

**Town of Duluth
Planning Commission
Approved Meeting Minutes
9/23/10**

Present: Yvonne Rutford, Janet Green, Michael Kahl, Bill Lannon, Brigid Pajunen, Barb Crow

Absent: David Chura

Also Present: Sue Lawson, John Kessler, MAT attorney Mary Tietjen, Bieraugel attorney Huck Andresen,
Russ Krook, Don McTavish and Clerk Ann K. Cox

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

The Planning Commission approved moving "Concerns from the Audience" to immediately below the Bieraugal Hearing.

Jan Green made a motion to approve the amended agenda, Yvonne Rutford seconded. Motion passed unanimously.

Brigid Pajunen made a motion to approve the minutes, Barb Crow seconded. Motion passed unanimously.

On Discussion: Jan Green commented on how impressed she was with Beth's minutes.

Jan Green in response to a query as to when the 60 day rule was enacted: 1995 according to the Minnesota House of Representatives research.

Bieraugal Hearing

There was no response to a request for comments.

Sue gave an overview of the June 24th public hearing. The public comment was closed and opened to the Planning Commission. It is at that point this meeting will commence. The proposal made at the last meeting was reviewed including lot area, variance requests, comparison of the proposals and site plan. The drainage will not be moved. The building plan is for a 24' x 48' structure which includes a 16' carport. (See Attachment 1.) The Criteria used at this meeting will be MN Statute 462.357, subd.6.

Jan Green: Your summary of the variance request will be part of the minutes?

Sue Lawson: Yes

Mary Tietjen reviewed the Criteria using MN Statute 462.357, subd 6.

Undue hardship is defined to include three factors:

- 1. Lack of reasonable use without the variance.*
- 2. Unique circumstances to the property not created by the landowner,*
- 3. Maintenance of the essential character of the locality.*

An applicant must demonstrate that all three factors have been met before a variance is permitted.

Now that we have an amended application we need to go back and look at the application and apply the criteria. I believe there was discussion in 2008 that acknowledged the size and the topography were not created by the Bieraugels so they met factor #2. Factor #3 was not met because the extensive work on the shoreline did not meet some criteria of the Comprehensive Land Use Plan. The Commission may want to consider the amended application with the changes which would affect #3. Do the Bieraugels have reasonable use of the property without the variance? It is noted they do need a variance to build. Part of the legal standard is that you can apply reasonable conditions on the variance, you just need to have a rationale.

There were no questions to Mary's presentation.

Discussion from the Planning Commission.

Jan Green: Testimony was taken last time. I think it was pretty obvious the issue was about erosion and the lake, not the particular use of the lot. It obviously does not meet the standards of the Ordinance at this point but there are others who also do not meet the standards. There are quite a few old cabins on properties along the lake, however this is not the primary use of properties along the shore. There are drainage ways, the lot is a lot of record and the lot was not

created by the landowner. I am comfortable with this request because the whole idea of the very intrusive shoreline protection (alteration) is not part of this variance request.

Jan Green made a motion to approve the variance with the following three conditions:

- Before any construction is started, including any driveway grading, the requirement of Article VI, Section 3, B must be fulfilled
 - “Site development plans shall be required and approved by the Planning Director for all new construction in the Erosion Hazard Area. The site plans shall include a description of the following: surface runoff including roof drains, subsurface runoff, vegetation removal including proposed landscaping, proposed sewage treatment systems, topography of site, structure and driveway location . . . and other pertinent information as requested.”
- Any shoreline or slope alteration, including bluff toe protection, will require a separate variance application which shall include a permit decision from the Minn. DNR covering the determination of the OHWL (ordinary high water level) and certified engineering diagrams and report.
- There shall be no removal of vegetation on the shoreline bluff, the drainage ways and their slopes, along Scenic Highway 61, and to this variance will be an erosion control alert attachment for future owners.

Brigid Pajunen seconded the motion.

Barb Crow proposed an amendment to the motion that there would be an erosion control attachment alerting future owners to the issue. The amendment was accepted by Jan Green and Brigid Pajunen.

Yvonne Rutford: I am not unwilling to support this motion but I do feel the footprint could be smaller. For so small a lot sandwiched between the road and the lake I think smaller is better.

Jan Green: I don't want to micromanage their design. It is up to the owner to put it together, any adjustments we make would be minor. It is much improved over the original.

