#### Stacy Shaw, 8802 250<sup>th</sup> St. W. – Accessory building compliance

Vice Chair Fredlund explained that the property is only allowed 5,000 sq. ft. of accessory buildings, and the addition of the lean-to puts them over the maximum footage allowed. There is no provision in the ordinance that allows for more than 5,000 sq. ft. with their acreage.

Stacy Shaw explained that the lean-to was removed from the building plans not realizing it would expose a large hole in that side of the wall with no roof overhang to protect it from the elements. When the trusses were cut off it left a gap at the top. The ordinance states a permit is not required if the work costs less than \$500. An estimate of the materials came in at \$490 and the Shaw's did the work themselves. Supervisor Sauber noted that the value is based on the State Building Code schedule.

After receiving the violation letter, Ms. Shaw began reaching out to her neighbors to try to purchase 2 acres of land which would allow them to have 10,000 sq. ft. of accessory buildings.

Chad Lemmons asked if this is actually an extended eave rather than a lean-to. Ms. Shaw replied that it is. The Supervisors discussed the option of extending the roof without the need for support. Then the extended eave would not be included in the total square footage.

*Motion:* Supervisor Kauffman moved to table the ordinance violation issue until the November 8<sup>th</sup> meeting to see what progress can be made on satisfying the ordinances as they stand and have a workable accessory building, or to secure 2 acres of land from a neighboring property. Seconded by Supervisor Sauber. *Motion carried 5-0.*

Stacy Shaw indicated she has not received a formal complaint on this violation. Chad Lemmons responded that there is no complaint to worry about at the moment.

### **Old Business**

#### Set date for joint Special meeting regarding home extended business

The Board agreed to set a date for a joint Special meeting with Planning Commission on November 15, 2021, at 6:30 p.m.

Fascia repairs

Vice Chair Fredlund noted that the hole in the fascia can be repaired with a few sheet metal screws and offered to perform the repairs.

*Motion:* Supervisor Sauber moved to approve for Supervisor Fredlund to make the necessary repairs to the Town Hall fascia, seconded by Supervisor Kauffman. *Motion carried 4-0*, with Vice Chair Fredlund abstaining.

**Adjournment**

*Motion:* Supervisor Sauber moved to adjourn the meeting, seconded by Vice Chair Fredlund. *Motion carried 5-0.*

Meeting adjourned at 11:00 p.m.

Respectfully submitted,

\_\_\_\_\_  
Ranee Solis, Town Clerk

Minutes Officially Approved By: \_\_\_\_\_ on: \_\_\_\_\_  
Town Chair Date