

EUREKA TOWNSHIP
Dakota County, State of Minnesota

TOWN BOARD MEETING
JANUARY 24, 2022 – 7:00 P.M.

Call to Order

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

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

Others Present: Chad Lemmons, Randy Wood, Mark Henry, Mike Callahan.

Zoom Attendance: Rane Solis, Stacy Shaw, Nathan Shaw, Julie Larson, Carol Cooper, Bill Clancy, Deb Burkhardt, Brian Ahern.

Chair Palmquist announced that he, as Chairman of the Town Board of Supervisors of the Town of Eureka, hereby declares that a health pandemic exists and exercises his power under Minn. Stat. § 13D.021 Subd. 1(1) to suspend all public in-person meetings of both the Town Board and Planning Commission until further notice. Meetings shall be conducted pursuant to the provisions of Minn. Stat. §13D.021. The Town Hall shall be open to the public for all regular meetings and special meetings. The Town Attorney, together with at least one Supervisor, shall be present at Town Hall for regularly scheduled meetings and special meetings of the Town Board. In the case of the Planning Commission, a Commissioner shall be present.

Supervisor Barfknecht pointed out that the Declaration contradicts itself and does not reflect the motion that was made at the previous meeting. The purpose of the Declaration was to limit the spread of contagion by suspending all in-person meetings. She questioned why the attorney instructed the Clerk to add that the Town Hall was to be open to the public in the posting notice.

Chad Lemmons responded that Minn. Stat. § 13D.021 states that either a Supervisor, the Clerk or the Town Attorney must be present, and that the location must be open to the public. Supervisor Kauffman pointed out that the statute language states, “unless unfeasible due to the health pandemic or emergency declaration.” Chad Lemmons stated his interpretation is that the statute requires that the meeting location be open to the public. However, if the Board does not want the Town Hall to be open to the public, he will concede.

Motion: Supervisor Sauber moved to follow the attorney’s advice. Vice Chair Fredlund seconded. Roll call vote: Kathleen Kauffman – Nay; Lu Barfknecht – Nay; Donovan Palmquist – Nay; Ralph Fredlund – Aye; Nancy Sauber – Aye. *Motion failed 2-3.*

Approval of the Agenda

The following changes were made to the agenda:

1. Add item B. Disappearing road signs and complaint under Road Report.
2. Add item K. Ordinance 3, Chapter 4, Section 5(A) number 5 under New Business.
3. Rearrange items H-J under New Business so that item J. comes before items H. and I.

Motion: Chair Palmquist moved to approve the agenda as amended. Vice Chair Fredlund seconded. Roll call vote: Donovan Palmquist – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Kathleen Kauffman – Aye; Nancy Sauber – Aye. *Motion carried 5-0.*

Road Report – Mark Henry

Status of trees on Highview and on Hamburg & 225th

Mark Henry indicated he will contact the road contractor regarding the overhanging trees on Highview and on Hamburg. The contractor is doing an excellent job on snow issues. The standard policy is to plow snow at 1” on paved roads and 3” on gravel roads. There have been no road complaints. He is getting together with the Road Committee to create a sign book and to check the sign inventory in the shed.

Disappearing road signs and complaint

Vice Chair Fredlund stated he received an email from a resident regarding missing weight limit signs on 235th near the Township line. There has been heavy dump truck activity from the Vermillion Aggregate pit traveling west on 235th instead of east toward Dodd. Vice Chair Fredlund recommended replacing the sign indicating that trucks must travel to Dodd.

Mark Henry asked if the Vermillion Aggregate mining agreement states they can only access Dodd, as travel restrictions should be listed in the agreement. Chad Lemmons recommended that the Board should amend the agreement if it is an issue. Mark Henry noted that some signs in the Township are not enforceable, he was told that the yellow signs are advisory only. Supervisor Sauber pointed out that Supervisor Barfknecht was told by the Dakota County Sheriff’s Department that road signs are enforceable regardless of the color. Chad Lemmons offered to look into this for the next meeting. The Board agreed that the sign should be reinstalled.

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.

Mike Callahan, Minnesota Paving and Materials (MPM)

Mr. Callahan requested confirmation of the information the Board requested in the letter to mining operations for the annual reviews. Chad Lemmons recommended he review Ordinance 6, Chapter 6, Section 2 items A-L. Mr. Callahan pointed out the letter refers to Section 1, and also requests he submit the approved IUP. Chad Lemmons pointed out that section 1 is for the initial permit, not annual reviews. Supervisor Kauffman suggested giving a one-week extension on the January 31st deadline.

Motion: Chair Palmquist moved to extend the deadline for all mines to February 7, 2022. Vice Chair Fredlund seconded. Roll call vote: Ralph Fredlund – Aye; Donovan Palmquist – Aye; Kathleen Kauffman – Aye; Lu Barfknecht – Nay; Nancy Sauber – Recused. *Motion carried 3-1.*

Supervisor Barfknecht questioned the extension, stating that if the Board requests additional information from a mine during the review, they can table the review for that mine to allow time for the information to be received.

