

**Town of Duluth  
Planning Commission  
Approved Meeting Minutes  
12/17/09**

The meeting was called to order at 7:04 p.m. by Commission Chair Dave Chura.

Roll call:

Present: Dave Chura, Jan Green, Mike Kahl, Seth Levanen, Bill Lannon and Barb Crow

Absent: Yvonne Rutford

Also present: Sue Lawson, Planning Director; John Kessler, Assistant Planning Director; and Dave Mount, Town Board representative

The Agenda for the evening was adjusted so that Concerns from the Audience was moved up to follow the approval of the minutes. Otherwise, the Agenda was approved without changes.

Regarding the minutes from the October meeting, Jan wanted the resolutions on the Odyssey decision to be referenced and attached separately – first, the resolution as it was put on the table for discussion, and then the resolution as it was approved. Dave Chura suggested that Dave Mount be added to the introductory material in the “Also present” category. The October 22 minutes were approved with these changes.

**Concerns from the Audience**

Don McTavish said that January 23<sup>rd</sup> would be the deadline for submissions to the next newsletter. The deadline is always on the 23<sup>rd</sup> of the month and he said all ideas and contributions would be welcome.

Sue suggested that we might want to put something in about the new land use permit fee schedule.

**Planning Director Report**

Sue said that she got a request from St Louis County to verify gravel pits in the Township. There are 4 in the Township, Warren Peterson’s, Johnny Hagglund’s and 2 others.

There is a case on the Ulland tree farm property North of Pioneer Rd and off of Bergquist Rd where a structure has been put up without a permit and too close to the property line.

A hearing for a subordinate dwelling CUP was supposed to be held at tonight’s meeting, but the applicants are still working on title issues so it has been postponed.

There is also another subordinate dwelling CUP application coming up. The property is on north Bergquist. They hope to build in spring.

The Worden’s short-term rental permit expires in January 2010. Sue has received another communication from neighbors adjacent to the rental property indicating that there have been continuing problems and that they are looking forward to the January P&Z meeting to see what is going to be done. The permit was issued 2 years ago. It is unclear if there are issues with putting time limits on STR permits.

Sue talked with Scott Smith regarding the Stony Point subdivision preliminary plat approval hearing with St Louis County. Their Planning Commission looked at it. No design changes were made, but they want to have the driveway/road entrances to the subdivision named for 911 purposes. The County also often wants wetland impacts in place and roads in before the final plat approval. In addition, Sue thinks the revetment may need to be done before the final plat approval. The preliminary plat approval is scheduled for their February 11 meeting when the minutes are approved. Then the Township will get an official letter from them saying that they have approved it and it comes back to the Township's Planning Commission for their final approval, after which it goes back to the County for its final approval. After looking at the Ordinance, Sue said she doesn't think another public hearing is required before the Planning Commission can make their final approval.

Sue said that the Bieraugel court hearing is scheduled for December 22.

Dave Mount said that he has the official court filings for this hearing – memorandums and responses from each party. He will put that information on Microsoft's file sharing site. Anyone who wants to access it will need to let him know so that he can allow them access. The hearing will be the oral arguments. The MAT attorney said that it is rare for the judge to actually make a ruling at the hearing. Huck Andresen and his associate, Maki, are preparing the arguments for the Bieraugels. Andresen will probably argue it.

Dave M said that as he understands the history of our Ordinance, much of the variance language in our Ordinance comes from the County. The Minnesota statute that authorizes counties is not the same statute that authorizes townships. The practical difficulty language is in the statute authorizing counties, but not in the statute authorizing townships. So part of the argument in the case is based on Bieraugel's attorney believing that we should have applied the practical difficulty standard. But that wasn't the way the Commission looked at the decision and our attorney's argument is that whether or not it is in our Ordinance, we don't have the authority to consider it. So there appears to be a disconnect between our Ordinance and the statute that authorizes us to have that ordinance and we need to look at that at some point.

### **Chair Report**

Dave Chura said that at the January meeting we will work on prioritizing P&Z goals for 2010 and review the budget. He also noted that the Comprehensive Land Use Plan is from 2002 and the Commission may want to consider when to look at that again.

Sue said that there is no set time for reviewing the CLUP. The Commission can look at it and can decide that it needs revision or can decide that no changes are needed.

Ann Cox will be preparing the current budget information for the Annual meeting and we should have that information for preparing next year's budget.

