

EUREKA TOWNSHIP
Dakota County, State of Minnesota

TOWN BOARD MEETING
NOVEMBER 8, 2021 – 7:00 P.M.

Call to Order

The Eureka Township Town Board meeting was called to order at 7:01 p.m. by Chair Donovan Palmquist 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, Mark Henry, Randy Wood, Mike Devney, Eileen Devney.

Zoom Attendance: Georgie Molitor, Julie Larson, Jim Sauber, Carol Cooper, Deb Burkhardt, Brian Ahern.

Approval of the Agenda

The following changes were made to the agenda:

1. Add Eureka Estates estimates under Road Report.
2. Add item C. schedule Special Closed meeting under Attorney Items.
3. Add Shaw discussion under Old Business.

Motion: Chair Palmquist moved to approve the agenda as amended. Seconded by Supervisor Barfknecht. *Motion carried 5-0.*

Road Report

Eureka Estates estimates

Motion: Chair Palmquist moved to approve the Northland bid in the amount of \$43,800 for ditch work in Eureka Estates to be scheduled at their earliest convenience. Seconded by Vice Chair Fredlund.

Chair Palmquist stated that he is concerned about the additional costs involved that were not part of the quote and asked Mark Henry to reach out to Dean Trahan to see if he can provide a rough estimate. Mark Henry offered that traffic control can be done inhouse, jetting was approved previously at about \$2,500, and he believes \$20,000 would more than cover the items. The Board agreed they should accept the bid now and get it scheduled at the earliest possibility, with the remaining items to be addressed in the spring. Chair Palmquist and Mark Henry will research the costs of the remaining items.

Motion carried 5-0.

Mark Henry Update

- Dakota County has a JPA for crack sealing where you become part of the County's bid package.
- Stop ahead sign is in place on 140th.

The Board granted permission to have the Deputy Clerk type the official minutes of all road committee meetings.

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

Citizen Inquiry

None

Planning Commission Update – Randy Wood

Summary of the November 3, 2021, Planning Commission meeting

- Citizen Inquiry for Jim Sauber at 9025 225th regarding a possible lot split. The Planning Commission recommended Mr. Sauber obtain a survey.
- Recommended approval for the permit request from Mike and Eileen Devney for a 20x30 hoop house. The application met the setbacks and met the definition for ag exemption.
- Revisited Ordinance 3, Chapter 3, Section 5 for driveway access to public roads. Under our current Ordinance, road access is created at the time of establishing a lot. If we were to remove the 33-ft frontage requirement, a resident can request the Township establish access according to the Mn Cartway statute. The Planning Commission recommends no change regarding the 33-ft frontage requirement due to the potential burden to the Township in the future regarding cartways.
- Review of the ag-exempt form was tabled to look for the old forms. Changing ag-exempt permits to over-the-counter permits was incorrect.

Vice Chair Fredlund noted that a commissioner has been absent for two consecutive meetings. We have a policy that missing 3 consecutive meetings or 50% in a year creates a vacancy. Commissioner Wood was requested to let the Commissioner know his attendance is needed at the next meeting.

Supervisor Sauber offered that Jim Sauber could attend a Town Board meeting as a citizen inquiry with a sketch before paying for a survey.

Permit Requests

Mike & Eileen Devney, 24167 Denmark Ave, 13-01300-01-010 – Ag-exempt hoop house

Supervisor Sauber requested the Devneys initial and date the measurements on the site plan which were provided by Commissioner Larson and confirmed that the measurement of 102' going from the corner of the hoop house to Denmark is to the road centerline.

Motion: Chair Palmquist moved to approve the Ag-exempt hoop house at 24167 Denmark Ave with PID 13-01300-01-010. Seconded by Vice Chair Fredlund. *Motion carried 5-0.*

Treasurer's Report

Clerk/Treasurer Solis read the Treasurer's Report as on October 31, 2021: Castle Rock Bank checking account \$0; Castle Rock Bank savings account \$0; New Market Bank checking account \$826,905.06; Outstanding checks \$6,427.21; CDs \$0; petty cash \$100; Total assets \$820,577.85. October claims \$53,705.28 and October payroll \$9,303.35.

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

Motion: Vice Chair Fredlund moved to approve the net pay and claims as presented. Seconded by Supervisor Sauber. 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 Kauffman. 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.

Clerks meeting pay

Motion: Supervisor Barfknecht moved to pay the Clerk and Deputy Clerk a set fee for meetings in the amount of \$90 unless the hourly pay would be higher, retroactive to July 1, 2021. Seconded by Chair Palmquist. *Motion carried 5-0.*

Clerks time sheets

Motion: Supervisor Barfknecht moved to approve for the Clerk and Deputy Clerk time sheets to include only the date, time in, time out and number of hours unless there is a project that the Board wants to track. Seconded by Vice Chair Fredlund. *Motion carried 5-0.*

Special meeting escrow refund: Pam Cappetto

The Clerk was directed to wait to refund the special meeting escrow until Inspectron submits additional permit fees for the revised permit.

