

Eureka Township

Dakota County

State of Minnesota

Special Town Board Meeting
November 2, 2006

Round table meeting: Town Board, Planning Commission and Township Attorney Jim Sheldon.

Call to Order

Chair Cory Behrendt called the Special Meeting of Eureka Township to order at 7:08 PM.

Present were Town Board Supervisors Cory Behrendt, Gloria Belzer, Gary Smith and Cheryl Monson.

Planning Commission members: Nancy Sauber, Sharon Buckley and Mike Greco. Clerk/Treasurer Nanett Champlain, to record the minutes and Township attorney Jim Sheldon.

Audience: Georgie Molitor.

The meeting opened with the Pledge of Allegiance.

Handout titled "Planning Commission Questions for Township Attorney" was used as an outline for discussion. *See attached*

All content in these minutes are by Township Attorney Jim Sheldon unless noted. Attorney Jim Sheldon stated that he was asked to give his opinion and responses are his opinion only.

1. Nonconforming

- a. What qualifies for nonconforming? Nonconformity can be structures or use or sometimes both.

Ordinance definition of nonconforming- talks about something that conformed before the ordinances were enacted or conformed to the ordinances at one time, because of a change in the ordinance it no longer conforms.

Does our ordinance grandfather in everyone here before September 7, 2004 or only those here before that date who can establish that they were already "nonconforming under the law." This can be interpreted different ways. The ordinance is not written as clear as it could be.

If you were nonconforming, and nonconforming is defined as legally nonconforming on that date, then you are entitled to continue. (Others interpret it to read that you become legal nonconforming as that date.) It is difficult to say that you could take all the nonconforming uses in the Township and by fiat make them legal uses. Jim Sheldon's opinion is that this cannot be done.

Supervisor Cheryl Monson stated that we the Township Supervisors received a letter from the former township attorney, Peter Tiede dated October 11, 2005, stating the intent of the Board as in relationship to the non conforming use and businesses who registered under Ordinance 32. Supervisor Cheryl Monson commented that the Town Board asked that all business sign up. The Town Board acknowledged any businesses that signed up and accepted them as businesses in the Township, because they had existing in the Township for many years.

Supervisor Cory Behrendt commented that the past attorney's stated that you can't make what wasn't legal before legal.

Nancy Sauber commented that it was clearly stated with the attorney at the meeting- that they had to be legal before and by accepting the registration does not deem them legal. It is written in the ordinance.

It is very difficult to interpret the ordinance a specific way, because the ordinance is vague. The Township has never had a commercial zone. The only businesses that are legal are businesses existing before the zoning ordinances were enacted. These businesses are legal nonconforming.

The Town Board has the authority to change the ordinance if they feel it is vague or not written correctly. The definition of home occupation could be expanded. Many businesses could fall into this category if accessory buildings could be used as long as it is not for retail use.

- b. Alteration or expansion you are talking about a building or structure. A use is a use. To change a use would be rezoning. A nonconforming use that asks to add onto a building to make more room is expanding the building, not expanding the use.

Alteration of a business would be changing the type of business.

A building permitted as an Ag building should be used predominantly for Ag use. If a building is permitted as an Ag building and the person is using it for another use the Town Board could ask them to take it down. The Town Board can not go onto private property to inspect a buildings use without permission from the property owner. If the use changes from Ag to another use, then it should be repermited under the new use.

Does approval of an expansion set a precedent for approving future expansions? Every application is a new application you need to inquire what is going on and make findings for the decision.

- c. If a nonconforming use is replaced by another use, the new use shall conform to this ordinance. Retail is retail. Use is a use. Use goes with the property, not the person. "Use" and "occupancy" means the same. A nonconforming use is a specific use. A legal nonconforming use is a permitted use.

The Township ordinance does not specifically state these things. The Township does not have commercial zones. The ordinance is vague. The township has not granted anyone specific rights to do these things. Just because a use is more intense, as long as it is a permitted use under the ordinance, then it is permitted, even if it is more intense and a much different use. To determine if a nonconforming use is expanding is difficult, because the registrations are vague and the Township does not have commercial zoning or rules for nonconforming uses.

The Township has nothing in its ordinance for auto repair and truck repair. All the Township businesses are legal nonconforming. There are no rules in the ordinance on what a change means for these type of businesses, if it rezoning or a change. It will need to be looked at on a case by case basis. The Township does not have a lot of regulations. The rules are going to read against the Township.

Supervisor Cory Behrendt commented that Eureka ordinances are written for an agricultural Township. The registration after the cut off should not have been accepted, Ordinance states a date. If the Township is going to allow and recognize nonconforming business uses. Then the Township needs to adopt ordinances to deal with these uses.

- d. Can people still register? No, the time is past. The ordinance states the date.

- e. How do you determine the scope? The applicant needs to be specific. The Board needs to develop findings. They have the right to ask all the questions they need to know to determine whether they can expand. Use doesn't necessarily relate to numbers. The Township does not have rules for businesses in the Township. The Township needs to look at different ordinances. Intensify use of a business that creates a nuisance, safety issues. These are police powers, not necessarily zoning issues.

Items f.-i. were skipped

- j. What happens if the lot on which a nonconforming use is currently located is split? Lot splits are allowed on properties with non conforming uses or conforming uses. As part of the lot split it would be agreed upon which piece of land would include the use. On a conforming use a new conditional use permit would be recorded with the county with the new legal description.

