

**Town of Duluth
Planning Commission
Meeting Minutes
4/24/08**

CALL TO ORDER

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

ROLL CALL

Present: Michael Kahl, Dave Miller, Dave Chura, Janet Green, Yvonne Rutford, Seth Levanen, and Bill Lannon.

APPROVE AGENDA

Dave Miller made a motion to approve the minutes. Seth seconded the motion. Agenda approved.

APPROVE MINUTES FROM MARCH MEETING

Zone district change – should be MUNS 4 only. Janet made a motion to approve minutes. Yvonne seconded. Minutes approved.

ODYSSEY DEVELOPMENT PUBLIC HEARING

Sue introduced people from Odyssey Development. The Town of Duluth is looking at the Preliminary Plat proposal from Odyssey Development. We are at the Preliminary Plat stage of the Subdivision development request.

Chair Dave Chura went over the public hearing process. Explain the criteria, explain the request, applicants speak to the request, public testimony, subdivision request, variance request. No questions from the audience.

Facts of the proposal

- Location of proposal is on Stoney Point.
- Zone District is SMU-6.
- Property is in an erosion hazard zone.
- Required Lot Area is 2 acres
- Set Backs:
 - Side yard – principle structure is 35 feet.
 - Road – 110 feet from center line.
 - Shoreline – is an erosion hazard area (125 feet from top of bluff).
- Lot Coverage Maximum is 25%.

Description of Preliminary Plat Subdivision Proposal

- Eight Lots – 2.04 to 2.8 acres. All meet the acreage requirements.
- The setbacks can be met. 125 feet from the top of the bluff.
- Impervious surface requirement can be met.

Preliminary Plat Subdivision Variance Request

The shore land stabilization proposed for this subdivision requires a variance as per article 6, Section b(5). Inherent in this variance are the following components:

- Article 6, Section 2(a) (1) (2)
- Article 6, Section B (1) (2) & (3)
- Article 6, Section 3 (B) (1-5)

ODYSSEY DEVELOPMENT PRESENTATION

Bob Ryan of Odyssey Development gave a brief explanation of the subdivision application.

- 1) Creation of 8 home sites/lots.
- 2) Removal of some vegetation to correct erosion then re-vegetate.
- 3) Remove slope instability to gain typical setback.

During the meetings that we have had over the past 2 ½ years there have been concerns about fishing. Fishermen are able to go anywhere on the lake where the high water mark permits.

Odyssey Development is swapping land with the City of Duluth.

Odyssey proposes to fix 1400 feet of slumping eroding shoreline out of 1700 feet of shoreline. The Bluff is constantly slumping. There are at least 2 areas at the bluff that have significantly slumped in the past 2 years. The city used to give money to people that would build up the shore line and correct erosion.

ODYSSEY DEVELOPMENTS PRELIMINARY PLAT PROPOSAL

- SMU-6 district – proposing 8 single family residential units (ordinance approved)
- Lots are at the 2 acre minimum - met.
- Side yard setback of 35 feet – met
- Road setback – 110 feet – met
- Shoreline setback: 125 feet from top of bluff in erosion hazard area. 100 feet from OHW in non-erosion hazard area. Impervious surface 25% max - .25 acres of 18.8 acres, under 7% coverage. (not met)

Mike and Scott with Krech & Ojard of Duluth, Krech & Ojard were brought on board to look at the shoreline, bluff and storm water issues. They worked with Gene Clark. The key areas that Krech & Ojard are working on are:

- 1) Toe of the slope.
- 2) Angle of the slope – clay soil with a lot of sluffing. Modify the angle to eliminate erosion.
- 3) Vegetation to prevent future erosion.
- 4) Storm water Pollution prevention plan.

Photographs were shown of the shoreline; demonstrating current conditions and erosion.

