

**Town of Duluth
Planning Commission
Meeting Minutes**

February 28, 2008

Call to Order: The meeting was called to order at 7:00 p.m. by Chair Dave Miller.

This was Adam Hendrickson's last meeting as a planning commission member; he was presented with a plaque. Thank you Adam for your years of service (2002-2008).

Roll Call: Michael Kahl, Seth Levanen, Dave Miller, Adam Hendrickson, and Janet Green.
Absent: Dave Chura and Yvonne Rutford.

Review Agenda: Janet Green made a motion to move the approval of meetings minutes to the first order of business. Adam Hendrickson seconded. Motion was approved.

Approval of Minutes: Janet Green made a motion to approve the minutes from the January 24, 2008 meeting. Michael Kahl seconded the motion. Minutes were approved.

Stoney Point Sub Division – Preliminary Plat: Greg Schendel from Odyssey Development was present to represent Odyssey. Planning & Zoning Director Sue Lawson asked the Commission if they wanted Odyssey to go through another Community Participation process. After a lengthy discussion Janet Green made a motion that another Community Participation plan open house be held in the town hall in a timely manner for both the developer and the commission. Adam seconded the motion. Motion was approved.

Sue reviewed and handed out copies of the *St. Louis County Ordinance Number 33, Article III, (pages 23-26)*

Section 3 Preliminary Plat Requirements:

- 3.01 Applications shall be on a form developed by the Commission and fifteen copies shall be submitted.
- 3.02 The following information shall be submitted in written form:
 - a. Names, addresses and phone numbers of the property owner, developer, designer, registered land surveyor and attorney.
 - b. Preliminary title opinion that contains an explanation of existing and proposed deed restrictions, easements, as well as details on all ownership interests and liens upon proposed and/or existing: roads (including explanation of access to property if not by publicly maintained road), right-of-ways, public walkways, parks and open space, and other proposed community and public areas.
 - c. General soils information from the Soil Conservation Service or, if available, percolation test results or any other specific soils information.
 - d. Statement on method of sanitary waste disposal and water system to be used.
 - e. Explanation of proposed or prohibited uses within the subdivision as proposed by the developer.
 - f. When required by the Commission, erosion control plan that addresses erosion control during and after construction. *The Commission would like an erosion control plan.*
 - g. When required by the Commission, a plan for vegetative preservation and landscaping. *The Commission would like to see a vegetation/landscape plan in the preliminary plan.*
 - h. Name, address and location of fire department responsible for providing protection.
 - i. Explanation of proposed road maintenance responsibility. *If people share a driveway the road/driveway will the maintenance be the responsibility of the home owners? Yes, per Odyssey. John Kessler suggested that there be a covenant for each road in the plat to agree to maintain own road/driveway. It was agreed that Odyssey Development would have to provide documentation of this road maintenance agreement.*
 - j. Explanation of any future subdivision or staged development plans. *Odyssey needs to provide a future development plan and describe how this plan will affect revetment?*
 - k. Certificates of location of Government Corners to be used to complete survey. This information shall be sent directly to the County Surveyor and be done in accordance with the policies of the County Surveyor.
 - l. Other information as may be required by the Director or Commission.
- 3.03 The following information shall be on a map(s) drawn to a scale of not less than 1:100.
 - a. Proposed name of subdivision which shall not duplicate or be similar in pronunciation or spelling to the name

- of any plat heretofore recorded in the County.
- b. Legal description of parcel.
- c. Individual approximate lot dimensions and acreage.
- d. Approximate location, right-of-way, curve radii, radius and length of cul-de-sacs, street grades where grade exceeds 8%, angle of intersections of all existing and proposed streets.
- e. Graphic scale and north point.
- f. Index map drawn to suitable scale showing that part of the section in a manner that properly determines the location of the subdivision.
- g. Date of preparation.
- h. Street profiles (may be on separate map) where proposed street grades exceed 8% when required by the Director.
- i. Topographic data showing contour intervals of ten feet.
- j. Lot layout, block and lot numbers, and areas set aside for public and community purposes.
- k. Major drainage ways.
- l. Soils map showing soil types, rock outcrops, water courses, marshes, and wooded area. U.S.G.S topographic maps and information from the Soil Conservation Service may be used unless the developer has access to more detailed information. The applicant shall also show wetlands as designated on the National Wetlands Inventory Map.
- m. Location of all known wells either abandoned or in operation.
- n. Existing utility corridors.
- o. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alteration; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling storm water runoff and erosion, both during and after construction activities.
- p. Location of 100-year flood plain areas from existing maps or data.
- q. Other information as required by the Director or Commission.

