

**Town of Duluth
Planning Commission
Approved Meeting Minutes
7/22/10**

The meeting was called to order at 7:00 p.m.

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

Also present: John Kessler, Assistant Planning Director; and Dave Mount, Town Board representative to the Commission.

On the draft agenda, the approval of the minutes was moved up to immediately preceding the public hearing and the agenda was approved.

The minutes from the June 24 meeting were approved without changes.

Public hearing -- David Nimz request for a CUP for a wind turbine at his residence, 6412 Bergquist Rd

Dave Chura began the public hearing with an overview of the process and project. David Nimz is applying for a Conditional Use Permit to install a Whisper 200 Wind Turbine from Southwest WindPower rated at 200KWH at 12 MPH wind speed. The wind turbine will supplement solar power in the winter when sunshine is not adequate to supply necessary power. The Ordinance definition of a utility facility includes windmills. It is a 50 ft tall turbine with guyed wires. The property is in Zone District Fam-3. The project meets all of the required setbacks for this zone district. Special requirements for a Private and Commercial Utility Towers include the following from Article IX.13.C:

- 3.** Towers within 1,000 feet of a classified lake or Residential zoned district are restricted to a height less than or equal to one-hundred (100) feet.
- 5.** Towers located within one-quarter mile of Types III, IV, or V wetlands and the Shoreland_Overlay (SLO), public parks and recreation areas, landing approach to private airstrips and Highway 61 Expressway are restricted to heights less than or equal to 200 feet.
- 6.** The structure must not encroach on any shoreland, road, or yard setbacks for the zone or overlay district in which it is located.
- 7.** Facilities less than one-hundred (100) feet shall not be illuminated.
- 9.** Towers will not be closer than two (2) times the tower height to the nearest structure off the property.
- 10.** At a minimum, the tower will be located a distance from property lines equal to the tower height. This setback will also apply from the ordinary high-water mark for properties on a lake or river. All other utility structures are required to follow principal structure setback requirements.

12. All utility structures within parcels containing active or inactive borrow pits must demonstrate that they will not interfere with the reclamation of the borrow pit or deny access to aggregate material. .

16. Windmills/wind generation units must follow all setback requirements for the zone district in which they are located except that the side yard setback shall be equal to the height of the windmill.

The criteria the Commission is bound to when granting a Conditional Use Permit are the following necessary findings, Article XI.7.B:

- 1.** That the proposed use is consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance.
- 2.** The use is compatible with the existing neighborhood.
- 3.** The use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district.
- 4.** The location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area.
- 5.** The proposed use will comply with the Wetlands requirements in **Article III, Section 6, page 43**, of this ordinance.
- 6.** The total amount of impervious surfaces will not exceed that allowed in the zoning district where the conditional use would occur.
- 7.** The topography, vegetation and soil conditions are adequate to accommodate the proposed use.
- 8.** The proposed use will not impact public waters during or after construction or impact wetlands without appropriate mitigation measures.
- 9.** Adequate utilities (water supply, wastewater treatment), access, drainage, storm water retention, and supporting facilities have been provided or are being provided backed by appropriate financial assurance.
- 10.** The proposed use will not create potential health and safety, environmental, lighting, noise, signing, or visual problems.
- 11.** The location of the site is appropriate with respect to existing or future access roads.
- 12.** The demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, which would be affected by the proposed use, and the adequacy of existing services to meet the increased demand can be met.

Next, David Nimz presented his findings from the Community Participation Report. He said that there were four concerns that were expressed – primarily from people living nearby. The main concern was visibility. Some people thought the tower was going to be 150 ft tall. But there is only one person, Travis Stolp, who may be able to see it and that would only be in winter when the leaves are down. Mr. Stolp had no objections. A couple of people came up and looked at the site. Mr. Nimz said that he currently runs a generator in the winter to provide power and the wind turbine will be much less noisy. The company has noise level studies from an older model, but not for this particular model. This model should be quieter. Unless you are standing within 100 ft of it, 99 percent of the time you will not be able to hear it above the ambient noise. You can also

switch it off whenever you want to. One person, who does not live near the property, was concerned about the color of the tower and generator. The turbine is white, the blades are black and it stands on a galvanized tower. If necessary, he would paint it, but he is not sure how long the paint would last on the galvanized tower. The tower uses guyed wires that come out 25 ft from the tower. They will use concrete for the anchors. As for bird migration, Mr. Nimz said that in his observations, he has never seen the raptors at less than 150 ft above tree level. His tower is 50 ft tall and will be only slightly above the trees.

There were no concerns from the public.

Jan Green asked how a half mile was measured from the property to determine the notification range for the CPR.

Beth Mullan said that she measured it directly on the map, as the crow flies, a half mile from the edge of the property all the way around.

Barb Crow said that she got the report on noise generation. She also checked with an audiologist to help her interpret it and the report verifies what Mr. Nimz said.

Yvonne Rutford asked Jan about birds and migration. Is it an issue in a situation like this one?

Jan said that big communication towers kill birds -- primarily because of how they are lighted at night and also during foggy conditions. Birds' navigation abilities are diminished in poor circumstances. Guyed wires cause trouble, too, on these lighted towers. The smaller towers, as far as is known, do not kill any more birds than picture windows. This wind turbine application does not have the characteristics that kill birds. She said that she wouldn't worry too much about it.

At this point the public hearing portion of the process was closed.