Erosion mechanisms were described by Krech & Ojard. Because of the clay soils the water sheers off the clay soils and then falls into the lake. By definition, the shoreline is receding by an average of 1 foot per year. Stabilizing the toe of the slope will help control the erosion.

The vegetation that is currently on the slope is not working and the erosion continues. No evidence of current vegetation that is stable.

Mike of Krech & Ojard discussed 2 drawings: Drawing/graphic representation of the shoreline and the slump that is happening. Showed a picture of the proposed slope stabilization. Trying to establish a 1 to 3 slope to prevent the ongoing erosion. Then establish natural vegetation on the slope. There will also be a storm water plan.

Landscaping

Presentation by Luke Sydow with SAS & Associates, the landscape architect firm for this project: There are 4 main issues with the shoreline vegetation stabilization:

- 1) Water control on top of the slope. Use a series of natural rain gardens. Controlled flow of water channels through the site. Remove current vegetation to stabilize the slope and prepare it for new vegetation. Want to make sure that people can get down the slope comfortably and are able to maintain the vegetation. Erosion control – there will be immediate cover re-established. Will plant larger trees, and a lot of annual rye right away.
- 2) Work with DNR & Odyssey regarding the “natural” vegetation feel. Unique clients who want to be in the woods and want to be in nature. Proposing a native seed mix and native plants that work with the existing vegetation that will remain. Spruce, birch, balsam, poplar, etc... Want to bring these back. Not leaving a bare slope. Maintaining some views in front of the homes but using the same materials and tying the bank/shoreline with the woods behind it. Will appeal to the boater and the fisher persons. This can be achieved.
- 3) Maintenance: Home Owners Association will address maintenance. Want to maintain the character of the North Shore. Intend to help homeowners regarding the maintenance.

VARIANCE REQUEST – Presented by Bob Ryan:

Article III General Provision (Section 3(c) Intensive Vegetative Clearing)

Bob Ryan doesn't think that there is any intensive vegetation currently on the shoreline. Basically it has no vegetation that is intensive. 85% is bare and 15% is not stable. Mr. Ryan doesn't feel that there is a need for a variance but they are

pretending that there is and that is why they are here.

Odyssey's intention is to connect to the North Shore Sanitary District.

- Wetlands: Odyssey has an approved wetlands impact plan from St. Louis County SWCD.
- Shoreline Stabilization: Have DNR permit to perform all work below OHWL (rock toe), established by DNR at 606.3 feet elevation.
- Public Land/Lake Access: Have a signed agreement with the City of Duluth to make the 3+ acres of land around Little Sucker River permanent public land.

Odyssey met with the MPCA (Jim Dexter). Only permit that they need is a storm water plan. Odyssey has provided the application – it is in the preliminary plan. General storm water permit construction is within a 100 feet which is not allowed exception 1) improvement of the water quality 2) improvement of the public access to the water. Both of which they feel are done.

This means –it is permitted with approved site development plan.

Filter strips

These strips provide a zone of filtration that protects surface water by allowing remaining vegetation to remain essentially undisturbed.

Soil Conditions

There are no stable soil conditions and we are planning on putting it into a stable soil condition. We are proposing to make it better than it is. We will replace the unstable vegetation that is there and we will place quality vegetation in its place.

If we are going to do what our neighbors are doing we should be granted a variance.

Meeting the variance criteria

We would like the board to respond to each variance separately.

I believe our lots are larger than the “required” lots. It is a home subdivision and I think it meets the local neighborhood.

The eroding shoreline presents a practical difficulty. Everyone agrees that you wouldn't want to deny us from making the slope more stable. It would make some lots to become unbuildable eventually. It would be a hardship if you would not allow us to be treated like our neighbors especially if we are willing to use our dollars to stabilize the shore line. We feel that we meet every requirement that is required by the variance proposal.

We have listened to the Commission and the neighbors. Please listen to the engineering experts when they tell us, with their experience, that a 1:3 slope is the proposed slope. If we remove the setback issue we should be treated like our neighbors.

