

**Town of Duluth
Planning Commission
Meeting Minutes
January 29, 2009**

Chair Dave Chura called the meeting to order at 7:04.

Roll Call: Present: Dave Chura, Mike Kahl, Bill Lannon, Seth Levanen, Dave Miller, Yvonne Rutford

Absent: Jan Green

The evening's **agenda** was approved with no changes.

The December 18 **meeting minutes** were approved with no changes.

Planning Director Report

Sue Lawson said that she received a letter from Bob Ryan that they will move ahead with another variance request for the Odyssey subdivision on Stony Point, but has not yet received the application. The hearing is not likely to be soon because they have to get their documents together again and complete another Community Participation Report – probably another open house. The Community Participation Report would not be required for just a variance, but is necessary because the project involves subdividing. It was moved and carried that the notification area for the Community Participation Report will be the same as for the earlier variance request. The subdivision plat has been approved by our Commission but Odyssey still has to have it approved by St Louis County Planning Commission. Odyssey had asked to postpone the original hearing with St. Louis County, but it was too late to cancel the hearing so the county denied their request without prejudice, which apparently means they can pick it up without starting the process over again.

Sue said that she had not heard back from Bob regarding the minutes from the December 13 working meeting. The approval of those minutes had been tabled at the January Planning and Zoning meeting pending Bob's okay of the wording changes suggested by the Commission.

There is a public hearing and an open house scheduled for the next meeting of Planning and Zoning on February 26. The public hearing, a CUP request from Bob and Leslie Mohs, will be at 8:30 following the open house. The open house is for public input on the short-term rental issue -- the policy as it exists now in the Ordinance. If there are not too many people, we can have a discussion. If there are a lot of people, we can set up tables and Commission members can meet with individuals. Mike Kahl has compiled some information on short-term rentals and how other communities deal with them. The Commission will use that information along with public input to make a recommendation on short-term rentals to the Board of Supervisors. The Commission will discuss it and make their recommendation at the March meeting. It will then go to the Town Board in April. The moratorium on short-term rentals that was put in place by the Town Board while the issue is evaluated is for 1 year.

The BOA upheld the Planning Commission's decision regarding the denial of the Worden's request for a Conditional Use Permit for their 5232 Greenwood Road property. Sue did not know if they were going to appeal it further. The Wordens are also appealing the decision made clarifying the conditions for their other short term rental. This appeal is set for February 9. Sue has also asked them for some more information on the conditions so we can review them. A lawyer has requested the history of the rental.

The Center for Changing Landscapes has completed the master site plan for the North Shore Community Center. Work on the \$75,000 LP grant, which had been the original impetus to pursue the master site plan, will begin this spring. The LK Johnson grant application has been put off until possibly April.

There will be an open house on January 29 regarding the use of firearms in the Township in the area between the expressway and the shore. There have been a number of complaints about unsafe hunting in that area. Shawn Padden suggested the possibility of limiting discharge of single projectile firearms. They are looking for comments and ideas from the community about how to make it safer for everyone down there. They hope that the meeting will be a problem solving meeting. It is a densely populated area and there have been a lot of complaints. John Kessler pointed out that there are also large areas of undeveloped land in that area where owners will want to preserve their rights regarding use of firearms. Clint Little from the DNR is putting together a map of the area with 500 foot radius circles around each structure.

The public hearing for the CUP request from Bob and Leslie Mohs will be held at the February 26 meeting. They are anxious to get it done.

Town Hall planning team is comprised of Bob Engelson, Dave Mount, Ann Cox, Dan Tanner, Don McTavish, Sue Lawson and Bill Lannon. The need for future planning for the Town Hall arose because there is not enough room for all of the fire vehicles.

Don McTavish said that the new pumper is being delivered on the 31st and the only place it will fit is at the Town Hall station. There is only 3 inches of clearance on either side. They also need extra room for another truck. In addition, at the station on Ryan Road, there are 4 vehicles and only 3 doors.

Sue said that there is also a storage issue at the Town Hall. The basement is wet and the foundation needs work. We want to plan for long range use like we did at the Community Center. The Township police are likely to need additional or different space in the future as well. With long-term plans in place, if infrastructure money becomes available, we will be in position to use it.

Dave Chura asked if there were plans to replace the current building or improve it and if there were plans to make the space available for more community use. Sue said that all options would be on the table. The team would not start meeting until after the annual meeting in March.

