

**Town of Duluth  
Planning Commission  
Meeting Minutes  
10/23/08**

The meeting was convened by Chair Dave Chura shortly after 7:00.

Roll Call was taken. Commission members present: Dave Chura, Michael Kahl, Seth Levanon, Dave Miller and Yvonne Rutford. Absent: Janet Green and Bill Lannon.

Also present: Sue Lawson, Planning Director, John Kessler, Assistant Planning Director.

The Draft Agenda for the evening was reviewed and approved without changes.

Jan Green proposed changes to the September minutes by email, but was not present to present those changes. Dave Mount looked them up and read them for her. Change Ordinary High Water Mark (OHWM) to Ordinary High Water Level (OHWL). Board of Appeals **overturned** (did not uphold) Planning Commission's denial of the Worden's CUP for a short-term rental. She also said that she did not say that she would work with the Township Association, only suggested that it might be possible. It was decided that the minutes did not say that, no change needed.

The September minutes with the indicated changes were approved.

#### **Planning Director Report**

Sue Lawson said that an appeal was received from the Wordens. There were 2 issues with it. First, the appeal was sent by registered mail and no one was here at the Town Hall to accept it and sign for it so it went back to the Post Office. No one picked it up at the Post Office so it was sent back to the Wordens and they resent it to us. So we essentially did not actually get it until about a week ago. Second, did we act upon the appeal within the 60 day time limit? The crux of the issue is when we actually received the appeal. If it is decided that we received it before the 30 day appeal deadline, despite having not actually picked it up, then we did not respond within the 60 day rule and the Wordens win the appeal by default. If it is decided that we didn't actually receive it until we physically had the document, then the Wordens would have missed the 30 day appeal deadline. Tim Strom is looking at it.

There was discussion about who would be responsible for picking something like this up in the future. It came to the Township. The Post Office it needs to be picked up from is the Mount Royal Post Office. Dave Mount said the Board would follow it up with Ann Cox.

The Wordens also included a check for \$46 for registration of the CUP.

Sue said that we have not yet received an appeal from the Bieraugels. She said they have until about Oct. 31 to appeal the decision on their CUP request.

Sue received a request from Metro Transportation Planning for data from us for new single family dwellings for the last 5 years. They would give us a layer of this information to use in our GIS system, probably a shape file.

We have issued 2 permits for auxiliary structures. There are a couple of permits pending for dwellings, but we haven't received them yet. There are no variance or CUP requests pending that we are aware of.

Dave Miller wanted to know what the new business on McQuade was. John said that it is Ken Johnston Plumbing. If the area is zoned for commercial use, as this is, there is no need for a CUP or anything else. As long as the minimum setbacks are met, there is not a problem.

#### **Report from the Chair**

Chair Dave Chura reported that there was nothing new to report.

### **New Business**

The first item was Odyssey Development. The Commission needs to set up a meeting time with them. They also need to look at using a facilitator. A time for meeting with Odyssey was discussed, as well as a time for the next P&Z Commission meeting since Thanksgiving preempts the usual meeting date. It was decided that Thursday, November 20, would work for the regular Commission meeting. But it did not seem likely that a visit to the Odyssey site or a meeting with them would work for that night.

Sue said that a facilitator would not want to go to the site without meeting first to discuss the parameters of the facilitation. And considering the short day lengths this time of year, a Saturday might work best. She also thought it would be important to set an end-date for the process. This would also have to be negotiated with Bob Ryan and Greg Schendel. The initial meeting could be held before the site visit so that an agreement regarding the facilitation could be established first.

Dave Chura suggested that the Commission draft a list of what they would like to be included in the facilitation agreement for the November 20<sup>th</sup> meeting. Then it could be formalized on the 20<sup>th</sup>. It was decided that some of the Commission could meet prior to the November 20<sup>th</sup> meeting to put this together.

Sue also said that would give everyone, including Odyssey, time to talk with the potential facilitators. There are two facilitators that she thought the Commission should consider, both of whom she felt are outstanding individuals.

The first is Al Katz, a retired professor from UWS Communications Department, who has done a lot of work in conflict resolution. He has also worked extensively as a facilitator. In addition, he is on the Minnesota Coastal Council, on the WLSSD board, and worked with the McQuade Harbor group.

The second is Bob Bruce. He was a planner for the City of Duluth and has a Bachelor's degree in architecture. He wrote the Cook County Comprehensive Plan and has worked for Lutsen. She thought that his position as planner probably included facilitating meetings.

Sue said that there are two schools of thought regarding mediators. One is that a neutral mediator does not need to know the subject to be an effective facilitator. The other is that the mediator should be versed in the subject that is being mediated. So the Commission needs to decide what kind of experience they think a facilitator should have for this task.

Wayne Dahlberg said that he knows both of them. He has worked professionally with Bob Bruce and thought that he is very good at what he does. He said that he has done a fair amount of mediation.

Sue said that she thinks that getting someone who is able to settle differences is more important than someone who knows planning. She pointed out that the Commission knows the issue inside and out.

Wayne asked if St Louis County was interested in being present for the process.

Sue said that they are not interested. Her original thought was that it would be good to have all interested parties at table: St Louis County, the Army Corps of Engineers, etc. But Bob Ryan was opposed to this idea. She had only talked to St Louis County about it and they were not that interested.