QUESTIONS FROM THE COMMISSION

- 1) Janet Green: Concerns with the revetment at the bottom. There is no document from the DNR permit for conditions 8–16 (or more). Janet would like to see this. DNR refers to 15-16 but these are not included in Odysseys Preliminary Plat. Janet would like to see the ENTIRE DNR permit. Soils report talks about a minimum of 1:3 slope. Safety factor built into it. The slope itself is relatively minimal compared to the way the shore is right now. Soils engineers recommend a 1:3 slope.

Greg Schendel: Clarification on the permit. Sue Lawson has the entire permit somewhere. If we do not have it Odyssey will provide it. They do not have it with them right now.

- 2) Janet Green has a concern regarding the slope, which is that even a 1:3 slope may not be stable. Mike (with Krech & Ojard) assured her that the 1:3 slope is NOT steep and would be easier to walk down.
- 3) Janet Green: Regarding the best vegetation. She has known the area for 30 years. Ravine on the west side has cedar and is working the best on this part of the shore. She would like to see some Cedar. Janet would like to see the Ravine undisturbed. Odyssey assured the Commission that they are NOT going into the ravines.

4) Sue Lawson: Asked how many trees are you thinking on each lot? A typical 10 foot x 10 foot planting would have about 600 trees per acre. The area that you are looking at is about ½ acre. Just so the audience has an idea of how many trees. Luke (landscape architect), replied – 30-40 on a ½ acre in front. Odyssey has talked to Landscape designers and they are talking 100's of trees. With SWCD they are going to put in a variety of sizes and park grade trees. More natural looking. Things that happen in nature. Take trees that they can move from the site and place them in a spot where they can continue to grow rather than just cut them down.

5) Janet Green: Concerned about the ravine and removal of vegetation.

- Janet – the vegetation removal. This is a terribly eroded slope. But to stabilize it at 1 to 3 you have to remove a lot of vegetation at the top of the bluff that has trees on it. In order to get the 1 to 3 you have to remove trees. Bob Ryan response: He said that there aren't a lot of trees at the top but Janet feels that there are missing pieces in the Plat that she would like to see more detail.
- Luke addressed Janet's concern regarding the ravine. There is a V with a silt fence so that the ravine does not get disturbed. There will be revetment at the bottom of the ravine but not disturbing the ravine.

6) Yvonne Rutford: Questions regarding lots 6 and 7 and why they are closer to the slope/lake?

Bob Ryan responded that the houses were set back further from the OHW. 2=140 3=130 however 3 lots/sites are closer. The easterly 3 lots have constraints regarding the wet lands behind them.

7) Janet Green: Regarding the Home Owners Association and vegetation maintenance. Janet feels this will be a challenge.

8) Janet Green: Building on the slop is Janet's main concern. Janet looks at Burlington Bay and the erosion is coming down over the revetment toe.

Mike (with Krech & Ojard) responded that a 1 to 3 slope angle, from an engineering opinion, is stable. Based on soil investigations Mike feels this will work. Can't guarantee it for 150 years. Have done soil investigation for the soil on the slope and when the houses are built the builder will be testing the soil as well.

Greg Schendel responded that Odyssey is following the soils report and will follow this and rely on the professional engineer.

9) Janet Green: Who would be responsible if the erosion control doesn't work?

Greg: Are you concerned about the home owner or the slope stability? Janet: Both. Janet is concerned that the houses are too close to the shore and this bank is not stable. Five of the 8 proposed houses are at least 130 feet back. Can't point to a responsible person if the shoreline doesn't remain stable.

10. Dave Miller: Would like Bob Ryan to go over the hardship part again.

Bob Ryan responded that he believes that it is a hard ship if the Township doesn't allow him to fix the practical difficulty of the shoreline. You not allowing me to fix my own site that has an eroding shoreline is a hardship.

