

**Town of Duluth
Planning Commission
Approved Meeting Minutes
1/28/10**

The meeting was called to order at 7:05 p.m. by Commission Chair Dave Chura.

Roll call:

Present: Dave Chura, Jan Green, Mike Kahl, Yvonne Rutford, Seth Levanen, Bill Lannon

Absent: Barb Crow

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

The Agenda for the evening was amended to move Concerns from the Audience to immediately following Approval of the Minutes. Otherwise, the Agenda was approved without changes.

Sue Lawson said that on the last page of the Draft Minutes from the December 17 meeting the word “people” in the phrase “people in rural areas may want the option of looking at larger generators” should be changed to “communities.” Otherwise, the Minutes were approved as written.

Jan Green asked that electronic copies of the final Odyssey decision and conditions be distributed to Commission members.

Dave Mount recommended Google Docs file storage and sharing system for this. He said when you share a document with someone, you email it to them and the email gives them a hot link for the document – there is no signing up for the service, etc. for the person you are sharing the document with.

Concerns from the Audience

Bill Mittlefehldt spoke. He lives next door to the Wordens’ short-term rental (STR) property. He and his wife thought that STRs did not fit into the existing neighborhood at the time the Conditional Use Permit (CUP) was approved, but were pleased about the 11 conditions placed on the CUP by the Commission that night. However, Bill said that there have been at least 14 violations of those conditions. He said that the owners of the property, the Wordens, live in Litchfield and there is no local manager for the property. The lot is 85 ft wide, not 100 ft as claimed at the original hearing. In the last week of July last year, there were 8 Hells Angels motorcyclists staying at the property which is over the occupancy limit set by the Commission. When he called the Township police to let them know about the potentially volatile situation, he was advised to keep a low profile and to not do anything that might create a problem. He feels that he and his wife have been put into a situation that they did not create. The permit is now up for renewal. Bill said that Dave Mount and Shawn Padden

suggested that the Mittlefehldts retain an attorney. (Dave Mount clarified that he and Shawn recommended this because the Mittlefehldts had issues with the Wordens that did not relate to the CUP and that were outside the purview of Planning and Zoning.) In October, the Mittlefehldts had their attorney request that the Wordens move their garage, which encroaches onto the Mittlefehldts' property. They have not heard back from the Wordens regarding this issue. The Mittlefehldts feel that the Wordens have disregarded the neighborhood and ignored the conditions on their CUP. Bill said that from his perspective, the Town has not enforced the conditions. He said that he has been repeatedly told that there is not enough money, time or staff to enforce the conditions. He said that it would be ludicrous to add conditions when the original 11 are not being enforced. He does not want to see their permit renewed.

Dave Chura said that the Commission had recommended to the Town Board that STRs be prohibited in the Township, but the Board wanted to keep them and felt that they could be dealt with using conditions. He asked Sue that since there was a 2 year limit on the permit, and it was approved on January 24, 2008, did that mean that the permit is currently expired? Sue said that that was her understanding and that she and Dave Mount are looking at the issue. She said that the matter could end up in court, so the discussion was curtailed.

Russ Krook spoke next. In 2005 he applied for a CUP to have 20 horses on his property. He and his wife were getting started with a non-profit organization called Seeds of Hope Ranch. At that time, the Commission gave him permission to have 10 horses on the property. The first summer they only had 5 or 6 kids in their program, so 10 horses were plenty. However, over 700 kids came through the program last summer and 10 horses are no longer enough. They also rehabilitate horses and then either fit them into their program or adopt them out. They have 19 horses now, 10 on the property and 9 boarded elsewhere. He would like to be approved for the 20 horses they originally requested. Russ said he applied for an amendment for additional horses two years ago, but it got sidelined by the Pine Park Road issue. He would now like to get it straightened out by spring. He said that they cannot afford another \$300 for another CUP application. Their property is 36.4 acres without the road right-of-way. They compost the manure and it is 500 ft from the nearest runoff.

Sue read from the minutes from the original hearing which was held on June 23, 2005. The CUP was approved with the condition that it be reviewed in 5 years for runoff and manure issues. Another condition was that if they were to want more than 10 horses, they would need to come back to the Commission. Since this was June 2005, it will be five years this year in June when the Commission is supposed to review the CUP. Sue felt that based on that language, they could just come back to the Commission and not submit a new CUP application.