225th gravel to be invoiced to Lakeville

The Board approved the invoice drafted by the Treasurer in the amount of \$5,260.50 to be billed to Lakeville for gravel work on 225th St.

Attorney Items

Administrative Hearing system model ordinance and letter

Supervisor Kauffman requested the Board hold off until next meeting to allow time for review.

Motion: Vice Chair Fredlund moved to table the item until the November 22nd meeting. Seconded by Supervisor Sauber. *Motion carried 5-0.*

Violation letter template

The Board agreed to allow 21 days to remedy the situation or respond with an answer. It was noted the letter only addresses "failure to cure." Chad Lemmons offered to add "In the alternative, if you feel you have not violated the Ordinance you have 21 days to schedule a hearing before the Town Board". Chair Palmquist added that it is important to maintain a good dialogue with the residents.

Schedule Special Closed meeting – Scotts Miracle Gro

The Clerk was directed to post a Special Closed meeting for 6:30 pm on November 22, 2021, to discuss the ongoing litigation with Scotts Miracle Gro/Hyponex.

Old Business

Planning Commission draft letter to mining pits

A minor correction to the draft letter was noted.

Motion: Chair Palmquist moved to approve the Planning Commission draft letter to the mining pits as edited. Seconded by Supervisor Kauffman. *Motion carried 4-0*, with Supervisor Sauber abstaining.

Planning Commission rationale: Ordinance 3, Chapter 3, Sect 5 text amendment

At their November 3rd meeting the Planning Commission found that the 33-foot frontage requirement was established for good reason. It proactively, at the time of establishing a lot, creates access to a road. If this was not done, the resident could later request the Township establish access, stating they have a right to have a road built, according to the MN Cartway Statute. Legal Counsel Chad Lemmons concurred. *"Towns must establish cartways to landlocked property of certain minimum size upon a proper petition from the owners of the property. Minn. Stat. §164.08"*

Motion: Supervisor Sauber moved to accept the Planning Commission recommendation to not amend the text. Seconded by Vice Chair Fredlund. *Motion carried 4-1*, with Supervisor Barfknecht abstaining.

MAC: Airlake Airport Advisory Committee

Supervisor Sauber and Commissioner Wood volunteered to represent Eureka Township on the Airlake Airport Advisory Committee. Supervisors Palmquist and Kauffman volunteered as alternates.

The Clerk was directed to add this position to the Town Board liaison list at the reorganization meeting.

Shaw complaint

Supervisor Barfknecht stated that our Ordinances do not define how accessory building square footage is determined. In researching this, I have found there are several ways of measurement, such as gross building area, floor area, and specifically, zoning floor area. "Zoning Floor Area is a measurement of a building for the purposes of adhering to a municipality's zoning code. It is established by individual jurisdictions, usually cities or towns. In general, Zoning Area is calculated by determining the gross building area and subtracting certain spaces like mechanical rooms, elevator shafts, stairwells, open atria, exterior balconies, terraces, and other areas as defined in local codes. Since each municipality has their own zoning code, it is important to confirm the local standards prior to making measurements."

In Ordinance 3, Chapter 4, Section 1(B)(4) Width and Length is defined as "All residential structures, except earth-sheltered homes, shall possess a minimum width of 24 feet, and a minimum length of 26 feet. The measurement of such dimensions shall not include bay windows, roof overhangs, porches, or eaves under which there is no interior space."

In Ordinance 3, Chapter 4, Section 7 Standards for accessory uses or structures provides "Area – the maximum total area of all accessory buildings shall not total more than 5,000 square feet on 2 to 5.999 acres and not more than 10,000 square feet on 6 to 10.999 acres. There shall be no maximum limitation to total area for agricultural buildings and agricultural buildings shall not be considered in the total sum of accessory buildings on an individual parcel."

When reading definitions on determining gross building area, they state you may include, but not always, the area that is the interior of the walls but not anything beyond the wall itself, even if the roof should exceed the foundation. In my opinion, we have holes in our own language that would not make that building, as these individuals have been told, exceed the square footage. We do not define how we are measuring square footage. The definition for measuring zoning gross square footage indicates we should be subtracting certain areas, such as an area that does not have a wall or walls. To me, depending on how we interpret it, one word can change the entire measurement as to whether that structure exceeds the 8 feet that they are over or not.

Supervisor Kauffman noted that on her 2015 application for a pole shed with an open lean-to, the Planning Commission and Town Board at that time did not count the area under the open lean-to as part of the total square footage of all accessory buildings. The application calculates the total square footage as the length of the inside by the width of the inside, and specifically does not call out the square footage of the open lean-to.

Supervisor Sauber stated that, in the past, a lean-to has always been added to the total square footage. In the Shaw's case, there would have been another way, besides a lean-to, to cure the water problem. The Ordinance defines Building as "Any structure having a roof which may provide shelter or enclosure of persons, animals, chattel, or property of any kind and when said structures are divided by party walls without openings, each portion of such building so

separated shall be deemed a separate building.” If that is correct, I would say the lean-to is part of that building and should be included in the total square footage because it is there to shelter something.

