

**Town of Duluth
Planning Commission
Approved Meeting Minutes
3/25/10**

The meeting was called to order at 7:05 p.m.

Roll call: **Present:** Seth Levanen, Barb Crow, Michael Kahl and Jan Green. **Absent:** Dave Chura, Yvonne Rutford and Bill Lannon.

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

The evening's agenda was reviewed. Barb Crow noted that there would be no wind energy generation discussion because Yvonne Rutford was absent. Dave Mount asked to talk about a couple of items under new business. With these changes the agenda was approved.

The minutes from the February 25 meeting were approved without change.

Hearing for Review of Krook's June 30, 2005 Conditional Use Permit and request for 10 additional horses to be allowed by the CUP

Sue Lawson reviewed the process that we would follow for the hearing. She also read the Township's communication agreement out loud. She noted that it was the first time, to her knowledge, that the Commission had reviewed a CUP.

The Krook's property is in Section 9 near the shore at the end of Pine Park Road. It is 36.6 acres and is in zone district SMU-6. The minimum lot requirement for SMU-6 is 2 acres. Impervious surfaces can not exceed 25% of the lot size. The Conditional Use Permit was approved in June of 2005. The new Zoning Ordinance was adopted August 12, 2005.

Horses are not allowed in Zone District SMU-6 except by Conditional Use. Russ Krook applied for a CUP to have 20 horses on his property in 2005. The Commission approved the CUP on June 30, 2005, however he was limited to 10 horses and a condition was set that the CUP be reviewed in 5 years for issues related to manure management and runoff.

Sue showed a site map of the property. A stream goes through the middle of the property. John Bowen supplied digital aerial photographs of the property. The aerial photos are photos of the North Shore from NSSD work. The photos show buildings, streams, topography, etc.

Russ pointed out features of the property on the photo. There is a 4 acre pasture on one side of the stream and a 7 acre pasture on the other side. Russ said the stream does not run year around and is more of a drainage. The horses spend most of the winter in paddocks around the arena area. Manure storage during the winter is between the paddock area and the arena. When his 6 wheel ATV is running, he takes the manure out to his manure management area every day. It was broken down last year so the manure accumulated outside the paddock area over the winter.

Russ said that he has 17 horses on the property now. This number includes 4 horses that he rescued last fall that are being nursed back to health. He has 4 others that are boarded elsewhere and he cannot afford to board additional horses out.

The original CUP requirements were 1. Review in five years regarding runoff and manure issues. 2. Not to exceed 10 horses – if they want more they need to come back to the Commission. 3. Not to pasture less than 50% of property. 4. Manure should be stored in containment area where it cannot leach into soil and to till with the slope of hill with Best Management Practices used.

Jan asked if there was an official request on paper to review the CUP. She felt that the Commission needed something more explicit to move forward on a review of the CUP. She said that the Commission normally makes a decision based on an application.

Because the Commission had set tonight as the review of the CUP and posted it and notified neighboring property owners, many of whom were present at tonight's meeting to comment, it was decided that the Commission would continue with the review, despite not having a formal written application for a review of the CUP. In addition it had been a condition of the CUP, set by the Commission, that it be reviewed in 5 years. The five year mark would technically not be until June of this year, but reviewing it now would only be 3 months shy of that date. Because the Commission had never reviewed a CUP to anyone's recollection, it was conceded that a process for a review needed to be considered in the future.

Public Testimony

Veronica Ulanowski spoke. She said that her son wanted her to come to the meeting to see what is going on. She said that she thinks 20 horses is a lot of horses for that area.

John Schifsky owns the property just to south of the Krooks. He said that he is the closest neighbor to the Krooks and the horses they have there have never affected his or his wife's lifestyle. His biggest concern is the potential for runoff. He is very conscious of the fact that he is one of about 425 people who were responsible for about \$9.5 million of debt to put in the sewer system along the shore from Duluth in an effort to protect Lake Superior. He said that it does not make sense to spend that kind of money to protect the lake and then pasture animals in the immediate drainage area. He said that there should be 30 feet of vegetation between the stream and any pasture. He asked for guidance from experts at NRRI and Val Brady from NRRI told him that soil breaks down urine very quickly, but manure is more persistent. He said that there is about 6 to 8 inches of topsoil in that area, then about 60 feet of clay and then bedrock. So there is essentially nothing to stop runoff. The drainage area going through the Krook property is a stream that has some water in it year around. He also said that traffic is another issue. If the request for 20 horses is approved there will be more people coming to the ranch, which will adversely affect people who live on Pine Park Road. There is a lot of clay on the road which produces a lot of dust in the summer. They have made efforts over the last year and a half to control speed on the road with speed bumps with some success. They are also looking at putting sodium chloride on the road to reduce the dust.