Janet Green responded that the difficulty occurs when you place the houses too close to the lake.

Bob would like the Commission to treat the Variances separately – stabilizing the slope and not taking the houses into account.

Bob feels that they have the aesthetic right and economic right to fix the unstable slope.

PUBLIC TESTIMONY

Dave Chura reminded people of the Public Conduct that they agreed to by signing the sign in sheet.

Sue provided further information about the Comprehensive Plan. It is the basis from which the Ordinance was created. Look at the Comp Plan as information which is used to codify the Plan.

Lisa Pomroy (5335 North Shore Drive):

I work for Odyssey as their Chief Accountant and am also a community member of Duluth Township. By approving Odyssey's subdivision request the new development would increase the tax base for revenues to the County, the Town and the School District.

I have been with Odyssey for 4 ½ years and really believe in the company and believe that they do development right and used Larsmont Cottages as an example. Lisa believes that Bob Ryan does development right. Look at the trees that have remained at Larsmont Cottages and the protection of the environment with the rain gardens. That property reflects the type of work that Odyssey does. Odyssey Development supports this community. We all live, work and play in the community. Odyssey also uses local vendors. Buy appliances locally. Also support the community with our resorts - \$150,000 worth of certificates to organizations. She is in favor of the Odyssey Subdivision being granted.

Dave Mount:

I would like to speak as an individual citizen and not as a Town Board member.

First I would like to speak to the matter of hardship. Hardship does not mean being able to develop to the maximum density. It includes being able to build to the maximum density allowed in the Ordinance, which speaks to capacity of land and many other factors. By proposing a subdivision, with the lot lines that are being proposed and the home sites that are being proposed the hardship is of the applicant's creation and therefore it is not a legitimate hardship. Finally, the hardship can not be financial. The applicant just spoke to one of the driving forces being maximum economic development of the property. That is not a hardship.

There is a very important point that Janet Green brought up, there is No Guarantee here. No means or action to be taken if the re-contouring of shoreline does not perform as expected. There is no remedy here. If the re-contouring begins to fail who is responsible? How can an entire development that is dependent on the assumption that the re-contouring does not fail be approved without some form of assurance of its permanence. The permanence of the re-contouring is the foundation of the entire proposal so it must be guaranteed.

My concern of the Subdivision boundaries themselves is defined in the Ordinance: Article 4, Section 4 part B on page 46. The Ordinance states that contiguous lots that under the same ownership must not be considered as separate lots for purposes of development if one of the lots is unbuildable under the terms of the ordinance and they must be combined until they meet the requirements of the ordinance. So that basically makes the approval of an unbuildable lot against the ordinance – you can't do it. And the buildability is dependent upon the granting of the variance. If, as the applicant has stated at a previous meeting, two of the lots are not buildable the variance should not be granted. The alternative would be to grant the subdivision and then require the applicant to recombine the resulting properties until they meet the Ordinance.

Also concerned with erosion and erosion control measures. The implementation of the erosion control measures does not assure long term stability. This is still a clay bluff with no bedrock foundation and its erosion is inevitable. The set backs for the homes should be required to meet the current set backs, because, as stated by the applicant the re-contouring stability can not be guaranteed. If the applicant can not guarantee the stability of the bluff why is it appropriate to ask the Commission to make a decision that is based on the long term stability?

I request that the Commission not grant the current variance.

Bill Weckman:

Two years ago a re-zoning process took place, a very comprehensive zoning of our township. You will be told in the zoning what you can do, everything else will require a variance. That is one way to do it. The other way is to say "we will tell you what you can do and everything else is illegal". A lot of time was put into writing the Ordinance and the Planning Commission did a wonderful job in spelling out what can and can not be done in the Ordinance.

Watched the best available engineering and the best available consultation, assemble and bring back time and time again to present and represent and meet every single requirement the Commission has placed on someone wanting to do something like this. It is commendable and I feel that Odyssey has bent over backwards for the Commission.