### **New Business**

None

### **Old Business**

The Town Board allowed the moratorium on short-term rentals to expire and did not make any changes in the Ordinance regarding them. So the issue needs to be revisited.

Sue said that we could look at handling STRs in two different ways: by geography (zone districts that are suitable for or not suitable for STRs) and by placing conditions on them. If the Commission decides to place conditions on STRs, those conditions would be included in the Ordinance under Article 10. Sue

suggested that we consider geography first and then consider conditions. There are issues and concerns that were identified in our research and at the open house that was held for community input on STRs. We can potentially address some of these concerns by applying conditions.

In the Ordinance, STRs are allowed as follows:

“Dwelling, short-term rental”; designated “C” (conditional use) in zones: FAM-1, FAM-2, FAM-3, MUNS-4, SMU-6, SMU-6A, SMU-8; designate “PS” (permitted with performance standards) in zones: SCO-8A, SCO-8B, COM3; designate “not permitted” in zone LIU-3A.

The definition for STRs is:

A single-family, two-family or seasonal dwelling where the dwelling is rented by the owner for periods of less than 30-days and is not occupied by its owner during rental periods.

Dave M said that in the Conditional Use part of our Ordinance, it says that if a CU is discontinued for 36 consecutive months, the permit will be terminated. He said that under the Statute, the Town has the authority to reduce that to 12 consecutive months -- but that would not be without its problems either.

Sue said that problems with noise control and general disregard for neighbors in the community were common issues identified in the research and at the open house. It was decided to use a list of possible conditions that Dave Mount had provided to the Commission at a previous date to direct the discussion. The list was projected on a screen and notes were added to each condition as it was discussed. The following is the list, including new conditions that came up during the discussion, and the notes for each condition.

### **Possible Conditions to Apply to Conditional Use Permits for Short-Term Rentals**

- 1) Need to be consistent not only with the broader development patterns of the land use zone, but also with the specific development immediately surrounding the property, particularly avoiding areas with intensive residential use. Consider not only general factors such as lot size, but also factors specific to the individual property, such as proximity of actively used spaces on adjacent parcels that may be affected by uses reasonably associated with a recreational/vacation use (as opposed to longer-term use as a primary residence).
  - In SMU 6 and 6a the lots are very close together
  - We would have to look at each individual house and how can you do that? With CUP application?
  - Density: lot sizes, setbacks. If the goal is to isolate, then the larger the side-lot setback, the better.
  - STRs are mostly in recreational areas -- most STRs in our area are likely to be along the shore. We should focus on the shoreline.
  - DM – Zones are not always developed to maximum standards – we can put conditions on such as side-yard setbacks or not selling a buffering lot. The Board thinks these are setting-dependent and should be evaluated on case-by-case basis.
  - JG – There must be some criteria – otherwise discretion of the Commission becomes arbitrary and capricious. Some lots on the shore are developed less intensively than others.
  - JG and BC will work on wording for this item
  
- 2) Applicant must present evidence that property can be used as a short-term rental without

substantive impact on adjacent properties or the neighborhood as a whole, and that concerns of other landowners judged reasonable by the Commission can be largely mitigated through operational controls or other measures.

- What would this evidence be? Meet the criteria from 1.
  - DM – make the applicant have the burden of proof – they have to show that this is a good place for a STR. SL – burden of proof has always been on applicant in CUP process
- 3) Applicant must provide affirmative evidence that the sewage disposal system, whether onsite or offsite, has the capacity to effectively treat 50 gallons of flow per day per rental occupant. Use of holding tanks or other temporary sewage storage facilities to meet this requirement is not allowed
- Ok as is
- 4) The Planning Commission may impose conditions that will reduce the impact of the proposed use on neighboring properties and nearby waterbodies. Said conditions may include but not be limited to a fence or vegetative screening along a property line or a native buffer along the shoreline.
- Helps make the applicant aware of how it all works
- 5) The owners of Vacation/Private Home Rentals shall ensure that the noise standards of Minnesota Rules, chapter 7030; or successor rules, are met. The Planning Commission may impose quiet hours standard in order to assist in achieving this goal and to reduce the potential impacts on neighboring properties.
- Ambient noise level is 34 decibels.
  - JG – What about barking dogs?
  - DM – Resolution of conflict tends to be a long-term process and when the source of discord is transient, as is the case with STRs, it makes enforcement difficult
  - SL – Quiet hours, dogs barking -- after X numbers of complaints from surrounding neighbors then must be mandatory mediation paid for by short-term rental owners
  - Need to develop language regarding complaints.
  - There are 3 decibel-related noise categories defined in Minnesota Administrative Rules Part 7030
  - Cannot depend on Township having to measure decibels
- 6) No rental or occupation of recreational vehicles or other use of tents or other facilities for sleeping while the property is being rented.
- Ok as is
- 7) On-premise signs are prohibited.
- Except: Require a sign, approximately 8 ½ by 11 inches, indicating that the property is a STR and with a phone number to call if there are any problems

