

**Town of Duluth
Planning Commission
Meeting Minutes
12/17/08**

Vice Chair, Michael Kahl, called the meeting to order at 7 pm.

Roll Call: Present: Mike Kahl, Seth Levanen, Dave Miller, Janet Green, Bill Lannon.

Absent: Dave Chura, Yvonne Rutford,

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

The agenda for the meeting was approved with the addition of reviewing and approving the minutes and comments on the minutes from the December 13 meeting with Odyssey. It was also decided to move a discussion with Township residents, Bob and Leslie Mohs, regarding a business at their residence to before the Odyssey meeting minutes discussion.

The minutes from the November 20 Planning and Zoning meeting were approved.

Consideration of a Conditional Use Permit for Bob and Leslie Mohs, 5163 Greenwood Rd

Bob and Leslie Mohs, 5163 Greenwood Road, were present to explore options for a home based business at their residence. Their home is on the corner of Greenwood Rd and the Scenic Drive and is newly remodeled. There is currently a space for a shop on the end of the house with a separate entrance. They would like to have a gallery in that space and be open to the public 30 days a year for occasional sales. They have a state license for the business which will be called Light of the Moon. They make dolls and painted furniture and are considering adding jewelry in the future. They have talked to their immediate neighbors about their plans and those neighbors were fine with it. They have parking in the back of their house for 10 to 12 cars. They want approval to go ahead and advertise. They hope to hold their first sale in June, another around the 4th of July, another in the fall, and one around Christmas, for a total of 12 to 15 open days the first year.

The entrance to their property is off of Greenwood. Their address is now on Greenwood, although it was previously on Old North Shore. The shop is not an accessory structure, it is attached to the home. It is also handicapped accessible and has separate bathroom facilities.

Sue Lawson reviewed the zoning for that area. They are in SMU-8 which is a residential and mixed use zone. She read from the list of Land Uses for SMU-8 on page 54 of the Ordinance and the definition of a Home Based Business from page 26 of the Ordinance.

It was decided that the planned business would fit under the category of a Home Based Business and was allowable in the SMU-8 zoning area with a Conditional Use Permit. Other commercial uses in the neighborhood are the Castle Restaurant 3 blocks away and a quilting retreat/instruction business about 4 houses away. The area of impact for the Community Participation Report was set at the minimum of 1/4 mile, specifically 1/4 mile east, 1/4 mile north and west to the Talmadge River.

Sue explained the purpose behind the Community Participation Report. It gives the applicant an opportunity to talk to and inform their neighbors about their plans. If there are concerns, they can be accommodated or addressed, but not all concerns have to be addressed. She will provide them with a guideline for the Report.

The Mohs thought they would like to try to have the hearing at the January 22 Planning and Zoning meeting. All of the information would have to be back to the Commission by 10 days before the meeting to have the hearing then. Sue gave them a copy of the CUP application and the cost for a Home Based Business (\$250).

Approval of Draft Minutes from December 12 Odyssey meeting.

Yvonne Rutford had submitted comments on the minutes to Sue. Everyone took time to read over the minutes and Yvonne's comments. (Meeting minutes and Yvonne's comments are attached.)

Jan Green felt that talk of court proceedings in Rule 6 of the Rules of Engagement on page 2 of the minutes was way ahead of where we are at in the process. She would like to substitute the word "decision." It was decided that it was good to have a statement that nothing from the meeting could be used in court, regardless of whether or not court proceedings were likely, but that the words "decision and/or" could be added. Regarding the last statement in the minutes, she would like to say that the Commission members "expressed appreciation" that there were revisions to the project, and not use the words "general support."

Bob Ryan, of Odyssey, had provided Sue with his comments on the minutes by email. The Commission took a few minutes to read this email (attached).

Jan disagreed with the first paragraph, in particular that "the additional layer of engineering design and installation approval was found to be appropriate." She noted that some of the stakes on the site were not located correctly for the slope that was planned for that location. The geometry would clearly not work.

Mike Kahl disagreed with language in the second paragraph: "the new plan did seem to address appropriately the variance language."

The ordinance says that the standard for Erosion Hazard Areas "may be modified by variance if the landowner provides technical data proving a different recession rate or that the Erosion Hazard Area, although correctly estimated, can be mitigated by structural protection." Structural protection in the form of building setbacks, footings and slope were presented at the meeting on Saturday. Jan was concerned that although structural protection was addressed, the actual layout of the stakes on the site did not reflect the concept. She was also concerned that the project still might not meet the requirements for a variance. She also emphasized that the Commission would have to be satisfied that the engineering for the slope stability would work.