Yvonne Rutford: I propose an amendment to the motion to decrease the footprint of the building plan to approximately 30 x 30; because of the small lot size (1.85 acres) and because it is situated between the highway and the lakeshore.

Michael Kahl: My thought is a reduction of the size. Any building codes or plans anchoring that building will be pretty much the same if it is 30 x 30 or 24 x 48.

Sue Lawson: It would reduce it 250 square feet.

Huck Andresen: The ground floor level is 1000 square feet; the upper level would stick out a bit.

Sue Lawson: Total impervious surface is 1150.

The amendment to the motion died for the lack of a second.

The motion passed unanimously.

Mary Tietjen and Huck Andresen will work out wording regarding the erosion control zone noted in the motion.

Michael Kahl: Sometimes we don't feel we have everything we wish in the site development plan. We will look at it very closely when it comes back to make sure it is complete.

Yvonne Rutford: How will stability be determined?

Sue Lawson: I am assuming an engineer will be looking at the site and documents will come back with a stamp on them.

Huck Andresen thanked the Planning Commission for doing their due diligence over the last 2 years.

Jan Green: One of the things that troubled me from the beginning of this process is that the people who applied for the variance are not the same people who will be living in the house. Are we giving the variance to the people or to the land?

John Kessler: To the land.

Jan Green and Mary Tietgen: Brief discussion on sub standard lots.

Barb Crow: It is hard to write a law that covers all loopholes.

Jan Green: Is the MN Association of Townships going to follow the issue of standards for variances?

Mary Tietjen: There are many places that put out information and this is a very popular topic.

Concerns from the Audience

Mr. Russell Krook: Conditional Use Permit

- I have developed a manure plan; a local contractor is removing all the manure from my property and composting it on his property.
- The Minnesota Pollution Control Agency has toured my property and measured the feed lots. I have a letter stating the feed lots are in compliance for any and all runoff. My property is in compliance for the number of horses I currently have.
- The NRCS did make some recommendations to reseed some of the property which I have done and will continue. The property can only be grazed until the grass is at 2 inches then the property must rest. I have added some fencing and it was suggested I move the water tank.

Michael Kahl: Could you refresh me as to where we were with the Conditional Use Permit?

Russ Krook: I wish to increase to 20 horses. Right now the Planning Commission has limited me to 10. I have 40 acres, 20 fenced. County and State zoning allow 1 horse per acre.

Barb Crow: We were going to review your CUP (see minutes from March in the April 22nd position of her book). We are at the 6 month point right now.

Brigid Pajunen: Do you still want 20 horses?

Russ Krook: Yes, I used to have 20 horses. I have 1000 kids come through my program; with only 10 horses, it is hard on the horses.

Michael Kahl: What is the situation with the road?

Russ Krook: The road was calcium chlorided this year; the only issue is speeding on the road.

Michael Kahl: Is your goal still 20 horses maximum or is it your best estimate at this point?

Russ Krook: My best estimate, I can handle up to 75 kids a day with 20 horses. My wife would like to get involved with social services and we don't feel at this time we can handle a full load from all four counties. My long term goal is to get access off the freeway; I have already applied once and was pushed into a corner. I haven't gone back to them because I haven't had the time. Next time I go back I am going to have a petition from my neighbors. MnDot says they are not allowing access from the freeway.

Sue Lawson read from the March minutes including Jan Green's motion (see Attachment 2).

Jan Green: The six months was just a time frame, we have the ability to regularly review Conditional Use Permits. I'd like to take this up with specific applications and put it on the agenda for one of the next up-coming meetings. One of the requirements will be a written copy of the manure plan and specifications on managing the increased horse total.

Brigid Pajunen: What do you think reasonably can your property handle? What do you think your area can handle vehicle-wise? What do you think your neighbors can handle traffic-wise?

Sue Lawson: As part of the community participation report you will have talked to the neighbors and listened to their concerns. You might not be able to resolve the issues but you can at least listen.

Yvonne Rufford: Can you talk about your manure management?

Russ Krook: I called all over to find someone to take the manure. Basically when there is a full trailer load then the fellow comes and gets it and removes it. I clean the 4 feed lots daily so it is pretty much removed once a month.

Bill Lannon: Can I have a copy of the reports you have received back?

Sue Lawson: Is it your intent to have Mr. Krook reapply and pay another fee?

Brigid Pajunen: The concern I have is a good situation can turn bad. I think it is unreasonable to have 40 acres with 20 fenced and that many horses.