Dave Chura asked the Commission if they had an idea of which facilitator they would prefer. The general feeling was that Al Katz would be a good choice given his experience with facilitating and given a general concern that a planner (Bob Bruce) could potentially get caught up in the planning issues involved.

It was decided that once they had the information they needed, the Commission could make a recommendation to the Board of Supervisors, and then, if Bob Ryan did not object to the choice, we could move forward from there.

Sue felt like the Commission might be better served by using an experienced facilitator than a land use expert. But she was unsure about what her role should be in the process in general. It is not something that Planning and Zoning has faced before. She said that her job typically is to provide the Commission with all of the information that is available on whatever is before them.

It was generally decided that she should participate and help guide the process. She could offer insight as to what the Commission should be looking at and make suggestions as needed.

Dave Chura asked if the Township would have a role in the process.

Dave Mount emphasized the need for Commission members to have a discussion with Odyssey that increases the chance that the next proposal they bring to the Commission will be approvable.

Sue said the proposal will have to be something new. The Commission approved the proposed subdivision, but did not approve the variance. The next proposal will have to be somewhere between the 25 ft setback that Odyssey originally wanted and the 125 ft setback dictated by the zoning ordinance. Vegetation removal and slumping bluff will be issues also.

Dave Mount asked what effect Odyssey's withdrawal of their subdivision request (which the Commission had already approved) before St Louis County would have on what happens next.

Dave Miller said that no one knows if there is a problem with the county and the subdivision.

Sue said that the goal will be for Odyssey to come before the Commission with a new proposal that will be more likely to be approved. They will want some assurances.

Yvonne Rutford said she felt we should clearly articulate what the intended goals would be for embarking on new discussions with Odyssey. She felt it was clear from the previous process, taking into consideration public input and its reference to the CLUP, what the Township would and would not approve at Stoney Point and that this really already provided Odyssey with the guidance they need to move forward. So we need to clearly articulate our goals with Odyssey.

It was pointed out that all meetings are public and there will have to be another public hearing on whatever new variance request they come forward with.

Sue outlined how the Township headed off Odyssey's intention to file an appeal. In general, you would not talk with someone who is suing you and it was clear that it would be in Odyssey's best interest to preserve the possibility of discussions with the Township and not take the Township to court.

Dave Mount pointed out that the vote on the previous proposal was 5 to 2. Two of the Commission members voted to deny the variance, but indicated that there was room to figure something out. The discussion the Commission had on the variance also signaled that there might be some middle ground. Bob Ryan heard this discussion, too.

Dave Chura asked for input on setting a date for the December Planning and Zoning meeting.

Sue said they may not need a December meeting.

Dave Chura said that he assumed that because of the facilitation, they would probably need to meet in December.

There was a discussion of setting a date and canceling it if the meeting wasn't necessary. Sue pointed out that we can't get cancellations out to the public easily. There was a discussion about how to get information to people, such as minutes, meeting dates, etc.

It was felt that this kind of information should be put on the Township web site.

Don McTavish said that Linda Holliday is the webmaster. She is a volunteer and works on it as she is able, so we might not be able to depend on being able to get information out on the web site as quickly as necessary for things like meeting cancellations.

There was some discussion about developing our own web site or blog, but nothing was settled on. There was a lack of enthusiastic volunteers.

### **Concerns from the Audience**

None.

### **Old Business**

Sue announced that the North Shore Community Center BAT and Master Planning Committee would be meeting next Tuesday. Bill Lannon from Planning and Zoning Commission is supposed to go.

The Commission then broke into two smaller groups, one to work on short-term rental issues, and the other to talk about Ordinance changes and Planning and Zoning permit fee structure.

The short-term rental group was comprised of Sue Lawson, Mike Kahl and Dave Miller. They came up with a list of issues pertinent to short-term rentals in the Township. They are 1) Safety, 2) Enforcement, 3) Character of the Township, 4) Possibility of not even having short-term rental properties in the Township, and 5) How do short-term rental properties affect property values?

It was determined that once the work group has gathered the necessary information, they would hold an open house to get input from the public. All the information would be gathered into a report and it would go to the Town Board and the citizens of the Township for approval. The immediate goal would be to report back to the Board with recommendations within 6 months.

The group looking at Planning and Zoning fees and Ordinance changes included John Kessler, Dave Chura, and Yvonne Rutford. Dave Mount sat in. They looked at Township fees compared to St Louis County's fees. They felt that a fee should be added for BOA hearings. In addition, they wanted to consider fees for site evaluations, soil disturbance, subdivision requests, and driveways or site entries. They decided they needed to look at the fees we are currently charging for CUPs and PUDs. John Kessler pointed out that the county has a rehearing fee that could be charged in instances like the Bieraugel continuation. It was decided that that particular example would not meet the definition of a rehearing but was more like a continuation. John was going to find out what the County's definition of a rehearing was. It was agreed that it would not be right to charge someone just because the Commission wanted additional information (if the application was complete in the first place).

Sue said that the quality of applications varies a great deal. People need to do the best job they can – it's in their own best interest.

Dave Mount talked about potential Ordinance changes. The time table for appeals needs to be looked at. Developing findings immediately following the hearing instead of waiting for the minutes to be approved was good.

Sue felt that the period allowed to file an appeal should be reduced.

Dave Chura said that providing the Finding of Facts at the meeting was working and now that they have a template for them, they can be put together pretty quickly.

The meeting was adjourned at 9:10.