There are safeguards built in. Odyssey's proposal is well within the ordinance and the houses are not right on the edge.

Bill is concerned that the Commission would like to see a guarantee and there is no guarantee. He believes that Odyssey is a good company and is spending money in the Township and wants to develop the right way. Odyssey seems to have covered their bases and doesn't seem to be trying to pull the wool over anyone's eyes. As a neighbor he would like to see this proposal granted.

Dave Chura :

Reminded members of the audience to please follow the rules of conduct.

Charles Andresen (Attorney for Odyssey):

I believe that the Plat does meet the requirements. On the first 3 you certainly don't have to necessarily look to grant those under the variance. It is a very unusual situation that you have with the property that has very little vegetation on it. So you could grant those variances on the special condition part rather than having to get into the hardship. I would suggest that when you look at those variances you look at the special conditions rather than the hardship.

Valerie Brady:

I am a township resident but I also work for the University in ecology, teach wetland ecology and currently have a research projects dealing with development along the Lake Superior Coast, including our Township. I am also a land owner in the Township.

I see a problem with the bank stabilization. I agree that there is no way of guaranteeing that the stabilization plan for the slope will work, but it could be putting future homes in jeopardy. The farther you can set structures back from the lake the more protected you are of the Lake itself. You could get a much larger filter strip.

At the Open house last month there was a lot of talk about wet lands and that there are wet lands between the road and the top of the bluff that are constraining where the buildings can be placed. As a wetland Ecologist I can tell you that wet lands this close to the shore and this far down in the water shed are not doing much to protect the Lake. Also, from looking at the property I wouldn't call these high quality wet lands, certainly not critical wet lands. To be more protective of the Lake it would be better, if possible, to have the wetlands between the structures and the Lake. Then wetlands are really good at filtering, that is what they do. That would be the ultimate filter in helping to protect the Lake.

The storm water plan is commendable and is going to be necessary no matter where a structure is placed on the site. But, because the homes are proposed to be located at the top of the slope that means that most of the storm water can't be infiltrated. You don't want the storm water to go into that slope because that would destabilize it so then it would need to be run off into the Lake as quickly as possible and that would be untreated storm water going into the Lake. If the storm water were run through a wet land it would be more treated and better for the Lake.

I concur with Dave Mount regarding the fact that this is a natural situation and the idea that we can just re-engineer nature and make it better, which, there are slopes that are 1 to 3 and they are stable but humans didn't go and create them, those were there naturally. We don't know if we can go in this situation and create 1 to 3 slopes and are there things on this property that will keep this new slope from being stable? We just don't know.

My main point is: Why take that risk so that people can have a pretty view of the Lake? That pretty view isn't going to be so pretty if the slope does start to fail and the homes are at risk. No guarantees that the slope will remain stable.

John Green:

I am a Township resident and I live on the Old N. Shore Road. I am a retired professor of Geology at UMD. I taught Environmental Geology for about 25 years. One of the things covered in that course was slope stability. This is the topic that I am particularly concerned about in this case.

I would like to make a comment regarding Odyssey's interpretation regarding the shore land requirements. It has been stated that the reason of creating this "stable slope" is to protect Lake Superior from pollution. I submit that another good reason for address the character of the shore is to keep it in a natural state. Keeping silt and clay out of the Lake would be un-natural frankly. *(Handed out a document to Commission Members).

1. Study from Wisconsin. The clay deposits from this study are very similar to the clay deposits that we have here on the shore. They did this big study and determined that the basal angles are in the range of 7 to 17 degrees. Up to 25 degrees in some steeper areas. Shows the clay bluff's like these, where the steepest angles are about 30 degrees where there is erosion at the base. The slope response to this erosion, in about 10-20 years, was a 15

degree angle. Over 50 years was about 10 degrees.