He said that he thought that the Planning Commission's original decision to allow 10 horses in that area was a mistake. It would make much more sense to have that number of animals above the Expressway and farther away from watershed that drain directly into the lake. He said that if the property ever turns over, he hopes the Commission will rescind the permit.

John also noted that the Commission should have the original request from 2007 from Russ when he asked then for the Commission to increase the number of horses allowed by his CUP. At that time, the request was tabled due to issues with responsibility over Pine Park Road. Russ should not have to complete a new application for the request.

Mike Vespa spoke next. He lives on Homestead Road and is familiar with the Seeds of Hope ranch. His daughters have volunteered for Seeds of Hope since its inception. He said that he was perplexed by the whole process. How can the Commission allow Odyssey to put in \$500,000 lots and rape the shore and then take an organization that helps abused and neglected kids and horses and make it as difficult as possible for them by not allowing additional horses so they can continue helping the kids? He also pointed out that there are probably more droppings from deer in the runoff from that area than there are from the horses.

Maria Vespa volunteers at the ranch. She said that it is hard to have so many kids come through the program and only have 10 horses. She said that the horses get tired and it affects their attitudes. It is hard for a horse to work with one kid and then another for hour after hour. They definitely need additional horses so they can continue helping the kids and make it easier on the horses all around.

Russ described the Seeds of Hope program. It is a nonprofit organization that is owned by the community and run by a board of directors. At the beginning they had 10 kids. Last year they had 550 kids – 60 per week – from places like Northwoods Children’s Services, Outward Bound, and Grant and Nettleton schools. The 10 horses that are being used for the program are overworked. Having a limit of 10 also gives them no leeway to nurse a rescue horse back to health which is another part of their program. They have rescued and placed over 30 horses. They have tried to maintain 10 at the property, but finances over the last winter dictated that they could not board out the additional horses. They rely on donations and Russ has been unemployed since last summer. Until then 30 to 50 percent of his income went to the ranch. The budget last year for the program was \$46,000 and they made \$42,000. The budget for 2010 is \$75,000. Much of this money goes back into the community in the form of purchases, payments for services, and summer jobs for college students.

Russ said that his manure composting area is over 500 ft from the nearest drainage area. He pointed out that this drainage area starts above the Expressway and that there are many animals above the Expressway that contribute to problems. They don’t pasture their horses; they feed hay 365 days a year so they do not rely on land to pasture the horses.

They have seen amazing things happen with kids who have come through their program. They have changed lives. They did not start this for personal gain.

Barb Crow said that she had visited the ranch and said that the area that was set aside for manure management did not look very well used, but she understood that this was due to problems with the six wheeler. She asked Russ what his plans were for fixing the ATV so he could better implement his manure management plan. She also said that the road to the management area doesn’t seem substantial enough for hauling. She said that she felt that Russ was struggling with the number of horses he currently has on the property. She said that he is doing fantastic work and the horses look great, but the manure is not being handled as well as it could be.

Russ said that he can get through 99% of the time. He said that his tractor is fixed, and the six wheeler will be soon. He also uses a back hoe. The paddocks are picked up every day and raked.

Donna Swanson asked if the manure could be moved offsite.

Russ said that he doesn't have a truck that is suitable for that.

Mike Kahl read the letters that had been received by the Commission regarding the CUP review. He read letters from Jerry Berlin and Lawrence Ulanowski (see attached). He also had a letter from John Schifsky which he did not read out loud, with John's consent, because John was present to speak and had covered his concerns.

Russ comment on Mr. Berlin's letter. Mr. Berlin believes that the Krooks are trespassing on his property. The boundary line was established in the 1800s. It was then mis-surveyed by St. Louis County. Russ said that he is using the same boundaries that have been used for 30 years. Until it is settled in court, he does not believe he is trespassing. The matter has gone from mediation and the court date is to be set for sometime in May.