Yvonne moved to approve the CUP based on the fact that it meets all of the required setbacks, and the criteria for a utility facility (windmill) as outlined in the Ordinance, and Mr. Nimz has met neighbor concerns. The tower is not a commercial tower. In addition, the Township's Comprehensive Land Use Plan encourages alternative energy sources in the Township and the Nimzs have provided an excellent example, as they currently use solar power and are now expanding to wind energy.

Barb seconded and the motion was approved unanimously.

A break was taken for the decision to be typed and printed out.

Dave Chura read the decision and it was approved unanimously.

The Commission commended Mr. Nimz on his application, especially his Community Participation Report which was very clear and made it very easy for people to respond. Mr. Nimz invited everyone to come out to his property to see the turbine once it was in place.

Planning Director Report –

In Sue Lawson's absence, John Kessler presented the Planning Director report. On the Bieraugel variance issue, our attorney was to have called the district court judge to get clarification on what standards to judge the variance on, in light of the new ruling from the State Supreme Court. There has been no word back on that yet.

The two short-term rental properties in the Township are due for a review of their CUPs. Sue has sent notification to the Wordens and to Christine Schoesboe that we will do that at the August 26 meeting.

An interpretive kiosk is planned for the McQuade Safe Harbor. They want to place it on the Township side of the harbor and have contacted Sue and John about where it should be placed. There was no land there until they constructed the breakwater.

We have a couple of Land Use Permits pending and John got two calls today concerning possible permits.

Jan asked about the Bieraugels' request for a variance from the shore setback. According to the Ordinance, page 59, Article VI.3.B.5: the setback "may be modified by variance if the landowner provides technical data proving a different recession rate or that the Erosion Hazard Area, although correctly estimated, can be mitigated by structural protection." Jan said that they have pretty much ignored this. Her personal opinion is that she would just as soon leave it as it is, but they are taking the risk if there is erosion between house and lake. It is preferable to a built up riprap area. It did not come up in the hearing. She said that we can grant a variance based on the problems of a site, but there is also this explicit requirement in this situation that should be met to grant the variance.

Barb said that since we suspended the hearing until we got additional information, it seemed to her that the discussion was unfinished and this issue could still be addressed.

Dave Mount said that we closed the public testimony portion of the public hearing and then postponed making a decision until counsel had time to explore the case that had come down from State Supreme Court.

Jan said that her preference is not to have big structural revetment. Maybe the thing to do is, if the variance is approved, make it clear that they are taking on the risk.

Barb said that she is worried about future owners not understanding the risks involved in the property.

John said that the decision will be filed and will follow the property deed.

Jan said that because we have this in our Ordinance, it strikes her that the Town is concerned about the erosion hazard area and they want buildings set back or they want technical information and/or reinforcement. If we decide in favor of the variance from the lake shore setback, we can recognize in the decision that it is in an erosion hazard area.

Dave Chura agreed, saying the language can be included in the decision.

Jan asked if anything had been heard from Odyssey. In the County Board Consent Agenda for the July 13, 2010 County Board meeting there was this item:

Amend Resolution Number 07-570, dated October 23, 2007, to correct the legal description of the County fee land located in Township 51N Range 12W sold to Odyssey Development Inc., and execute a quit claim deed for this purchase.

She is guessing that this is the land they bought from the Highway Department. She said that it would be worthwhile to send a letter to the Clerk of the County Board asking for a copy.

John said that Lakeview Castle has been sold and is now owned by a woman who owns Red Swan Catering and she will do some catering and operate a small eatery and bar at the location.

Chair Report

Regarding the 2010 work plan, Dave Chura said that Yvonne is working on the wind energy language based on the Commission's suggestion to split the language between large- and small-scale applications.

Jan is working on language for undue hardship and practical difficulty pending what we learn from the court decision and what guidance we receive from legal counsel.

And Dave has been working with Dave Mount on the short-term rental issue.

We also need to look at interim use permit language for the Ordinance and need someone to take the lead on that. Dave Mount sent out a summary memo on it at one time.

The August planning meeting will be busy. There will be the Bieraugel hearing and the STR reviews. He suggested that Commission members brush up on STR issues and the language in the Ordinance.

The most recent budget update is in the members' packets for review.

New Business

None

Old Business

Jan asked what happens following the STR CUP reviews in August – can the Commission terminate a CUP or do they make a recommendation to the Board to terminate?

Dave Mount said that it says in the Ordinance on page 77, Article IX.6.G, that “Conditional uses with conditions will be reviewed periodically by the Planning Commission. Where such a use does not continue in conformity with the conditions of the original approval, the permit shall be terminated and such non-compliance shall constitute a violation of this Ordinance.” He said that the Board would welcome input from the Commission.

Jan asked who takes action after the decision is made? The Ordinance, in Article X.D indicates that it is the Planning Director's responsibility.

Dave Chura said that Article X.D deals with administrative determinations.

Jan emphasized that we need to know what the steps are in the process.

Mike Kahl said that we need to check to be sure we have a quorum for August before the meeting. We also need to check to see if four voting members are enough to render a decision.

John said that someone suggested that he look into a new driveway on North Shore Drive. He appreciated this tip and would like everyone to look for new driveways.

Jan said that there is a driveway on Old North Shore Road on the north side of the road between Homestead and Alseth that is new since spring.

Barb said that a cooking show was going to be airing featuring Rita Bergstedt and Sherry Rovig on the locavore scene.

The meeting adjourned at 8:12.