The Commission has asked Krech & Ojard a number of times to produce specific data that supports the 1 to 3 angle and all they have said is that “we have done these kinds of things all around, believe us”. The 1 to 3 angle, as far as I am concerned is not supported by actual data. This slope should be about long term stability.

2. The other major factor is the erosion at the base of the slope and the sloping of the slope. Krech & Ojard has demonstrated this also. There are two factors 1) Stabilization of the base of the slope and 2) how long can you wait for stabilization of the slope and is 1 to 3 going to be a good enough angle? It is my opinion, with the results of the engineering studies done in Wisconsin, it is not.
3. Exhibit from Wisconsin Sea Grant. Set back for a stabilized slope. Minimum facility set back away from the top of the slope. Even if it is supposedly a stable slope the set back should be further back away from the slope.

Finally, I have an acquaintance who is a Geology Professor at the University of Wisconsin Madison who has done extensive research on slope stability and he sent a pamphlet regarding “Lake Superior Shore Land Erosion and Building Set Backs regard to developing coastal properties in Bayfield County”. In Bayfield County they recommend 14 degrees as a stable slope angle which is about 1 to 4. This is based on quite a few measurements on stable and unstable material. My colleague states that he believes that with a 1 to 3 slope there will be problems in the future.

Corlis West:

I was at the Open House last month and some of the things that I saw there caused me some concern and that is why I am here tonight. From what I understand Odyssey is proposing a certain number of lots, however these lots are not straight forward simple lots or Odyssey would not be going through the expensive process that we are in the middle of right now. These lots have complicating factors and that is the reason that we are here tonight.

1. For one they are on the shore of the largest body of fresh water in the world and the cleanest of The Great Lakes. A resources that the State of Minnesota and the Township has recognized as worthy of protecting.
2. There are wet lands present in this area, also recognized by the State in the 1991 MN Wetland Conservation Act and by the Township as worth protecting.

The Township has limited jurisdiction over wetlands or areas below the ordinary high water mark of Lake Superior. Our ability and responsibility to oversee and regulate land use above this area is stated in MN Statutes Chapter 366 and 462. In order for homes to be located in the areas desired by Odyssey Development the natural area next to the shoreline will need to be altered. This will allow building locations to be closer to the waterfront. At present our land use ordinance requires that structures be located 125 feet from the upper most sheer cone or top of the erosion bluff, which is stated in Article 6, Section 3, Part B, paragraph 5. While a site development plan described in the Zoning Ordinance Article 6, Section 3, Part B, paragraph 3 refers to the possibility of slope alteration in the shore land overlay area, other restrictions may preclude this option. A lot of these have been talked about before and I am going to go over them again because I think they are important.

The character of these hillsides are eroding things. I think from photographs and everyone we have to agree that it is an eroding thing. But, to characterize them as bad or un-natural is not correct. I believe that it is natural phenomenon. Natural materials transport and movement. It provides for the transport of natural debris. Trees may slide into the water but a lot of research has proved that this then turns into habitat for many organisms.

Article 6, Section 2 - Filter strips. These strips provide a zone for filtration and protect surface water by allowing remaining vegetation to remain essentially undisturbed. Everything that I have heard about this plan this is not the case – to leave the vegetation undisturbed. Natural filtration should be maintained. Existing vegetation must be maintained. The Ordinance states that the removal of natural vegetation is not allowed without obtaining a permit from the Planning Commission. Removal of natural vegetation is restricted and limited to the following: dead, diseased, dangerous and storm or fire damaged trees, shrubs and plants and the trimming and pruning of trees, shrubs and plants. Everything that I have heard tonight does not speak to this. In Article 3, Section 3, Part C – vegetation clearing. In no case shall intensive vegetation clearing be allowed on bluffs and steep slopes. The removal of natural vegetation is limited to dead, diseased, dangerous and storm or fire damaged trees, shrubs and plants and the trimming and pruning of trees, shrubs and plants. This is the second time this is stated in our Ordinance. The Ordinance also states the removal should not be done by heavy equipment. How can the proposed site plan be accomplished without using heavy equipment? To allow someone to come in and bulldoze this area for their profit sets a dangerous precedence for this area.