3.04 Field markings of subdivision. The developer shall place in the field posts, stakes or flags showing the approximate outer boundaries of the subdivision.

Other Requirements per Planning & Zoning Commission:

1. Include the elevation as to where the DNR establish the OHWL. The elevation needs to be portrayed vertically in a drawing. First survey showed the High Water Level well but subsequent drawings haven't been as specific or detailed.
2. Would like proof that the domestic water supply is adequate. Odyssey Development has a letter from Steve Ojard (well driller) stating what he has found in the area as far as well depths.
3. Include landscape plan that shows what the shoreline will look like when the project is complete. There is a concern regarding the view from the road. The vegetation plan should have comments, requirements and requests. Odyssey Development is very clear that the Community doesn't want to see a yard or clearing. Odyssey will try and keep natural vegetation where possible.
4. How is the Lake being protected and how is the earth going to be removed? Where will the earth be moved to? Odyssey needs to provide a clear plan as to how this will be accomplished.
5. What will be done with the stone wall? Will it be slumped and what will happen? Part of Odyssey's design will be that they do not alter the structural stability of what is in place.
6. Development plan: Odyssey's intention is to have the shore line stabilized and vegetation introduced before they begin building. Odyssey is not sure if they will do the entire shore line at once or in portions. Plan needs to detail the staged development and how it will be accomplished.
7. The map shows the area in one foot intervals to give a clearer more accurate representation of the shoreline.

Variance Requirements

Greg Schendel from Odyssey wanted to know if a Variance is required. The public hearing is in essence the variance process because it will be decided at that time to grant the variances or not. The majority of the variances are related to the revetment on shoreline. Greg Schendel assured the Commission that Odyssey Development wants to make the process as easy as possible and will follow the Commissions suggestions.

The Commission agreed to one preliminary Plat application and the variances are included within this application.

Variances
Stoney Point Cottages Subdivision
(from Zoning Ordinance Number 3 – August 12, 2005)

Article III General Provisions

Section 3 Steep Slopes

- A. Erosion Control Plan Requirement.** In bluff and steep slope areas the Planning Director may require that the applicant for any land use permit, submit information on how erosion will be prevented and existing vegetation preserved to screen the structure as well as prevent erosion.
- B. Accessory Structures.** Selective vegetation removal shall be allowed to accommodate the placement of accessory structures.
- C. Intensive Vegetative Clearing.**
In no case shall intensive vegetative clearing be allowed on bluffs and steep slopes.
1. The removal of natural vegetation is limited to the removal of dead, diseased, dangerous, and storm or fire damaged trees, shrubs, and plants and the trimming and pruning of trees, shrubs and plants.
 2. No more than twenty-five percent (25%) of trees greater than two (2) inches in diameter (measured at four and one-half (4.5) feet above ground) may be removed at one time.
 3. Removal of trees, shrubs and plants shall not be done by heavy equipment.
 4. Removal in excess of twenty-five percent (25%) of existing vegetation is allowed if:
 - a. It is replaced with trees, shrubs and plants that have similar erosion preventive and screening value than previously existed, or
 - b. It is for the purposes of forest management activities associated with timber management practices such as thinning.