Commissioner Burkhardt noted that the letter to the mines did not contain any questions. She and Commissioner Clancy thought that clarifying the IUP that the mines are relying on would make the review easier.

Motion: Chair Palmquist moved to strike the motion to extend the deadline for mines. Supervisor Kauffman seconded. Roll call vote: Donovan Palmquist – Aye; Kathleen Kauffman – Aye; Ralph Fredlund – Aye; Lu Barfknecht – Aye; Nancy Sauber – Recused. *Motion carried 4-0.*

Supervisor Kauffman requested that MPM provide an update on their reclamation plan at the annual review, as the Board had approved a 120-day timeline to provide the reclamation plan.

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 - None

Old Business

Stacy Shaw, 8802 250th St. W. – Accessory building compliance

Investigation of the complaint was assigned to Supervisors Kauffman and Fredlund.

Supervisor Kauffman reported the following:

1. A complaint was raised with the Board that the Shaws had constructed an open lean on their horse barn without a permit. After completing the horse barn, the Shaws added an open lean covering the area between the horse barn and the paddock. Relying on the Ordinances and the application instructions, they did not apply for or receive an additional building permit for the open lean. They have reported the lean was added to stop rain infiltration and to make it safe for the horses to pass from the barn to the paddock. They do not use the area for storage.
2. Inspectron reported that the existing accessory building was 3,081 square feet; the horse barn was 1,623 square feet; and the open lean was 443 square feet for a total square footage of accessory buildings of 5,147 square feet. Inspectron has told the Board that it is unclear under the Minnesota State Building Code whether the area under the open lean is to be included in the building area. Mark Luostari of Inspectron reported that he did speak with state officials responsible for the building code, but state policy prohibited them from stating a position for attribution.

Inspectron's view that open leans should not be included in a building's square footage is not dispositive for us.

3. There is a difference of opinion among Eureka Township leadership as to whether an open lean should be included when calculating the building area. In addition, our citizens could not look at the definition of "Building" and the limitation on accessory buildings in the Ordinances and know whether open leans counted as accessory building square footage or not.
4. Recently, on a question involving another ambiguous ordinance, the Town Attorney has stated: "The Ordinance in question is clearly ambiguous. Because the Town created and adopted the language of Ordinance 3, interpretation of the Ordinance will be strictly construed against the Town and in favor of the property owner. Furthermore, the interpretation would be one that is least restrictive to the rights of the property owner. See *Franks Nursery Sales Inc. v. City of Roseville*, 295 N.W.2d 604 (Minn. 1980).
5. For these reasons, I believe the Board must find that the Shaws are in compliance with the ordinance limitation on accessory building square feet. The Ordinance is ambiguous, and under law, ambiguity in the Ordinance is interpreted against the Town and in favor of the landowner. I recommend that the Shaws submit a revised permit application to cover the additional construction with no need to remove 147 square feet.

Vice Chair Fredlund offered that, historically, we have included leans in the square footage. The Shaws deceitfully violated the Ordinance by adding the lean after the final inspection. Since the Ordinance states a maximum of 5,000 square feet, the Shaws should remove 147 square feet.

Supervisor Barfknecht pointed out that the Building Permit & Land Use and Zoning Requirements instruction sheet states "The following do not require building permits but must adhere to State Building Code requirements: Construction, reconstruction or alteration of a building not used for commercial or industrial purposes, where the cost of such work does not exceed five hundred (\$500) dollars." The Shaws explained that the contractor purchased materials for the open lean and would not refund the \$490 of material expense. After a day of rain, they discovered the roof was not functioning as it should. They relied on the permit instructions which state that if a project is under \$500 a permit is not required. In addition, the instructions state that a change of structure does not require Planning Commission or Town Board review. They were repairing construction that was causing water damage, the project cost was under \$500, and this is why they did not notify us.

Supervisor Sauber discussed several permits at varying times in support that leans have always been included in square footage regardless of ordinance changes on accessory building limitations. In addition, the Board has always measured the outside foundations. Open leans can be enclosed at any time without a permit, this creates a serious issue. I support the Board count leans that have foundations, whether open or closed, as it has a roof and fits our definition of a building.

Chair Palmquist agreed with the need to be consistent with how we measure building area, and that the language needs to be clearer in the Ordinance.

Supervisor Sauber stated the Shaws should follow the pattern we have always had and take down the part they put up. That is what is fair and consistent, and this is not how we have dealt with any other lean-to.

Supervisor Kauffman stated that the residents are not privy to the variety of examples of lean-to permits, they are privy to the language of our Ordinances which do not disclose how we treat open leans or how we measure building area. This lack of clarity, and Minnesota law, states we must interpret the Ordinance in favor of the Shaws.