Dave Chura said that a new hearing could be held at an upcoming Planning Commission meeting. Neighboring property owners would be informed again, the conditions would be reviewed and the Commission could also hear the request to expand the number of horses on the property. Because it was a condition that the Commission put on the CUP, there would not be an additional expense to the applicant.

He also said that the Commission may want to look at how to handle similar hearings in the future.

It was decided that the March Planning and Zoning meeting would be the soonest the Commission could hear it. The Commission set the notification area as everyone on the Pine Park Road and in a ¼ mile radius from the property. Someone from the audience said that the Clarks, around the corner from the Krooks' property, should be included. Dave Chura suggested that, although it would not be required, the Krooks might want to complete another Community Participation Report (CPR). The information gathered in the report could be helpful for them.

Planning Director Report

Sue said that there will be training available for townships administering zoning in St. Louis County held in Mountain Iron on February 11. Commission members can go and be reimbursed. The agenda was not available yet.

There has not been any decision yet on the Bieraugel hearing. Dave Mount said that he, Sue and Wendy Anderson attended the hearing. The judge, Eric Hylden, had clearly read the materials. Attorneys for both sides made arguments and the judge asked hard questions of both attorneys. He seemed fixed on whether or not alternatives had been discussed in the original hearing before the Commission. The minutes from that hearing were helpful in showing that the Commission had discussed some alternatives. Dave said that he didn't have a feeling for how it would go. The judge used to be a mediator. He has 90 days to rule, so the decision would be due by March 22, more or less. The attorney for the Wordens, Huck Andresen, was hinging his argument on whether practical difficulty applied to townships. The Township's attorney, from Minnesota Association of Townships, said that she thought it went well for the Town.

Jan Green noted that a lot of the Commission's decisions are based on community input. She read the opposing brief in the Bieraugel case which said that our community input was inadequate, and that we used unprofessional witnesses. The Township's attorney said that it was specifically government's, and hence the Commission's, job to listen to those supposedly unprofessional people from the community.

Chair's Report

Dave Chura said that Commission members should review their 2009 attendance record, which was emailed to them, for accuracy. They will be paid after the February meeting.

Seth Levanen's term on the Commission expires on April 1, 2010 so a new Commission member will have to be hired. The next Township Newsletter comes out in March. It is the Town Board's responsibility to advertise and hire for the position. Dave Mount said that the advertisement for the position will go out on March 1 with a possible deadline for applications of March 15. He said that there is a lot that has to be done and there are already a lot of meetings in March. They will also advertise for the position by email.

Also, the first meeting after the Annual Meeting in March will be the organizational meeting for the Commission.

Dave Mount read from a letter the Township received regarding the Wordens' CUP from the attorneys representing the Wordens, Huck Andresen. "Please be advised that it is our legal opinion that the Township did not and does not have the power to put any time limitation on a conditional use permit. Our opinion is based on MN Statute that authorizes townships to issue conditional use permits which is 462.3595." They also had a note in the letter having to do with the once a week rental. Dave said that we need to clean up that language. The original language in the permit said that they could rent the property for "no less than 7 days." The Wordens asked for that to be defined. Sue and the Commission defined it and they appealed that decision to the Board of Adjustment. In addition, the Wordens were supposed to declare what day of the week they would like the rental period to begin on. The BOA revised that language to say that a "subsequent rental can not begin any sooner than 7 days following the initiation of the prior rental." Dave was not sure whether or not that language revision was recorded. Dave read Statute 462.3595 Subdivision 3, that is referred to in the letter: "Duration: A conditional use permit shall remain in effect as long as the conditions agreed upon are observed, but nothing in this section shall prevent the municipality from enacting or amending official controls to change the status of conditional uses."

Jan pointed out that the Wordens agreed to Condition 11 of their CUP which says that the permit can be revoked if the previous conditions are not met.

New Business

Putting together a proposed budget for 2011 for the Town Board was next on the agenda. The Town's fiscal year is the calendar year and the Town Board 2011 budget meeting is February 18, so the Board needs the Commission's recommendation before that meeting.