Article VI Shoreland Overlay

Section 2 Lake Superior Shoreland – All Areas

- A. Activities Within Building Setbacks From Lakeshore.** The following standards apply to activities within the area defined by the building setback from the lakeshore.
1. **Alterations below ordinary high water level (OHWL).** Any alterations below the ordinary high water level of public waters must first be authorized by the Minnesota Department of Natural Resources (MNDNR).
 2. **Filter strips.** The setbacks listed in **Table 5.2, page 52** function as filter strips. These strips provide a zone of infiltration that protects surface water by allowing remaining vegetation to remain essentially undisturbed, allowing the forest floor to trap sediment from adjacent land areas. Filter strips will be maintained as follows:
 - a. They will border and parallel the edge of the lakeshore.
 - b. Existing vegetation must be maintained, subject to the exceptions listed in “3” below.
 - c. Soil exposure is limited to less than 5% of surface area well distributed throughout the filter strip.
 - d. Cultivated lawns and lawn fertilizer are not permitted in the filter strip area.
 - e. Erosion control measures such as straw bales, mulch and silt fences will be used when an area of soil is exposed within the filter strip and sedimentation is likely to result. (*see Article III, Section 4, page 41, “Soil Erosion Control & Storm Water Management”*)
 - f. There shall be no commercial harvesting of trees within these filter strips.
- B. Activities within Shoreland Overlay.** The following standards apply to activities within Shoreland Overlay area.
1. **Vegetation management plan.** A vegetation management plan will be required for total vegetation removal of over 10,000 square feet or 25% of the development site, whichever is less.
 2. **Removal of vegetation limited.** Removal of woody vegetation shall be restricted on bluffs, steep slopes and within the structure setback area to maintain stable soil conditions. (*see, Article III, Section 3, page 40, “Steep Slopes”*).

3. **Vegetation as screening.** Removal of woody vegetation shall be limited so that vegetation serves as a screen for structures, parked vehicles or other facilities viewed from public roads and Lake Superior. Selective removal of woody vegetation shall be allowed to provide a reasonable view of Lake Superior from individual residences.
4. **Clear cutting not permitted.** Clear cutting shall not be permitted unless part of an approved site development plan with the exception of an authorized public service such as public roads and utilities.
5. **Best management practices.** Cutting, pruning and trimming of trees shall be based on sound horticultural and forest management practices for each individual tree species.
6. **Private drives and public utility lines.** Private driveways shall blend into the existing terrain as much as possible, and public utility lines to private landowners shall be buried if possible.
7. **Grading and filling, erosion control.** Grading and filling, erosion control shall comply with the following:
 - a. An erosion and sediment control plan is required for excavations exceeding 1,000 square feet or 100 cubic yards or fill exceeding 1,000 cubic yards, or 50 cubic yards within the structure setback area. Shoreland alterations done in connection with work authorized by permit shall be exempt from the plan requirement.
 - b. The South St. Louis County Soil and Water Conservation District and the Planning Director shall approve all plans prior to the commencement of any alteration work.
 - c. The approved erosion and sediment control plan shall be followed and is incorporated into any permit.
 - d. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage. A permanent vegetative cover must be established as soon as possible.
 - e. Methods to minimize soil erosion and to trap sediment before they reach any surface water feature must be used. Such methods shall be in place before development occurs.
 - f. Altered areas must be stabilized to acceptable erosion control standards consistent with the Field Office Technical Guides of the local Soil and Water Conservation Districts and the U.S. Soil Conservation Service.
 - g. Fill or excavated material must be stabilized to prevent erosion and slope failure.
 - h. Fill or excavated material must not be placed on steep slopes, except as designated by qualified professionals.
 - i. Approved permanent erosion control practices should be maintained.
 - j. Alterations below the Ordinary High Water Level (OHWL) of lakes and streams shall follow accepted practices. Any alterations shall be first permitted by the Department of Natural Resources and the U.S. Army Corps of Engineers, as required.

Section 3 Lake Superior Shoreland – Erosion Hazard Areas

- A. **NSMB Designated Erosion Areas.** The North Shore Management Board (NSMB) has determined erosion Hazard Areas for land within the Town of Duluth along the shores of Lake Superior. These are defined as those areas of the North Shore where the long-term average annual rate of recession is one (1) foot or greater per year. The areas are those designated and mapped by the North Shore Management Board as of May, 2004 or subsequently designated by NSMB or another agency,
- B. **Erosion Area Requirements.** Those areas as identified must meet the following requirements:
 1. The Planning Director, at the time of permitting, will notify the property owner of the restrictions of this section.
 2. The burden of proof concerning the suitability of land in designated Erosion Hazard Area is the responsibility of the property owner.
 3. Site development plans shall be required and approved by the Planning Director for all new construction in the Erosion Hazard Area. The site plans shall include a description of the following: surface runoff including roof drains, subsurface runoff, vegetation removal including proposed landscaping, proposed sewage treatment systems, topography of site, structure and driveway location, potential bluff toe

protection, slope alteration, and other pertinent information as requested.

