

**Town of Duluth
Planning Commission
Meeting Minutes
4/23/09**

Dave Chura called the meeting to order at 7 pm.

Roll Call:

Present: Dave Chura, Seth Levanen, Barb Crow, Mike Kahl, Yvonne Rutford, Bill Lannon

Absent: Jan Green

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

Election of a chair, vice chair and representative to the Board of Appeals was added to the Agenda following the Chair report and the Agenda, as amended, was approved .

The minutes from the March 26 meeting were approved.

Andrea Darsow spoke representing The Lighthouse Restaurant. They put a decoration up and were informed it was signage. They would like to be able to display the decoration on 4 holiday weekends and want to know what they need to do to do this. The item is a large inflated bottle. When they did have it out, it attracted business with many positive comments. It can be seen from the highway and indicates what kind of business it is. It can be taken down each night. They would like to display it more often, but hoped that by just asking to display it for the 4 holiday weekends, it might be more acceptable.

There was a question as to whether it would be considered signage or decoration.

Pages 68 and 69 of the Ordinance deal with signs.

The inflatable bottle is approximately 30 ft tall 10 ft in diameter.

The definition of a sign from page 32 of the Ordinance is: Any device designed to inform or attract the attention of persons not on the premises on which the device is located, including any structure erected primarily for use in connection with the display of such device and all lighting or other attachments used in connection therewith.

Bill noted that seasonal outdoor lighting is exempt.

Yvonne and Barb felt that it met the definition of a sign.

The Ordinance allows 1 sign per business, no bigger than 50 sq ft. The Lighthouse currently has 2 signs, but they are not permanent. One is at the end of the driveway with

the name of the restaurant and the other is a thank you sign. They still plan to get a larger, permanent sign.

It would require a Conditional Use permit, not a variance, per Section 7.F.3.a on page 69 of the Ordinance. It would be a second sign and exceeds the allowable size.

Sue explained the process for the CUP process, including the Community Participation Report and Public Hearing.

Andrea said that they would like to be able to use the sign for Memorial Day weekend, but the next scheduled meeting for Planning and Zoning is the Thursday after Memorial Day.

It was suggested that they may want to think about overall signage – everything they envision for signs on the property -- before going through the CU process. A Conditional Use permit would go with the property if it were sold. Fees will be going up, but until then, the fee for a Conditional Use permit, Commercial, is \$500.

Andrea asked if they could get any guidance about what would be acceptable. If they were to ask for a permit for a package that included a number of signs and it was denied, they would lose everything. The sign they have now is as close to the highway as is allowed.

Dave Mount said that the Commission's decision on CU doesn't have to be yes or no on the whole package, they could agree to part of it.

There was a discussion of what the notification radius for the Community Participation Report would be if they moved forward. A motion was approved to make the radius ¼ of a mile. There was also a discussion of what qualified as a sign. It was thought that something that was actually on the building, but didn't exceed the height of the building could be used and would not be considered a sign.

Mike Kahl asked what lead them to realize that they needed a permit for this.

Andrea said that someone came in, they weren't sure who he was, and said that they had to take it down or be fined.

Andrea and the other owners of the Lighthouse decided that they would think about what they wanted to do and let the Commission know.

Planning Director Report:

Sue presented the Commission's proposed fee structure to the Town Board at the last meeting and they are looking at it.

Dave Chura asked if there were any comments from the Board.

Dave Mount said that there was a discussion about the fees being at or near the top of the range on the chart. The Board had a discussion about what would be accomplished by having driveway permits. They also discussed the \$4,000 to \$5,000 Planned Unit Development (PUD) fee.

Sue said that they are still trying to get it in place by building season.

Dave Mount said that the Ordinance requires that if someone wants to split 40 acres into 10 acre lots, it would require a subdivision fee. He felt that the subdivision fee has been influenced by Odyssey. The problem with Odyssey was with the variance, not the subdivision.

Dave Chura thought that a goal as stated in the Comprehensive Land Use Plan (CLUP) was to encourage PUDs and discourage subdivisions.

Sue said that the conservation-designed subdivision is another way to go. Page 39 of the Ordinance Section 1.J.2 says “The Town of Duluth, at its discretion, may offer incentives for pursuing conservation design principles.” Conservation design entails looking at the piece of land and figuring out what is really important to that piece of land – e.g. topographical or historical features – and then looking at where to put the houses. This approach allows you to put 4 houses on the 40 acres in the best place for the land. The extra green space could be commonly owned or made public.

Subdivisions go through St Louis County and PUDs go through the Township.

Odyssey was originally a PUD, then went to a subdivision. Dave Chura said the costs associated with Odyssey were for the PUD.

Dave Mount said that the money he saw spent after he came on was towards the variance. The PUD was already dead.

If they had just wanted to subdivide the land, and set the houses away from the lake, it would have been straightforward.

Dave Chura asked if the Board thought that \$1500 was too much to subdivide a piece of property into 4 lots.

Dave Mount said that it does not reflect the actual time and cost involved.