Among the points and comments made regarding the budget were the following:

The Commission decided to review the budget each quarter so that everyone could be more aware of costs and spending.

The only entity that has responsibility for money in the Township is the Town Board. The Commission first started putting together a proposed budget when they realized they needed a mechanism to fund plans or projects that they saw coming up in the future. Without having them in the budget ahead of time, there was no way to fund them. At the Annual Meeting, the public holds the Commission accountable for spending, and even though this is not entirely accurate, it is good policy for members and the Chair to know what is going on with the budget.

The Professional and Legal Services category is the highest number in the budget outside of wages and it is a category that people tend to notice. It was hard to come up with a way to decrease this cost. The Township is involved in one lawsuit and has been threatened with another – both by the same attorney.

The Township wants zoning and has to be willing to pay for it.

The only budget item that could be called discretionary is Planning Projects and Education.

There was a concern that if we sacrificed in some areas for this budget, there would be a perception that we didn't need those funds and we would have trouble getting them back in the future.

The format of the budget should be changed in the future to show anticipated permit income.

Dave Mount said he hoped to get a cost of living increase for wages this year but given the economic climate, it might not go through. He budgeted for it last year but it didn't get put in for the same reason. Dave Chura thought that whatever was done with wages should be in line with what the Town Board recommends for everyone.

Proposed Budget for 2011

Wages.....	19950	*add 2.5 % from 2010 (\$20449)
PERA.....	1000	add 2.5 % from 2010 (\$1025)
Withholdings.....	1400	add 2.5 % from 2010 (\$1435)
Professional service/legal.....	3500	
Telephone and e-mail.....	1500	
Postage.....	250	
Training.....	200	
Office supplies.....	400	
Service fee - recording fees....	300	
Advertising.....	500	
New equipment.....	300	
Mileage.....	500	
Planning projects/education....	100	
Total	30,458	
Assumed income from permits	(11,868)	
Total Levy	18,590	

* Commission would like to have a Cost of Living increase similar to what the Town Board does – not necessarily 2.5% -- but want to be consistent with what the Town does elsewhere.

Land Use Permits Receipts

2009	\$ 7,000.00
2008	\$ 7,371.00
2007	\$13,325.00
2006	\$ 9,025.00
2005	\$10,325.00
2004	\$ 6,400.00

Dave Chura said he will not be at the February meeting. At that meeting the Commission will continue to examine STRs, looking at conditions and appropriate locations in the Township for STRs. We will also look at also look at STR CUPs issued in the past in the Township.

Jan said that the situation with the Worden's STR should not drive how we look at permits and the conditions we place on them. But that experience may tell us that it is not a use that is compatible with densely populated areas.

Sue said that we could license STRs instead of dealing with them through land use. Licensing would be the Town Board's responsibility. There are a lot of inherent complications with trying to manage STRs from a land use perspective. She said that the City of Duluth licenses all of its rentals. If renters disrupt the peace and the police respond, they are fined and licenses can be revoked.

Seth said that approach could mitigate legal ramifications – either they met the criteria or they didn't.

Bill Lannon said that all costs should be pushed onto the owner – if there is an issue with their property, they pay.

It was decided to check with Tim Strom to see if the Township would have the legal authority to do something similar.

On the subject of wind energy, Yvonne Rutford said that their group submitted a report to the Commission at the August 27 meeting. It wasn't clear to her what the next step should be. The report looked at how wind energy is currently addressed in the Ordinance and proposed new language to address the issues uncovered in their research. Dave Chura suggested that everyone look at the report and email questions to Mike Kahl so they can be addressed before the meeting. It was decided to wait until the April meeting to look at the issue again. Yvonne suggested that Stephan Gorny should be present for that discussion since he was a part of the group that put together the report and is advising the Township on the matter.

Seth said that he got a call from someone off of Hegberg Road. This area is zoned as FAM-2 which is a minimum lot size of 17 acres for building. The property in question is 10 acres and is a lot of record. Sue read the definitions for building on a nonconforming lot of record on page 46 of the Ordinance.

The meeting was adjourned at 9:20 p.m.

Attachments:

P&Z Budget Report