It was agreed that there was general support for the direction Odyssey was taking with regard to the project.

There was a discussion of how to address comments on the minutes. In general comments do not get incorporated into minutes. In facilitated meetings the minutes are typically created by the mediator and both parties sign off on them. Comments from both parties should be considered.

Pertaining to the first part of Bob Ryan's comments, Commission members suggested changing the language about building setbacks from "approval" to "appropriate" or "valid concept." For the second part, Commission members felt that variance language was not discussed in the meeting, but that some of the findings of facts were addressed. It was decided that the findings of facts that were key to the CLUP were addressed. Sue said that she would relay the agreed upon changes to Bob for his approval.

There was another discussion of the wetland delineation for this property. The consensus was that it was not accurate, but it was not clear what could be done about it. It was also thought that the houses could be placed according to the current concept without changing the wetland delineations. The current delineation is expired, so it cannot be appealed. Jan pointed out that it was not desirable to have to deal with inaccurate wetland delineations every time the Commission needed to approve something. Because the current delineation is expired, Sue said the only thing that can be done is to wait for the next delineation and appeal that one if it is not accurate. The delineations are supposed to be updated every 3 years. County Commissioners could be contacted about the issue, but that may not accomplish anything either and could be seen as antagonistic. A document from the Technical (or Wetlands) Advisory Committee (?) was referred to at some point by Greg Schoendel of Odyssey, but no one was familiar with this document.

It was decided to postpone approval of the Odyssey meeting minutes pending Bob Ryan's response to the wording changes. Seth made a motion to table the approval, Dave Miller seconded and the motion carried.

Planning Director Report

Sue said that she just received the Master Site Plan for the North Shore Community Center. They also produced a booklet for use in getting grants. She and Wendy Meierhoff met with Dan Schutte, from the school, who will be implementing the LP grant. It was determined that it can be started right away and that it won't interfere with anything else in the site plan.

There was a meeting at the school to look at the possibility of qualifying for an LK Johnson grant for some of the funds for construction of a swale in the first phase of the site plan. Dave Mount attended. He said construction costs are expected to be roughly in the vicinity of \$46,000. They have applied to the Musser Foundation for half of that. Approximately \$23,000 would still be needed. The representative from LK Johnson felt that half that amount was more in the vicinity of what they would typically fund. Although they do sometimes fund construction projects, they usually emphasize the social and educational aspects of a project. So if the school does apply for a grant, the proposal should emphasize those aspects. Dave said they expect to find out very soon if they will be invited to submit a full proposal.

Sue clarified that the LP (Louisiana Pacific) grant was the first grant she discussed before Dave's discussion of the LK Johnson grant. The LP grant is for playground equipment and some site and landscape work. They have talked about upgrading the tree nursery or possibly establishing an orchard. They have also talked about a community root cellar. Cindy Hale is looking at grants for that.

The Master Site Plan will be in the newsletter. On the flip side of the insert will be the building addition concept.

The open house for the short term rental issue will be in February. Mike Kahl has been working on collecting and putting together information for the open house. He read what he has so far (attached). He will complete this research by looking at the language communities have used pertaining to short term rentals.

Sue said that we could look at our own experience with short term rentals. We have had two and we have spent thousands of hours and dollars on them.

Jan asked if the short term rental regulations that Mike found were through conditional use processes or if they were regulated through zoning.

Mike said it was primarily zoning.

Seth pointed out that when we add conditions, it is hard to enforce them.

Mike said that his research showed that enforcement was considered a major issue.

Sue said that Officer Padden sees it as a safety issue. He says that if owners aren't around, things can go downhill quickly.

Prior to the current version of the Ordinance, there was no language pertaining to short term rentals. Focus on short term rentals began with a complaint. Prior to this, it had not been recognized as a problem or something that needed to be regulated.

The purpose of the open house is to gather people's opinions. A compilation of Mike's research will be available. Sue felt that the best format for the public meeting was for Commission members to sit one-on-one with individuals to discuss their concerns as opposed to a forum where individuals stand and address everyone. She felt like you get much more information this way. The information gathered from the open house along with Mike's research would

be presented to the Town Board with the Commission's recommendations.

Mike will complete his research and compile an information sheet for the public meeting. He will include source information for his research. He will get it ready for review at the January P&Z meeting.

Seth asked about the short term rental CUP that the Commission revoked because the conditions were not met. Why was this Commission decision overturned by the Board of Appeals? Doesn't this undermine our ability to enforce conditions?