Mike Kahl agreed that the expense associated with Odyssey has been primarily concerning the variance and the shoreline. But he thinks we still need to make some adjustments to the fee.

Dave Chura said that the process for subdivisions is outlined on page 39 of the Ordinance and the Planning Commission does have responsibilities.

Sue said that a subdivision requires a CPR and involves a lot of secretary time. Subdividing is the single action that can change a property greatly and quickly. It costs \$245 just to pay the individual Commission members to meet once. Advertising costs about \$150.

Dave Chura said that it was his experience that that fee was not based on the Odyssey fees, but more on what it took to do it. He also thought the general sentiment at the annual meeting was to have fees that cover Planning & Zoning costs.

Seth asked if it would be possible to include language in the new fee structure that would allow some fee adjustment for cases such as the one that was just discussed concerning The Lighthouse.

Dave Mount said that all of the costs Sue enumerated also apply to a CUP or a variance. He agreed that the Commission has no flexibility.

Yvonne said that we talked about the philosophy behind some of the fees at the last meeting. She didn't want to see the folks tonight have to pay \$500 for the kind of sign they are interested in. As John Kessler said earlier, everything that comes up is a new situation.

John said that it evens out over time. You have to look at it as an average over time. \$500 is not a huge expense for a business enterprise. And often, it doesn't take long to run up Commission expenses when evaluating a permit request.

Sue said that ultimately, it is the Board's decision.

Dave Mount said that he needs to be able to defend Commission recommendations to the Board. So he wants to understand what has gone into a recommendation for a fee increase.

The Fire Hall / Town Hall planning is proceeding.

Sue talked about the progress on the Master Site Plan for the North Shore Community Center / School. The LK Johnson grant proposal did not end up getting submitted. The Musser Fund has money for site work, but it must be matched. The Board has to decide whether to kick in money from the school rent money. They are working on plans for the pavilion. Bend-Tec (Wendy Meierhoff's company) can donate some steel. It is probably more economical to use steel versus a timber frame. They are looking at writing another grant. They also need one more good look to make sure the Master Site Plan will work. 2 members of the Town Board and 2 members of the School Board will meet to discuss that.

Dave Mount said that the Musser fund is \$23,000. They hope to find \$13,000 in the LP grant that would match it. Then they would need to decide whether to pull an additional \$10,000 out of the Community Center Fund to complete the match.

LP underestimated the cost of the pavilion. Wayne Dahlberg has been working on a design.

Dave Mount gave an update on the two lawsuits against the Township. The Wordens have a sales contract on the 5232 property so they contacted the Township attorneys to delay any further action on the lawsuit pending the sale. The lawsuit would be dropped with prejudice.

Dave Chura asked if the prospective buyers need to know what has been going on with the property.

Dave Mount said he didn't think the new owners would have a legal standing to continue with the Worden's lawsuit. He will ask the attorney.

Dave Mount said that the Town Board held a closed meeting and decided to have a site visit on May 7 with the Bieraugels, their attorney, Sue, Mike Kahl and Dave Mount to look at alternatives for the site. Our attorney said that even if we don't want to talk with them, the judge might insist that we do. Nothing has been filed yet.

Chair Report

There was nothing new to report at this time.

The elections of Planning & Zoning chair, vice chair and a representative from the Commission for the BOA:

Yvonne nominated Dave Chura to continue as chair and Mike Kahl to continue as vice chair. Seth seconded.

Seth nominated Bill Lannon as representative to the BOA and Yvonne seconded.

The vote was unanimous in favor of all 3 nominees.

Old Business

Short Term Rentals

Yvonne made a motion that we discontinue short-term rentals based on

- findings in the report prepared by P&Z and submitted to the Town Board,
- the vision set forth for the Township in the CLUP,
- the existing rural character of the Township,
- tourism activity not being a dominant activity in the township,

- budget concerns as expressed at the annual meeting, and
- enforcement issues.

Mike seconded.

Definition of short-term rental from the Ordinance Amendment: 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.

It was felt that some of the comments made at the open house in favor of short-term rentals, were good comments in general, but were oriented more towards areas up the shore that are more tourism-oriented.

Dave Chura said that the Vacation Home Rental Task Force makes good points regarding health and safety and effects on the neighborhood. If we ask certain things of hotels, motels, bed & breakfasts, and campgrounds, it is reasonable to expect the same things from short-term rentals.

Sue said that we provide a number of ways for people to use their property in the Township. You are not denying people the opportunity to rent their home in general. Renting by the weekend or by the week may potentially be more profitable, but is it Township's responsibility to maximize revenue?

Bill said that in his experience, short-term rentals can divide neighborhoods and destroy cohesiveness.

It was felt that in a neighborhood you know who your neighbors are and that is what makes it a neighborhood.

Renting your home for winter does not fall within the definition of a short-term rental, i.e. the rental period would be longer than 30 days so it would still be allowable regardless of any action on short-term rentals.

Motels and hotels are defined as Highway Commercial in the Ordinance.