16. Conditional Uses

How should recordings of CUP's not previously recorded be handled? State law requires that CUP's be recorded. The Town Board has the option to record CUP's that were not recorded in the past. Existing CUP's that conditions are known and owners agree that the conditions are correct, they should be recorded. Old CUP's that are obsolete and are unclear would probably not be recorded. Recording of any existing CUP's would be done at the townships expense. New CUP's issued would be recorded with the applicant paying the filing fee.

2. State Building Code

- a. Is the Township legally liable if something happens as a result of a structure not being inspected? No.
- b. Non permanent or temporary structures. The Township has adopted the building code, but not the definitions of the building code. The Town Board adopted the definitions of the ordinances. Buildings need to be built by codes.
- c. What qualifies as permanent location on the ground? Building officials typically answer these types of questions.
- d. How should portable buildings be handled? They need to meet the building code.
Building code states buildings more than 120 sq ft need to be inspected. The Township ordinance states anything over \$500 in cost requires a building permit. If either threshold is met, then a building permit is needed.
- e. How does the building code apply to reconstruction projects that do not change the building footprint or square footage? The Township ordinance states anything over \$500 in cost requires a building permit. Building codes require permits.

3. Setback on signs

The Township currently has no setback requirements for signs. If the Township wants a setback on signs, then it should be put into the sign ordinance.

4. Ag policy

Is it an Ag use or non Ag use? The building needs to be predominantly Ag and needs to stay that way. If a building is permitted as an Ag Building and its being used for another use that is clearly not Ag, or it never was used as an Ag building the Township has a right eventually to force them to take the building down, pay the permit fee or rezone the property.

The current Township ordinance does not allow for residential accessory uses. If the Township is going to continue to allow personal use pole buildings, the ordinance needs to be changed.

Ordinances should be amended as problem areas are discovered. A Planning Consultant familiar with zoning issues should be contacted to help with ordinance corrections.

5. Lot of Record

What is acceptable as documentation of a lot of record? Recorded Deed, Recorded Contract for Deed, Platt Registered Land Survey approved by the County and recorded by the County Recorders Office. It is the ordinance definition and real estate lawyers. (any one of these documents.) The documentation must be recorded at the County Recorders Office.

Board of Appeals and Adjustments

The Town Board is the Board of Appeals and Adjustments. Would a person requesting a variance would come to the Board of Appeals and Adjustments? Under Township Ordinances the applicant would submit the application to the Planning Commission. If the Town Board denies an application, they can present the request to the Board of Appeals and Adjustment. A neighbor or citizen opposed or does not like the Town Board's decision cannot appeal to the Board of Appeals and Adjustment, only the applicant for the variance. The opposing citizen can be heard at the public hearing and the Town board.

10. Setting Precedent

As far as variances there are no precedents, each one is dealt with on an individual basis. Just because the ordinance was different before or the Town Board was more relaxed what they did, the Town Board does not need to be that way now. You run into problems when you are arbitrate and cupreous.

11. Public Hearings

What is the proper procedure for a public hearing? If a public hearing is held and testimony is taken, there are a lot of issues that the Planning Commission feels they need to research. They do not want to make a decision that night. The preferred method is to table the decision to the next meeting. It would be helpful for the Planning Commission to have an attorney present to help with findings for a request.

If the Planning Commission recommends denying a permit, should the Planning Commission make recommendations to the Town Board for conditions, if the Town Board decide to move ahead with the issuance of the permit? Yes, if the Planning Commission feels that conditions are appropriate, then they should tell the board what conditions they should be set, if they choose to issue the permit.

Can a public hearing be held as part of the regular Planning Commission meeting? Yes, it needs to be noticed. Typically hold the public hearing first.

8. Open Meeting Law

Is it ok to only allow public comment at the beginning of a meeting and not take public comments later in the meeting? Chair Cory Behrendt commented that tends not to take as much public comment as past boards. He typically asked the Board if they want to hear public comments on an issue if someone is raising their hand.

The open meeting law is to guarantee that the Town Board makes their decisions in public and receives their information in public and deliberates in public in matters not excluded by case law. It does not say anything about allowing people to talk at the meeting. The public has the right to speak at a public hearing.

Serial conversations are not permitted. Information can be distributed to members before meetings. A copy of all information needs to be available to the public. If information is presented to the Town Board at the table, that information becomes public and must be made available to the public. The attorney suggested a folder or book be available to citizens in the meeting room.

7. Advising Citizens

Town Board members and Planning Commission members have no authority to advise citizens. Only Town Board and Planning Commission as a whole can make decisions.

14. Home Occupation

If you want to allow home occupations, then you need to set strict performance standards in the ordinances. Then allow them as permitted uses. Do not try to license them. (Traffic, lighting, noise, hours of operation, parking spaces, etc.) If they are a permitted use, they would not need to register as a home occupation.

The Town Board asked the Attorney Jim Sheldon to submit written response on the questions. His comments will be general, each specific case is different.

A motion by Supervisor Cheryl Monson: To adjourn. Motion seconded by Supervisor Gloria Belzer. Motion carried by unanimous vote.

Meeting adjourned at 10:07 pm.