The Planning Commission's denial of Bieraugel's Conditional Use Permit request was upheld by the BOA. A summons has been served and the matter is now going to court. The case should not be discussed and all questions should be referred to our attorney. Minnesota Association of Townships is representing us. The Township's insurance pays for legal costs after the first \$1,000 (?). So far, the Bieraugels have submitted their appeal and the MAT attorney has responded to it.

John Kessler and Dave Chura believe that variances have been requested for this parcel and denied twice in past.

As far as anyone could remember, the Township has only been sued over planning issues once in the past.

Planning Commission Chair Report

Dave Chura thanked the Commission for their commitment and all their work over the last year. It has been a busy year with a lot of work. He also thanked Dave Mount, Planning Commission Representative from the Town Board.

The March P&Z meeting will be our organizational meeting. He suggested renominating Dave Miller for the BOA. Everyone needs to think about what we would like the Commission to accomplish in 2009 between regular business.

New Business

Sue handed out copies of the 2008/2009 budget (see attached). The Commission needs to come up with a 2010 budget for the Town Board's February 17 budget meeting, to be presented and approved at the March annual meeting.

Dave Chura asked if all application fees are included in the building permit line item. They are. Fines for \$125 were for late applications.

Sue said we ended up in the black – even with the legal fees -- because there was a carry over balance from last year of \$11,000.

Dave Chura said that we now have a carry over balance of \$3747.99. But we were over budget by about \$4,000.

Advertising is for legal notices to the Duluth News Tribune. The newspaper of record is set at the annual meeting. There is only \$300 budgeted for advertising in 2009.

We had a little more revenue from building permits this year compared to 2008, but Sue pointed out that revenues from building permits could go down given the economic times. There is currently not a fee for subdivisions.

Recommendations from the Commission go to the Town Board and the Town Board makes the final decision, to be approved at the March annual meeting.

Telephone expenses should stay about the same. We consolidated phones – got rid of phone lines and switched to cell phones.

It was decided that having funds for education was important. It is the best way we have to get information out on the Zoning Ordinance – why it is important and why we have it. Sue said there will also be a need for education for SWPPs.

Dave Miller pointed out that one of the goals when Sue was hired was to do more planning. There is a lot in the Comprehensive Plan that we haven't had time to get to.

Dave Chura read the numbers agreed on so far for the 2010 budget:

Telephone \$1500
Postage \$250
Training \$200
Office supplies \$800
Recording fees \$350
Advertising \$1500
New equipment \$300
Mileage \$1000
Education and Planning \$2000
Reimbursement recording fee \$100

Sue said that we get the recording fee from applicants so we would not need to have the \$100 for Reimbursement Recording Fees. Other recording fees are included in the \$350 under Recording Fees.

Without that \$100 the total of expenses besides wage-associated expenses is \$7900.

A discussion of wages ensued. It was felt that the workload for Commission staff members was substantially higher than in the past because of increasing complexity of the work and the greater number of public hearings held over the past year. It was felt that it was important to retain staff with experience. Current salaries for staff are Planning Director: \$750/mo, Assistant Planning Director: \$350/mo and Secretary \$150/mo.

The Town Board budget meeting is February 17. The Commission's recommendations would be needed for that meeting.

Don McTavish spoke, saying that because of all of the public hearings and the legal issues ensuing from those, a lot of extra care is needed on the part of the staff. He said that this is another argument for maintaining a well-qualified staff that understands the Ordinance.

Dave Miller said that as we make the ordinance more of a living document, there is going to be more and more controversy. We have never had as many complex cases as we have this year. We would be naïve to not expect more of these complex issues.

Sue said that every letter written could end up in court. So more time is spent on what was formerly thought of as routine communication.

Dave Miller said that the quality of work is also an important factor. The staff makes the Commission's job a lot easier. There are elements of quality, complexity and enforcement capability that we need to consider. We should make an effort to compensate appropriately.

It was agreed that Commission members could forgo an increase to offset an increase in staff wages.

John Kessler said that there could be some increased income from permitting. The Commission is in the process of reevaluating the fee structure. We can get a justifiably better income from the fees than in the past.

Dave Chura said that some fees are going to be added and some will be increased. We recognize that are not going to offset all of our expenses, but that fees can more accurately reflect the work load. For instance, there is no fee for appealing to the BOA, but there is a lot of work created by these appeals.

It was decided to recommend increases for staff and keep meeting reimbursement for Commission members the same.