John Bowen asked how many animal units are allowed above the freeway. Sue said that it was 1 horse per acre.

The Public Comment portion of the hearing was closed at this point.

Jan said that CUPS with conditions are reviewed periodically. When the conditions are not being met, the permit is terminated. She said that Russ, by his own admission, has not adhered to the conditions of his CUP. He has not maintained the number of horses on the property at 10 or below. So technically, the permit should be pulled. But she said the real issue in this case is manure management. The Planning Commission itself is not in a position to assess how good or bad the manure management is. She said that she thought it would be appropriate to deny the request until there is a professional assessment of the manure management issues, perhaps by the Soil and Water Conservation District.

Barb agreed with this assessment and added that she would like to see the manure management plan in place and followed consistently before considering a request for additional horses.

Jan made a motion to deny the request for an increase in the number of horses from 10 to 20 because the applicant is not currently complying with the conditions set by the original CUP. She suggested that the Commission review the matter again in 6 months and that at that time a manure management plan must be in place that includes an implementation schedule and a schedule for any increase in number of horses.

Barb seconded the motion.

Seth asked if there was a track record that could be required before considering the request again.

Jan said that in 6 months the Commission will look at it again and at that point they will either proceed with the request for more horses, pull the permit, or continue the permit as it is currently written.

Russ asked what he was supposed to do with the excess horses? Turn them back out? He said that it was an ongoing and growing problem. People are just turning horses loose or letting them starve to death.

Jan said that when the Commission issues a permit with conditions, the conditions are not considered flexible.

The Commission agreed that everyone appreciates the work they are doing. They hoped that the problems could be resolved.

The motion to deny the request passed unanimously. The meeting was paused while the decision was written up. It was then read aloud by the Vice Chair and approved unanimously.

Planning Director Report

Sue said that at the April meeting the Commission would be hearing the rezoning request for the property on Alseth Road.

Dave Mount gave a report on the progress with the Bieraugel property. They want to submit a modified variance application but cannot provide it by the April deadline. They now hope to have it submitted in time to be heard at the May meeting. So the Commission would hear, under the practical difficulty standard, a modified proposal. The Bieraugels are still interested in pursuing a settlement with the Town Board so, although it is not likely, the suit could be settled at any time. The Bieraugels' attorney does not necessarily believe that we are subject to the 60 day rule. Dave said that by the Township's interpretation, the clock will begin either when we get their amended proposal or, if they decide to go with their original proposal, on the date of the hearing. The three areas of contention are destruction of the shoreline, the position of structure, and the size of the structure. In discussions, the applicant expressed some flexibility, but the applicant and the Board were not able to agree on all three at one time. He said that he does not know how much of a change they will make if they submit a new proposal.

New Business

Dave said that Shawn Padden asked that the Town look at its ordinances concerning animals in light of the cat hoarding investigation and arrest last week. The only wording that is currently in the Ordinance pertaining to the number of allowable animals is the animal unit calculation. There was nothing in any of the Town Ordinances that addressed the hoarding situation. Shawn said that it would be useful to have some legal tools in that regard. Dave asked if the Commission would consider the issue and make some recommendations to the Board.

Barb asked how cat hoarding pertains to land use?

Sue said that she felt it was more of a humane issue and a health and safety issue, not land use.

Dave said that the Board would appreciate any input – even if it's just some consideration of whose issue it is.

John Kessler said that the man who had contacted him regarding the cats had done some work, with his son, on the house in Two Harbors. He and his son contracted toxiplasmosis and almost died. They had to go to a University of Chicago medical facility for treatment. He suggested limiting the number of pets people could have.

Seth asked if other communities have models concerning animal units, feces, etc.

Sue said that a use could be put into the Ordinance concerning animal rescue/humane society groups but it would not be an easily defined use and could cause more trouble than good.

Jan Green pointed out that kennels are considered commercial in the Township. She thought that we should look into what the County's responsibilities are as far as health and safety and cruelty to animals.

Dave said that this was part of the problem Shawn had. He had trouble getting a warrant based on probable cause. He suspected animal cruelty, but the only information he had was the number of animals the first time he tried to get a warrant and he was unsuccessful.