Dave Chura read from the Department of Health statutes regarding hotels and motels: "A hotel or motel means a building, structure, enclosure or any part thereof used as, maintained as, advertised as, or held out to be a place where sleeping accommodations are furnished to the public and furnishing accommodations for periods of less than one week." Do vacation home rentals fall under this language?

Dave Mount said that there are bills in the House and the Senate that include adding vacation home rentals to the definition in the Statute. When he read the statutes, short-term rentals fit under the broad category, but didn't seem to be included in requirements which are delineated for hotels and motels.

Dave Chura thought it was reasonable to support a motion prohibiting short-term rentals in the Township while the State decides how state law applies to short-term rentals.

Dave Chura read the definition of short-term rentals from the Ordinance amendment: 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.

He also read the conditions for short-term rentals from the Ordinance amendment:

- a. The property meets the State of Minnesota compliance criteria for individual septic treatment systems or has a valid connection to the Duluth North Shore Sanitary District sewer.
- b. Garbage/trash removal services are under contract
- c. There is adequate off-road parking
- d. There is adequate access to the property for emergency vehicles

Dave Mount asked if the intention of the motion is also to remove it from Commercial zoning districts?

Sue said the motion as she understands it is for no short-term rentals in the Township at all.

Dave Mount said that he would be reluctant to prohibit something that is potentially reasonable. Our experience with one short-term rental seems to be coloring our whole opinion about the issue.

Dave Chura said that he felt that it wasn't tied only to the bad experience. Since considering all of the information that has been compiled on the subject and seeing what other communities do, he is rethinking what precedents we want to set for the Township. Perhaps we should have spent more time on the subject before our original decision. He thinks that was the wrong direction to go and should not have been allowed to begin with.

Dave Mount said that we have always said that we allow rentals greater than 30 days but he doesn't see this in the Ordinance. Should we insert this language?

Chura asked to amend Yvonne's motion to include a definition of long-term rental:

A single family, two family, or seasonal residential dwelling can be rented by the owner where the dwelling is rented by the owner for periods of 30 days or longer and is not occupied by the owner during rental periods. Long term rentals are allowed in all zones.

Yvonne and Mike accepted the friendly amendment.

There was discussion about whether to allow long-term rentals in all zone districts and whether long-term rental should be considered a conditional use.

Dave Chura said he was not comfortable with the language in the motion on tourism.

John Kessler said that passing this motion would negate 150 years of practice. Tourists have always traveled up the shore and spent the night at fishermen's homes. The philosophy of renting out space on the shore is a long-standing historical precedent. People will continue to do it, regardless.

Bill said that with the motion we will have teeth to enforce it.

Dave Chura asked how we would plan for enforcement? The junkyard ordinance has already demonstrated the difficulties of enforcement.

John said that we already have a lot that we cannot enforce. And to state that the shore does not depend on tourism activity is not correct.

Yvonne clarified. She said that the CLUP says that tourism is not a dominant activity in the Township. Certainly the North Shore is a tourism area. What she has seen in other areas on the shore, such as Tofte, doesn't fit in with the neighborhood in our Township.

It was agreed to remove the language about tourism.

John said that Duluth Township is comprised of two different kinds of socioeconomic activity and land. The shore land and lake area are one and fields, farms and streams are the other. You cannot ascribe rural character to anything below the expressway. The shore land area with motels and restaurants, etc. is different from the inland area of the Township. You cannot use the same phraseology to apply to both land types.

The motion, as follows:

That we discontinue short-term rentals based on

- findings in the report prepared by P&Z and submitted to the Town Board,
- the vision set forth for the Township in the CLUP,
- the existing rural character of the Township,
- budget concerns as expressed at the annual meeting, and
- enforcement issues.

The definition of a short-term rental is: A single family, two family, or seasonal residential dwelling can be rented by the owner where the dwelling is rented by the owner for periods of 30 days or longer and is not occupied by the owner during rental periods. Long term rentals are allowed in all zones.

passed unanimously.

Dave Mount said we needed to modify the Ordinance to change the appeal process to better fit with the 60 day rule.

It was suggested to shorten the period in which an appeal can be filed to 15 days from the current 30 to 45 days. The goal is to not lose time on the 60 day clock while the applicant decides whether or not to appeal. Tim Strom's conservative take on the 60 day clock is that it applies to the appeal process.

There were no concerns from the Commission regarding this change.

Sue said that there are other things in the Ordinance that need clarification.

Under prohibited devices for signs on page 68, Section 7.E.8 the Ordinance prohibits a signage device that "is located in, over, or upon public waters..." This language came from language in the County Ordinance and refers to inland lakes with signs out on the lake. It was agreed to strike it.

Dave Mount read from the Ordinance, page 57 Section 2.A.3 regarding removal of vegetation in the SLO area. He believes that as it is worded, it ends up conveying the opposite of what it is meant to mean and needs to be clarified.

On page 75, Section 2 he suggested reversing 4 and 5.

In addition, parameters for neighborhood notification for a Conditional Use CPR and hearing are not set until the application is received. To accommodate this in the Ordinance it would work to change the name of the CUP application from application form to hearing request form.

There were no concerns from the audience.

The meeting adjourned at 9:50.