Dave Chura read the new proposed budget numbers:

Professional legal \$5000

Telephone \$1500

Postage \$250

Training \$200

Office supplies \$800

Recording fees \$350

Advertising \$1500

New equipment \$300

Mileage \$1000

Education and Planning \$2000

Withholding \$1400

Pera \$1000

Wages \$19,950 (Planning Director \$10,000, Assistant Director \$4600, Secretary \$2000, Commission members total \$3350)

Yvonne Rutford asked why the proposed legal fees were less than in 2008.

Dave Miller said that he thought this was an unusual year. There has been legal advice at all BOA meetings, which are lasting a full 3 hours, plus more need for advice than usual because of Odyssey, Bieraugel and Worden issues. He thought \$5000 for 2010 was a reasonable estimate.

Dave Chura totaled the expenditures: \$35,250. It was assumed that an increase in fees would compensate for the possible drop in building permits. Income from permits was estimated at \$10,000, necessitating a levy of \$25,250

Dave Chura asked if we subtract the carryover of \$3747.99.

Sue said that we have traditionally carried over about \$11,000 but that legal fees in 2008 brought it down to \$3747.99. It was agreed that we would need that money in 2009 to cover legal fees that weren't in the 2009 budget. Seth Levanen pointed out that we are already very short for 2009 and we are barely into it. He said it should be pointed out to the Town Board that legal fees were \$7000 over budget in 2008.

Dave Miller said that if the Township wants a good zoning code and enforcement and follow up, they need to be willing to pay for it. The Commission should prepare an accomplishment report to submit to the Town Board along with the proposed budget. Count the hearings, CUPs, BOA appeals, legal hours, etc.

Sue said that Commission members should also provide a total of hours they spend on Commission business outside of meetings. These are volunteer hours. Dave Chura and Sue will write an article for the newsletter summarizing what Planning & Zoning has done over the past year.

Dave Miller said that the hours report and accomplishment report will demonstrate the complexity and change of scope of what Planning & Zoning is doing.

Seth Levanen said that no other township has a planning department for \$25,000.

Dave Chura asked if there is historical data showing what the workload has been in the past?

Seth suggested that we include cost of living data.

Dave Miller said another thing that is unique about Duluth Township is that other townships Planning Commissions make recommendations to the Town Board and the Town Board makes the decision. In our township the Planning Commission makes the decisions. If a decision is reviewed, it is by the Board of Appeals. In addition, he knows of no other township that uses PowerPoint and mapping and GIS.

Dave Miller moved to approve the proposed 2010 budget with \$35,250 in projected expenditures and \$10,000 in projected income for a proposed levy of \$25,250. He also moved to include a letter of commendation for the staff. Mike Kahl seconded and the motion passed unanimously.

Sue said that the new manager for Cooperative Light and Power called regarding the substation on Homestead Road. They needed 5 acres for the substation but purchased 40 acres for the project with the intention of subdividing the rest of it later. The original CUP was granted for the project on 5.08 acres. Sue and the CLP manager wanted to be sure that if CLP wants to sell the remaining acreage now, there is no need for the Commission to look at the CUP again.

Although the manager asked about subdividing, Sue said they may want to just sell it as 35 acres. Sue said she suggested that if they do break it into smaller lots that they do a Planned Unit Development or a conservation designed subdivision. The important thing is to keep 4 additional driveways from going in there. It is a SENSO area.

Seth suggested that when CLP sells it they could put a condition in the purchase agreement stipulating that if the land is subdivided, that a PUD or environmentally sensitive design be used.

It was suggested that members of the CLP cooperative could ask that they do that.

If it was sold as a 35 acre parcel, the new owners would have to come to the Commission to subdivide it. They could also sell lots over time without a planned subdivision.

The Township received an email from Dan Belden at WLSSD asking for input for the WLSSD wastewater treatment comprehensive plan. They asked the Township to provide input on any issues, concerns, ideas, etc that the Township may have regarding wastewater treatment for the next 5 to 10 years. Sue said this was a good opportunity to get involved and suggested we have someone from the Commission and someone from the Town Board meet with Dan and WLSSD.

Dave Chura asked if this only applies to the sewer system along the shore.

Yvonne, who wrote the plan, said that the wastewater comprehensive plan focuses primarily on capacity allocation.

John Bowen said that the DNSSD (Duluth North Shore Sanitary District) also has a comp plan that will be reevaluated in 5 years. Anything that the board does should include the NSSD because both they and WLSSD are both responsible. WLSSD has to take input from everybody in the district. The Township pays a yearly administrative fee (\$1500).