Dave Miller said that the decision was overturned based on timing and technicalities, not on whether or not the conditions were met.

Sue continued her Planning Director report. The Board of Appeals upheld the Planning Commission's decision on the Bieraugel variance request. The Bieraugels plan to pursue further appeals.

John Kessler wanted input on a problem with a survey of a property on the shore. The property in question is a substandard lot that the owner wants to sell. Evidently the county misplaced benchmarks way back when and now, with newer and better technology, these inaccuracies are showing up. In this case, a new survey was made and this survey shows that the garage and well thought to be on an adjacent property are actually on the property in question. How should this discrepancy be handled? Especially if someone buys the property and then comes to the Commission wanting to do something with it. Do we accept the new survey or get them to agree on the old platted lot lines?

On the same general subject, Sue said that because lots are very small on the shore and do not have a lot of room regarding building location options and setbacks, the Commission should consider requiring a registered survey, in conjunction with any variance requests and possibly with CUP applications.

Seth asked that given what John has encountered, even if we do require a survey which survey do we go with?

Sue said that all surveys have to be tied into the original government land survey. As long as it is a registered survey the Town would accept it.

It was agreed that requiring a registered survey for variance requests was a good idea.

John was concerned about land use permits. How can a building be placed if no one knows where the lot lines are?

Jan said that if you buy a substandard lot you don't have a case. If it becomes substandard while you own it, it is considered a lot of record.

Sue said she would ask Tim Strom if requiring a survey for variance requests could be implemented through a new policy or if it needs to be incorporated into the Ordinance.

Bill moved to implement a new policy requiring a registered survey for properties between the expressway and the shoreline when requesting a variance or a conditional use permit, effective February 1, 2009. The survey must be registered and tie the setbacks into the registered lot lines. Seth seconded and it passed unanimously.

Jan said that she googled "practical difficulty." She found that pertinent to the concept of "practical difficulty" were 1) The difficulty cannot be self-created. Self-created includes buying a substandard lot and then wanting a variance. And 2) The variance can only be the minimum variance necessary.

Sue said that it had not been determined if these interpretations of "practical difficulty" applies to Townships.

Chair Report

Mike had nothing to report.

New Business

Sue reported that at the Township Board meeting the Fire Department said that they need another stall at the Town Hall station. This led to looking at other Town Hall space issues. It was suggested that a similar approach to that taken for the Community Center be used. Sue will be starting a committee, probably in April, to look at planning for future needs. Someone from the Planning and Zoning Commission would need to be on the committee. Bill Lannon volunteered for this committee.

Seth asked if moving the Town Hall to the Community Center would be an option.

Dave Mount responded that the Township cannot afford the building if the school is not in it. Moving the Town Hall there would create an element of risk.

Sue pointed out that there was a lot of history associated with the Town Hall that people would be reluctant to lose.

Old Business

The short term rental open house had been addressed adequately earlier in the meeting.

It was decided to look at zoning updates, including fee structure, 60 day rule and clarification of BOA authority at the next meeting.

Sue asked how everyone felt about the facilitated meeting they had with Odyssey – specifically if it would be useful to engage in a similar process, before the initial application, if another larger-scale project were to come along.

The Commission agreed that it had been a worthwhile process.

Jan said that it would be hard to have such a discussion in the abstract. Could a draft application be presented, checked for completeness, and used as the basis for a facilitated process?

Sue said that once we have an application, the conventional process is initiated. Typically, if someone has a proposal that they want input on, the Planning Director would be the one to look at it. But Sue said all she can do is tell them what is in the Ordinance. She cannot represent everyone's concerns. In the future, if the Commission was willing, they could look at more complicated proposals in a working-type session before an application was submitted – it could be beneficial to everyone.

Jan felt that it would need to be a proposal with some substance to it.

Dave Miller said that this kind of process could potentially save time and expense. He said that an applicant could start with Sue, as usual, and if she felt the complexity or scale merited it, she could suggest a working meeting with the Commission.

As far as Sue or Dave Mount knew, there was nothing to prohibit doing this as long as an application was not filed. Dave said it would need to be emphasized to a potential applicant that the only opportunity for this kind of dialog would be before the application was filed.

The Commission agreed that this kind of a pre-application working meeting with a potential applicant could be useful.

Sue said that she could act as facilitator so they would not necessarily need to hire an outside facilitator.

Sue noted that Al Katz, the facilitator for the Odyssey working meeting, was very impressed with the Planning Commission.

Concerns From the Audience

None.

The meeting was adjourned at 9:15.