4. The site development plan shall include setback and shoreline erosion control recommendations, and shall comply with the shoreland alteration provisions of this Ordinance.
5. Structures and soil absorption areas shall be set back one-hundred-twenty-five (125) feet from the top edge of the eroding bluff, and where slumping is evident, the setback shall be measured from the uppermost shear zone (point at which the soil separates and slumping begins). Sewage treatment systems shall not be located within the structure setback area. The above standard 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.

Article II Definitions

Shoreland Overlay Area – Land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from the ordinary high water level of a river or stream designated by this ordinance, or the landward extent of a flood plain designated by the Federal Emergency Management Agency (FEMA). The shoreland overlay area adjacent to Lake Superior extends from the ordinary high water level of Lake Superior to the Highway 61 Expressway.

Article X. Variances

E. Criteria for Decisions. The Planning Commission shall always act with due consideration to promoting the public health, safety, and welfare, encouraging the most appropriate use of land and conserving property value, and shall permit no structure, building or use detrimental to a neighborhood.

1. The Planning Commission may authorize a variance from the terms of this Ordinance which will not be contrary to public interest where, owing to special conditions, a practical difficulty or particular hardship would be created by carrying out the strict letter of the Ordinance, and when the terms of the variance are consistent with the spirit and intent of this Ordinance and with St. Louis County's and Duluth Township's Land Use or Comprehensive Plan, if any.
2. "Hardship" as used in connection with the granting of a variance means that the property in question cannot be put to a reasonable use under the conditions allowed by this Ordinance; the plight of the landowner is due to circumstances unique to his property not created by the landowner. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under the terms of this Ordinance. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located.
3. When in the opinion of the Planning Commission a variance may result in a material adverse effect on the environment, the appellant may be required by the Planning Commission to demonstrate the nature and extent of the effect.
4. It shall be the burden of the applicant to demonstrate sufficient hardship to sustain the need for a variance. Absent a showing of hardship as provided in Minnesota Statutes and this Ordinance, the Planning Commission shall not approve any variance. The Planning Commission may impose conditions in the granting of variances to insure compliance and to protect adjacent properties and the public interest

Discussion regarding Development

Are the lots buildable without the shoreline revetment? Answer – about ¾ are buildable.

Public Open House

What does the commission want to see from Odyssey Development at the Public Open House? Odyssey does not need the completed Preliminary Plan at the time of the Open House but does need enough information to address the concerns of the public. Odyssey should supply a Concept Plan and the closer the concept plan is to the preliminary plan the better. The Commission is NOT requiring the Preliminary Plan for the public open house.

Meeting Date(s) regarding Stoney Pointe Development:

Wednesday, March 26th at 7:00pm (7-9) - Public Open House. Need enough of a plan that the developer is able to speak to all of the items listed above. There will be a presentation by Odyssey Development which will be followed by a question and answer portion with discussion to follow.

April 24th Public Hearing for Subdivision – The concept plan will be submitted at this meeting.

Planning Director Report

Planning Projects Based on Comp Plan that could be looked at:

- Community Center – work on this until about October.
- Senior housing.
- Enhancement of trail, open space system, and bike trails.
- Safe roads to school – biking trails.
- Connecting to bike trail on shore.
- Connecting to Lake superior hiking trail.
- Ensuring sucker parcel remains in public ownership.
- Ensuring continuance of public lands in the town.
- Mass transit opportunities – railroad corridor.
- Maintenance of open spaces, green corridors, heritage of Town's agriculture – preserving fields-conservation easements.
- Janet Green suggested having a legal search on the deeds and titles regarding the Congdon Trust properties in our township, as a future project.