Dave Miller moved that Yvonne Rutford be the Commission's representative to WLSSD. Seth Levanen seconded and the motion carried.

Sue reported on a technical assistance meeting for the North Shore Management Board she attended. They are looking at setting up some water and land use planning forums for the shore. They want input on what those forums should be on – soil erosion management along the shore was the primary concern, along with wetlands, but they were also interested in other technical matters. Another focus for a forum was how to implement Comprehensive Land Use Plans and zoning ordinances and the implications of implementation. How to take the goals from the CLUP, look at the zoning ordinance and at a CUP and make it all work. The other item they looked at was how they, the Technical Assistance Committee, can better assist local governments. But their purpose is to assist the NSMB, so that was moot. There is also a north shore GIS collaborative that is trying to get a web-based source of GIS data for along the shore.

Old Business

Short-term rentals had been addressed earlier in the meeting.

Changes in the fee structure will need to be included in updates to the Ordinance.

Sue said that the Commission recommends changes to the Ordinance to the Town Board. The Town Board would have a public hearing and then decide what to approve. Dave Mount has looked at the 60 day language in the Ordinance. We will have the short-term rental open house in February. The comments from that can be compiled and at the March P&Z meeting the Commission can put together its recommendations for short-term rentals, the 60 day language and the fee structure.

Dave Chura will put together the recommendations for the fee structure that his group came up with at the November meeting. He suggested that a group of Commissioners meet to go over it again before the February meeting. Then the Commission can look at it in February and be prepared to make recommendations in March.

Mike said that he would like comments on his document on short-term rentals before submitting it to the Board. Commission members will review it by email and then look at the comments from the open house in March and make their recommendation then.

The same working group that already worked on the fee structure – Bill Lannon, Dave Chura, Yvonne Rutford, Dave Mount, and John Kessler – would try to meet again before February to work on it again. Sue said she would attend also if she was able.

Dave Mount said the members should look at the Ordinance and look for any cleaning up that needs to be done. Because of the process involved, it is important to do it all at once. We also need to change language in the Ordinance as we change other things – for instance, when we charge for appeals, the language in the Ordinance will need to reflect that. Dave suggested we create a table of updates -- what section, what it used to say and what it needs to say. He volunteered to start that table.

John Kessler said we did correct many of the small things at the last review, but the Ordinance was not reprinted.

Sue said that the updates were issued as an addendum.

There was a question about if the addendum was on the website.

Dave Miller commended John Kessler for his articles in town newsletter. About a year ago a goal was identified to get more information out to public on what some of the Planning & Zoning issues are and John's articles do an excellent job of that. Everyone agreed and applauded John.

Concerns from the Audience

John Bowen said that what Jan Green said in the minutes about substandard lots and lots of record was not entirely correct. She said that if you buy a substandard lot you don't have a case. But if it becomes substandard while you own it, it is considered a lot of record. He said that lots of record are not dependent on ownership. When a lot of record is established, it remains a lot of record no matter who buys it. When the NSMB was established, it made sure that anything that was a lot of record on the shore at the time remained a lot of record regardless of ownership changes. They put that in their manual. Setbacks must still be met, or a variance applied for if necessary, but if it is a lot of record, it is considered a buildable lot.

Don McTavish suggested that individuals like the CLP or the owners of the property by Bluebird Landing be encouraged to donate property to the Township. He said that some townships require donation of land or money to the township when creating a development.

Sue asked if the group for senior housing has talked to CLP. Don said that the group has not been active lately.

Dave Mount wanted to let the Commission know that the Township was served a summons on the Bieraugel property by Bluebird Landing. The attorney has asked that no one talk to anybody about the case. He has learned that when an appeal is filed over an administrative judgment, like this one is, it is an administrative review by a judge. The judge only looks at the records -- there is no testimony or new information presented. It is basically judged only on the record. Considering this, he said that it is important to continue to keep records as accurately as possible. The record -- the minutes, the recording of the public hearing, and the written decision -- are primarily all that the case is decided on. Dave said that the attorney said that courts tend to side with the local government unless they have been unreasonable. If the reasoning is tied back to the CLUP and the Ordinance, the town will be in good shape. When those connections are not strong enough is when there is a problem. Since learning how the process works, it emphasizes the importance of what ends up in the minutes and written decision. He said that it is important to continue to articulate reasonings effectively for the minutes and said that the Commission already does a good job of that, but he wanted to emphasize how important it becomes if a case goes to court.

The meeting was adjourned at 9:05.