Wayne Dalhberg

He is for advocating for growth but advocating in a smart manner.

The site comes with natural hardships. Back when the NSMB was created it clearly states that you can request, by variance, that if you can prove that you can stabilize or slow down the erosion rate you could request a closer set back. Be prudent when looking at all of the factors.

They have really put their best foot forward with working with professionals and they have worked hard and come up with good solutions. Do they need some work? Maybe. They have gone through a level of study that has been needed at this time.

Who is the responsible party? I am a registered architect and if something goes wrong their goes my license. If the slope doesn't work – it is their responsibility. These people take their work serious. It is people's jobs and homes at stake. They're request is based on the Ordinance. I think we need to listen to it.

Don Long:

He is a brick layer by trade. If someone wants me to build a fireplace I won't build one that I feel is not safe just because someone tells me to. Krech & Ojard are reputable and they will do work to the best of their ability and not do something that they don't believe in.

I have also worked with Odyssey and they have not cut corners. In fact, they have left trees and taken the long way around when it would have been easier not to.

Toni Fladmark:

Thanks to Odyssey for all of their work and taking community input. Appreciate and respect that.

She has concerns about the set back but not the development. She is grateful that they have moved 5 of the properties but would like to see the 3 lots back at least to the 125 foot set back. If the variance is granted, don't blanket the set back and make sure that the specific lots state the specific setbacks. Please pay attention to the set backs.

Ken Johnston:

Township resident and a contractor that has worked with Odyssey. They go above and beyond to not tear up the land. Each site is carefully thought out. I don't see that anyone else is going to come in and go through all of this to build on this site. He thinks it is a good thing. The bank by the Sucker River is ugly and I don't care if it is natural. It is a good opportunity for the community. I think we should go for it.

Public Testimony Closed

Dave Miller made a motion to close the Public Testimony. Motion was seconded by Janet Green. Approved. Public Testimony closed.

SUBDIVISION REQUEST DECISION

Janet Green made a motion to approve the Subdivision Preliminary Plat with the lot lines but with footprint of the houses that are on the Plat removed. The Home Owner Association is a plus. The revetment at the bottom of the slope is a plus. The only issue is the set back. Seth Levanen seconded the motion. It must be in conformity with all St. Louis County Requirements.

Discussion

Yvonne Rutford: If we approve an 8 lot subdivision without the variance approval for the 2 lots that are not buildable what does that mean? There are places on the lots that only have to be 110 feet from the road. The 2 lots that are close to the Lake could be set back farther.

There was clarification by Bob Ryan on the 2 unbuildable lots. They are unbuildable if we don't get a wet land forbearance, but we could do that. It could be a dedicated out lot.

Janet stated that the only one that is a problem is lot 8. It isn't a wet land – there are other places for houses on that lot rather than on the bluff.

Ken Butler responded that the lots conform to the 2 acre requirement so all lots are o.k. as per Yvonne's request.

Sue responded that the lot lines and the set back lines are on the diagram/map that has the variance request on it. The set backs on the map are from the High water mark and the road. The point is that there is sufficient acreage for the 8 lots. There are wet land issues with 2 of the lots but there are dimensional areas for the 2 houses to be positioned on the lots.

Motion was restated as follows: That the Subdivision Preliminary Plat with the red lot lines, without footprint of the houses on it, meet all requirements of the Town of Duluth and that it meet all St. Louis County requirements be approved. Seth seconded the motion. Motion approved.

SUBDIVISION VARIANCE REQUEST DECISION

Seth moved to approve the variance as presented. There was no second.

Dave Miller moved to deny the variance in that there was no hardship.