What planning projects would the commission like to see? The Town Board would like Sue to help create a Site Plan for the Community Center. A comprehensive plan for the Community Center would be beneficial when grant opportunities arise. Sue is looking into getting grants for this project. It was agreed that for the first part of the year the emphasis for the Planning Director would be focused on the Master Site Plan for the Community Center.

Current Project Updates

- Valhalla Village is no longer happening.
- Odyssey is progressing – Open House March 26th at 7:00 pm.
- Great River Energy – Public Hearing on March 27th at 7:00 pm.
- Non-conforming lots – something to be aware of in the future.
- Need to record ALL variances and CUP's. Have several that were not recorded in the past.
- NSCS is putting up a wind generator but it is less than 35 feet (just a structure).
- Pine Park Road was discussed at Town Board meeting and is being taken care of.
- Town Board increased Legal portion of Planning & Zoning Budget by \$600.

Chair Report

Email from Seth Levanen had questions regarding interaction between Planning & Zoning Director and The Commission Chair. Seth was concerned about balancing the power and checks and balances between the Director and the Commission. Sue stated that the Director does not vote in any of the decisions that the Commission makes at the Public Hearings and as such there should not be a concern with usurping power.

Seth was also concerned about who sets the agendas and puts them out? Concerned that the Commission Chair has historically prepared and distributed the Agendas and now the Director does. Discussion ensued. The Planning and Zoning Team responded that they were, perhaps, in the best position to prepare the agenda with input from the Chair and other Commission members, as it is their job to staff the Planning department and as such are aware of and current on the business of the Planning department.

Dave Miller informed the Commission that in the past Wayne Dahlberg did not use email and Wayne would collaborate with Dave before the meetings and Dave would prepare and send the agenda. Janet Green and Dave Mount reminded everyone that if there is a concern with the agenda the "review agenda" item should cover it. Commission members are always welcome to add items to the agenda before or during the meeting.

The Director will continue to send out the agenda and consult with the Planning Commission Chair in doing so.

New Business

Discuss process for Public Hearings

Each of the Commission members had received a letter from Bill and Pamela Mittlefehldt regarding their concerns from the Worden Short Term Rental Public Hearing. Sue Lawson also expressed her concerns regarding some personal attacks that were made during the last Public Hearing. Carolyn Marino also felt uncomfortable at the last Public Hearing regarding some personal statements that were made. Sue felt that the Planning Commission, in its endeavors over the last 5 years has done a good job of promoting civil conversations in Planning Commission business. However, the Commission can do better—there is no room in civil public conversations for personal attacks. We need to get through these public meetings in a civil way. Sue Lawson proposed some agreements regarding the process for Public meetings.

Communication Agreements For Public Meetings

*Adopted February 28, 2008
Duluth Planning Commission*

We all have something to teach and something to learn in this process. We will listen to learn and to understand.

The process of learning requires us to rethink our assumptions. We agree to be open to rethinking our own assumptions and to hearing other people's ideas.

We will act with respect for everyone's knowledge and experience by:

- Listening without interrupting or talking over each other
- Listening without judging someone's ideas or experience
- Sharing time/space equally with each other
- Describing the problem or issue, not the person.

We will refrain from characterizing the views of others in a critical spirit.

We will not make negative attributions about the beliefs, values and motives of others.

We are all accountable for these agreements and we will hold each other to them.

These Agreements will be posted at all Planning Commission public meetings

There was a suggestion that the Commission have attendants at a Public Hearing sign a Public Meeting Conduct form.

Janet Green made a motion to accept the Proposed Agreements for Public Meetings. Seth Levanen seconded the motion. The Commission unanimously adopted the agreements

Old Business

Planning Priorities: Already reviewed.

Concerns from the Audience: Dave Mount, Duluth Township Board Representative discussed Board Conduct. Note that emails are public items when done as a Planning Commission member. Secretary should have pertinent emails and information printed out and available for review at meetings.

Close / Adjournment: Adam Hendrickson made a motion to adjourn. Seth Levanen seconded the motion. Motion was approved.

Meeting adjourned at 9:05 p.m.