- 8) Prior to rental of the property in any calendar year, landowner must present to the Planning Director copies of any licenses, including license to charge sales tax, required by the State or County under current or future statutes or ordinances. Failure to present evidence of licensure shall be interpreted as meaning that the property was not used for short-term rental during the calendar year. Cessation of a conditional use for three consecutive years shall result in expiration of the conditional use permit.
- SL suggested the following conditions:
    - Must be ADA compliant including bathrooms
    - Since commercial endeavor – should be assessed as a commercial property
    - Should require licensing by MN Dept of Health
    - At least a million dollars liability insurance. Bonding to pay for mediation, etc.
    - Require fire and CO detectors
  - BC – Determine the time period for renewing permit or lapsing due to non-use
- 9) Sufficient off street parking must be available.
- Ok as is
- 10) Routine garbage service is maintained.
- Garbage gets strewn about. State that garbage must be contained.
- 11) The licensee shall keep a report, detailing use of the home by recording, at a minimum, the name, address, phone number and vehicle license number of all guests using the property. A copy of the report shall be provided to the Department upon request.
- Licensee shall keep a record and mail a monthly report to the Town Board detailing to who, when and for how long the unit was rented during that period.
- 12) Landowners must provide for a local contact to oversee the property that is able to respond to problems at any time and is located within reasonable commuting distance. The Planning Director, tenants, and adjoining property owners must be provided with telephone numbers at which the property overseer can be contacted at any time. Alternate contacts must be provided whenever the primary overseer is unavailable within one hour.
- Must have local contact and must have a contract (with time frame) with that person.
  - Current agreement with local contact to be provided to the Township yearly.
- 13) Inspections of rentals can be made with reasonable notice to licensee. License revoked after X number of warnings.
- Based on X numbers of substantiated complaints, mandatory mediation or binding arbitration with bonding to pay for this.

- 14) A copy of rules pertaining to STRs is to be displayed in rental unit
  
- 15) Permit to be posted in rental unit showing contact information, number of people allowed, etc.

Additional discussion:

- SL will look at language on 13 and on tax issue and how to structure bonding
- BC – What about grandfathering if we change our minds about STRs in general? As long as they maintain these standards, they can keep CUP forever?
- Include STR conditions in the Ordinance so that people can see what is expected if they have a STR in the Township
- DC – maybe look at interim use permits?
- It is not clear if CUPS can have time limits on them
- Don McTavish – What about costs of police calls? And what can police do – throw the renter out?
- DM – Police would enforce as usual for illegal matters. For violations of STR conditions, hope is to put culpability on owners. But there has to be some way to verify that complaints are legitimate. Some way to substantiate claims.
- BL – When police arrive they either substantiate or not and give a short report
- SL – We need to be very clear about what the rental periods are. We have had appeals based language not being explicit enough.

It was decided to continue the discussion at the next meeting, giving Commission members time to review the points discussed tonight and review the research on STRs that was distributed at a previous meeting.

Next on the agenda was wind energy generation. The working group looking at wind energy generation and how it fits with the Township and the Ordinance is still researching the issue. Jan Green suggested that they look at the Maine State Planning Office's website on Model Wind Energy. She suggested that the group look at free-standing generators as well as attached vertical ones.

Sue agreed, saying that communities in rural areas may want the option of looking at larger generators.

Barb said that for the time being, they are looking strictly at residential wind generation sized below a certain level of generation. She also said that if a height limit is imposed, it may exclude some forms of wind generation.

Jan also said that we need to think about larger wind generation projects. Wind energy is getting a lot of attention and is being actively promoted. She suggested that people look at Minnesota Project's report on the web called Lessons and Concepts for Advancing Community Wind. There is a large gap between the size projects that utilities regulate and the size regulated by local land use policy.

The meeting adjourned at 8:45 p.m.