When Odyssey purchased the property the bank was there and they know that it could be developed in a certain way. This really isn't a hardship to have them choose to put the houses closer to the lake. This is a hardship created by Odyssey.

Yvonne seconded the motion.

Discussion

Janet would like to see all of the vegetation requirements bundled together. There is need for more specificity regarding the vegetation. The Home Owner Association being responsible for the maintenance of the slope is a good addition. Strikes me that the vegetation portion should be held over.

Dave Chura state that the Town received 5 letters from community members and would like that placed into record.

Michael Kahl had questions on the wet lands allocation. They are an artifact of the roadway that is there.

Ken Butler stated the he thought it is important to look at the criteria of a variance. It can be granted as a practical difficulty as well as a hardship. We should look at the variance not only as a hardship. Encourages the Commission to look at the variances as practical difficulty as well as hardship.

Yvonne stated that the land can be put to use without a variance. Everyone in an Erosion Hazard land area and the land owners are dealing with the same issues. The desire of the community is laid out in the comp plan. And it talks to the natural physical characteristics of the land and we need to work with that.

Janet Green reiterated items from the Comp plan. Under B. Policies and General Land Use 1 3E and 4 (page 14 of the comprehensive land use) to go into the variance.

Seth said that we should forget who the owner is and what the intention is. Seeing the photos and the rate of erosion is there something that we would want to do with the Erosion Hazard Area?

Dave Miller: The slope in question is naturally slumped. This is a natural condition of the site that really doesn't need to be altered as part of the site plan.

Seth: What is bad that occurs by nature? How do we decide the line of natural erosion as being bad or not? Erosion man creates o.k.?

Janet: We don't need to see it as natural erosion or not. If we deny the variances then that gives us another opportunity to work on another configuration at the top of the slope.

Dave Chura: In regard to special conditions, and looking at the shore line in that area - It is a typical erosion of the shore in the area.

Bill Lannon: Would like to see a compromise. Compromise on the set back of the houses. He is a little concerned about the erosion. Doesn't want to turn Odyssey away and would like to work on a compromise. He is concerned about the set back as well.

Janet Green: She is concerned about the slope stabilization.

The motion was to deny the variance request. The motion was passed with the following vote:

In favor of the motion:

Dave Miller
Dave Chura
Janet Green
Yvonne Ruttford
Bill Lannon

Opposed to the motion:

Michael Kahl
Seth Levanen

NEW BUSINESS:

Short Term Rental CUP

There is a Proposed Short Term Rental CUP. The Commission needs to determine the Area of Impact for the CUP for the Community Participation Report.

The application is from Christine Schousboe. The Property is located at 5856 North shore drive, next to Dodges Log Lodges. She requests a Short Term rental on the first floor of her home. For rentals ranging from 2-30 days. There is parking for 2 cars.

She wished to do short term rental because of the rising cost of her home and hasn't been able to find suitable long term renters. The caretakers are right next door.

The Commission determined the area of impact to be ¼ mile in depth down to Stoney Point Drive and inland to Old North Shore Road if applicable. To the East go to the Lake County line ¼ mile in depth.

Jeanne Anderson has resigned from the Secretary position, she is moving out of the Township. Her last day is May 31st, 2008.

The Town is moving forward with a Duluth Township Community Center / School Master Site Plan Processes. It is anticipated that the project will conclude by September of this year. Four meetings will be scheduled.

The Commission was asked if they would like to meet as a group and provide input for the Master Site Plan. The Commission responded affirmatively. Dave Chura will set up an account at Doodle and people can go there and designate what dates would work for them in early June.

OLD BUSINESS: None

CONCERNS FROM THE AUDIENCE: John Bowen stated that the sewer system is not close to its 2% growth for 20 years.

CLOSE / ADJOURNMENT: Dave Miller made a motion to adjourn. Seth Levanen seconded. Motion was approved. Meeting adjourned at 11:15 p.m.