Supervisor Kauffman stated I, too, looked at our Ordinance for clarity on how square footage is calculated and could not find the language. We then go to case law which says ambiguities in the Ordinance must be interpreted in favor of the landowner. I question whether we were right by telling them in the first place they were over on square footage.

Supervisor Sauber explained the history of maximum square footage for accessory buildings. There was no limit initially, but then it was changed to 200% of your primary structure. Two Supervisors argued that you are being penalized if you have a small house, so it was changed again. If we do not count lean-tos we not only have to be concerned about what is going on inside the building, but now what is going on outside the building as well. I feel if a building has a roof and is meant to enclose or shelter, it should be included.

Chad Lemmons stated that Building, under your definition, does say a structure that has a roof providing shelter, so the size of the roof provides the size of the structure. I have always presumed it is the gross area from outside wall to outside wall. I suggest you may consider a change from area of buildings to permeable vs. impermeable surfaces.

Supervisor Kauffman reiterated that we do not have a section in the Ordinance that states this is how we calculate square footage. Chad Lemmons responded that the building applications define area as measured from exterior wall to exterior wall.

New Business

Septic pumping information from the County

The Clerk shared information from the County stating, in general, as long as a certified inspector determines a septic tank does not need to be pumped, an inspection satisfies the requirement. Supervisor Sauber noted our Ordinance, which is modeled off of the County Ordinance, states it must be pumped. Chad Lemmons was asked to check again with the County to get one final decision.

Complaint 2021-06, 25500 Highview Ave

The citizen is, once again, violating the Ordinance by having a Northfield equipment truck back on the property. Chad Lemmons was directed to send them a letter requesting their presence at the next meeting, along with a copy of the complaint.

The Board reminded that Chad Lemmons was to draft model violation letters for the Board to review.

Response to Lakeville Comp Plan amendment: United Christian Academy

Motion: Supervisor Sauber moved for the Clerk to respond that the CPA does not affect Eureka Township. Seconded by Supervisor Barfknecht. *Motion carried 5-0.*

2022-2024 JPA for Ordinance Enforcement Services

Motion: Vice Chair Fredlund moved to approve the JPA with the Dakota County Sheriff for Ordinance enforcement services. Seconded by Supervisor Kauffman. *Motion carried 5-0.*

Newsletter items

The Clerk requested that the Board submit any newsletter items they may have before the next meeting.

Approval of Meeting Minutes

August 23, 2021, Town Board meeting

A few minor corrections were noted.

Motion: Supervisor Sauber moved to approve the minutes of the August 23, 2021, Town Board meeting as amended. Seconded by Vice Chair Fredlund. *Motion carried 5-0.*

September 13, 2021, Town Board meeting

A few minor corrections were noted.

Motion: Supervisor Sauber moved to approve the minutes of the September 13, 2021, Town Board meeting as amended. Seconded by Supervisor Kauffman. *Motion carried 5-0.*

September 27, 2021, Town Board meeting

A few minor corrections were noted.

Motion: Supervisor Sauber moved to approve the minutes of the September 27, 2021, Town Board meeting as amended. Seconded by Vice Chair Fredlund. *Motion carried 5-0.*

Clerk Matters

Measuring wheel

The Clerk noted that the measuring wheel is located in the Town Hall conference room cabinet.

Receipt of intervening warranty deeds for 26480 Galaxie Ave

The Clerk noted that the intervening warranty deeds for 26480 Galaxie Avenue have been submitted by Carol Cooper as requested.

Adjournment

Motion: Chair Palmquist moved to adjourn the meeting. Seconded by Vice Chair Fredlund. *Motion carried 5-0.*

Meeting adjourned at 10:07 p.m.

Respectfully submitted,

Ranee Solis, Town Clerk

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

While I appreciate the “commendation,” “research” is the wrong term to describe my actions. I simply read the Ordinances and check them frequently, so I am very familiar with what they say. No one can perform one’s duties as a Board Supervisor without familiarity with the Code.

The information that a public hearing is needed for a variance did not “instigate” my “deeper review” of the Ordinances. I simply did as we all should do and reacquainted myself once again with the broader Code.

The property [in the instance in question] was a Pre-1982 Lot of Record with a specific set of circumstances; **that** is the reason no variance/public hearing was ultimately needed.

I again object to what I characterize as rushing headlong to “solve people’s problems” during a meeting without proper knowledge of and “administration of the Ordinances.”

When a supervisor with many years of experience, along with many years of training, objects to a process at a meeting, perhaps it might be an occasion for all to slow down and check the actual Ordinances to be sure the proper procedure is being followed. It is **not** a time to presume ill intentions on the part of the Supervisor just trying to do her job correctly.

Respectfully submitted,

Nancy Sauber

Town Board Supervisor