Dave said that the Board would be holding interviews for Seth's replacement on the Commission. There are 2 applicants. They are trying to schedule interviews on the evening of March 31. If Commission members want to participate in the interview process, we would need to post that a quorum may be present.

Sue told the Commission that she had received a call from Susie Lannon, owner of the Cape Superior Inn (co-owned by Bill Lannon, Commission member). Susie said that they were interested in having a concession stand in front of their motel. Sue asked if the Commission thought it was an appropriate use there, and if so, how it should be handled. It is something that is likely to come up again – should we develop a policy? We could consider Conditional Use Permits, over-the-counter permits or permits with performance standards.

The Commission leaned towards permitting with performance standards. Parameters for performance standards could include setbacks, traffic, parking, time limitations, signage and lighting.

The trailer or temporary unit would have to meet the setbacks of the zoning district. Would it be treated as if it were an outbuilding?

Sign placement and size would have to meet the language in the Ordinance. In addition, no signs can be placed in the road right-of way. Perhaps one temporary sign in addition to the business's usual signage would be acceptable. What about banners?

The operating season could be flexible, depending upon what the owners wanted. Assuming that something like this would be in a commercial area, the Commission would not set restrictions on hours of operation.

There should be enough parking spaces so that people are not parking on the road. However, there is no parking ordinance in the Township, which means it would have to be dealt with on a complaint-based basis. We could require that all parking be onsite, but we would not want to unnecessarily increase impervious surface area in the Township.

Dave Mount said that the Board continues to consider the short-term rental issue. The Commission previously recommended that STRs not be a permitted use in the Township and that would leave long-term rentals as the only rentals allowed. He read the definition from the Ordinance for long-term rentals: "A single-family, or seasonal dwelling, where the dwelling is rented by the owner for periods of 30 days or more and is not occupied by its owner during rental period." If the Board were to follow the Commission's recommendation, could this language possibly be interpreted by someone to end up allowing a property to be rented for one weekend

out of a month? The wording that the Board of Appeals set for the Worden's STR was that a "subsequent rental could begin no sooner than 7 days following the commencement of the prior rental." The BOA felt that this was consistent with the intent of the Ordinance. Dave said that he is not necessarily advocating for additional wording but was looking at what would happen if only LTRs were allowed as worded in the Ordinance. If the Town prohibits STRs, then what is left under the definition as it remains, are LTRs.

Barb described a scenario in which the property owner could set a low monthly rate for a property, the renter would, on paper, rent it for the month, but only actually be there for the weekend, resulting in a STR use situation. She said that the difference to her between a STR and a LTR is that if she were to rent a home for a month, she would fall into regular living habits. One weekend is a party. People who rent for a weekend would tend toward a more active and loud pattern than those who rent for 30 days.

Sue agreed, also pointing out that you get to know people who are long-term renters – they are your neighbors.

Jan said that the biggest issue is still having someone local to oversee the property. Adequate local oversight is the only way to control problems that are not police issues.

John Bowen, from the audience, commented that the City of Duluth dug themselves a hole when they got involved with the rental business. And as soon as the Township got into it they got themselves into a big hole. He said we have now traded a shovel for a backhoe. He thought the best thing would be to take renting completely out of the Ordinance. Leave it the way it was before the amendment.

Old Business

Wind energy discussion had been moved from the agenda, and there was no other old business.

Concerns from the Audience

John Bowen spoke up. He said the idea that Odyssey put forth regarding the North Shore Sanitary District floundering at the last meeting during the senior housing discussion was erroneous. The auditor found that they have to stay on top of everything so that in 2013, when assessments are done, bills won't be kicked up. The system is worth about \$17 million and about \$8 million remains owing. If they were doing it today and saw what the costs would be, it never would have gone. It is going to hurt elderly people on fixed incomes with small houses. But the sewer district is not floundering.

When the district was formed, allowances were made for 2 percent growth per year over a twenty year period. Since 2003 they have had a total of 26.5 EDUs (equivalent sewer units). The growth rate has been .86% since it started, well below 2%. The District could also increase capacity by increasing the size of the pumps. The cost for connecting the Lighthouse was in the vicinity of \$80,000. A nursing home would be more. It currently runs close to \$30,000 for a residence just to connect.

The meeting was adjourned at 10:05.