Supervisor Sauber pointed out that if the Shaws felt unfairly treated they could have appealed the Board's decision. The Board is supposed to administer the Ordinances, not advocate for citizens except under the Ordinance.

Motion: Vice Chair Fredlund moved that in order to comply, the Shaws must remove 147 feet of sheet metal roof. Supervisor Sauber seconded. Supervisor Kauffman called the question. Supervisor Barfknecht seconded. The motion to call the question carried 5-0. Roll call vote on the original motion: Nancy Sauber – Aye; Ralph Fredlund – Aye; Kathleen Kauffman – Nay; Lu Barfknecht – Nay; Donovan Palmquist – Nay. *Motion failed 2-3.*

The Shaws were instructed to submit a revised building application to include the open lean to the Planning Commission. After approval by the Board, Inspectron will calculate the additional permit fee which will be doubled.

Motion: Supervisor Barfknecht moved that no further action will be taken regarding the square footage of the horse barn and open lean. Chair Palmquist seconded. Roll call vote: Donovan Palmquist – Aye; Kathleen Kauffman – Aye; Lu Barfknecht – Aye; Ralph Fredlund – Nay; Nancy Sauber – Abstain. *Motion carried 3-2.*

Supervisor Sauber asked the attorney if the memo submitted by Supervisor Kauffman stating what Supervisor Fredlund agrees with and does not agree with results in serial meetings. Chad Lemmons responded that he advised both Supervisor Kauffman and the Clerk that the memo is appropriate if it is made part of the public packet. Supervisor Kauffman reminded that the Town Board assigned this complaint to Supervisor Fredlund and herself, they investigated the complaint together. Chad Lemmons advised that the memo did not violate the open meeting law and offered to submit this question to the advisory group for an opinion.

Inspection on MPM complaints

Chair Palmquist reported that his inspection of the MPM pit showed that the complaint had been remedied. Vice Chair Fredlund concurred. The Clerk was directed to inform the complainant.

Inspection on Lybarger complaint

Supervisor Barfknecht noted that she and Supervisor Kauffman were assigned to the complaint. The Board agreed that the Lybarger's will not be able to move the chicken coop until the ground is no longer frozen.

Treasurer's Report

Net pay and claims

Treasurer Solis presented net pay in the amount of \$1,567.03 and claims in the amount of \$7,850.45.

Motion: Vice Chair Fredlund moved to approve the net pay and claims as presented. Supervisor Sauber seconded. Roll call vote: Ralph Fredlund – Aye; Donovan Palmquist – Aye; Nancy Sauber – Aye; Lu Barfknecht – Aye; Kathleen Kauffman – Abstain. *Motion carried 4-1.*

New Business

Lakeville Comprehensive Plan Amendment

Motion: Supervisor Sauber moved to respond that the Comprehensive Plan Amendment does not affect the Township and no comment is forthcoming. Chair Palmquist seconded. Roll call vote: Ralph Fredlund – Aye; Donovan Palmquist – Aye; Nancy Sauber – Aye; Lu Barfknecht – Aye; Kathleen Kauffman – Aye. *Motion carried 5-0.*

Town Hall use policy

Supervisor Barfknecht noted that there should be notification to the Town Board when the Town Hall is used by another organization. Supervisor Sauber offered some suggested changes to the template policy. Chad Lemmons offered to provide language on insurance requirements.

Motion: Supervisor Sauber moved to adopt the template Town Hall Use Policy as submitted only for the caucus being held on Feb 1st. Vice Chair Fredlund seconded. Roll call vote: Ralph Fredlund – Aye; Donovan Palmquist – Aye; Nancy Sauber – Aye; Lu Barfknecht – Aye; Kathleen Kauffman – Aye. *Motion carried 5-0.*

Schedule special Town Board/Planning Commission meeting

Motion: Supervisor Sauber moved to schedule a special joint meeting of the Town Board and Planning Commission for February 17, 2022, at 6:30 p.m. Vice Chair Fredlund seconded. Roll call vote: Ralph Fredlund – Aye; Donovan Palmquist – Aye; Nancy Sauber – Aye; Lu Barfknecht – Aye; Kathleen Kauffman – Aye. *Motion carried 5-0.*

All remaining agenda items were tabled until the February 14, 2022, Town Board meeting.

Adjournment

Motion: Chair Palmquist moved to adjourn the meeting. Supervisor Sauber seconded. Roll call vote: Ralph Fredlund – Aye; Donovan Palmquist – Aye; Nancy Sauber – Aye; Lu Barfknecht – Aye; Kathleen Kauffman – Aye. *Motion carried 5-0.*

Meeting adjourned at 10:15 p.m.

Respectfully submitted,

Ranee Solis, Town Clerk

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