Russ Krook: I feel 20 horses is what I can handle. We didn't have funding for additional help this summer so we had fewer kids. My horses are in good shape, keeping them in a feed lot is working out well, it is the same as keeping them in a barn except they get better exercise.

Sue Lawson read the minutes and conditions from Mr. Krook's permit 5 years ago (see Attachment 3).

Barb Crow: Did he file another application for the 20 horses?

Jan Green: No it is just an ongoing issue. I am not insistent that he apply again but there has to be some sort of application so we have something to approve.

Michael Kahl: Basically it would be a package that included what we said 5 years ago.

Sue Lawson: Would you see a community participation report?

Jan Green: Yes.

Sue Lawson: There would be no additional fee. It would be kind of an amendment to the original CUP. You have a manure management plan. What is the maximum amount of horses you have on your property? Is that what the Commission is looking for? We sent letters to the neighbors for the last CUP, we will do the same this time also. We will let them know Russ will be coming to talk to them to discuss the changes he has made. The letter will include all of Pine Park Road, one or two land owners on Highway 61 adjacent to Pine Park Road (two to the West and one to the East). I'm thinking October?

Russ Krook: I have one neighbor I cannot talk to because of legal issues.

Sue Lawson: The first step is to fill out the CUP, give us the manure management plan and copies of everything presented to us this evening.

Yvonne Rufford: Can we ask for information on where the manure goes? If it is a commercial operation I would like to know more about the operation.

Barb Crow: We could say the manure must go to a licensed commercial operation as part of the CUP.

Russ Krook: I was asked to get rid of the manure, it isn't my issue where the manure goes and what the person does with the manure.

Yvonne Rufford: I believe the person is my neighbor Duane Madison.

John Kessler: I have quite a file built up on the Pine Park Road. Perhaps the new inquiry be sent to people up above Mr. Krook, just below 61.

The Director reviewed the Township Fertilizer Ordinance.

Sue Lawson: I think it is a responsibility to deal with the manure issue but I don't know that it is Russ's responsibility what happens to the manure.

Brigid Pajunen: If you want 20 horses on your property we will be looking at the manure.

Sue Lawson: I rest my case you just said "WE" not Russ.

Michael Kahl: Mr. Krook came forward in a timely fashion with the items we requested initially, we have to embrace that and say he can move forward with the participation plan but we are still concerned with the manure issue.

Comment period is closed.

We will be looking at a future date to hear this, possibly the October hearing. We need to get the paperwork first.

Bill Lannon: Is a license required to remove manure?

Planning Director Report

- Matter of signs for Lynn Compton and Lighthouse restaurant: They now have an off-site sign at the back of the Sucker River. This was based on the 2005 request, they asked for a decision but didn't receive one until last month.
 - What about the beer bottle signs?
 - What about their flashing light?
- Wordens: a letter was written to the Wordens notifying them that their Short Term Rental is repealed and that the Town Board is the Board of Adjustment. They have until October 1st to respond.
- Wrote a letter to Schousboes; their CUP has been extended for 2 more years.
- Who is the Wordens local contact? Jay Zink is the current local contact.
- Permits are trickling in
- Greenwood Cliffs development – at closer reading a variance isn't required, setbacks are met.

Chair Report: The Chair is absent this evening. All old business is to be brought forward on every agenda.

New Business

- McQuade Harbor Interpretive structure
 - Sue received an e-mail from Cheryl Erickson. McQuade Harbor would like to install an interpretive sign somewhere on the new spit of land. They will attend the October meeting to present their request. So far we have skirted the issue whether or not the DNR has to get a permit from townships or not. It is too late to get it in the newsletter but we can put it on the web site.
 - Jan Green: If we look at this is it a sign?
 - John Kessler: Actually it might be more of a kiosk. The land they want to place it on didn't exist before.

Old Business

- Wind generator/alternative energy language for zoning ordinance – splitting into 2 sizes:
 - Rutford, Kahl, Lannon
 - Have not met to discuss. Yvonne Rutford will do the language changes to address the different sizes
- Draft ordinance amendment re: Undue hardship/practical difficulty: Green
 - Fairly easy to take practical difficulty out of our ordinance.
 - Wait until we get the short term rental thing done. Jan Green is uncomfortable amending our ordinance every other meeting. Maybe we could factor it better into our ordinance once the legislators are done.
- Develop short term rental conditions: Green, Crow – on hold to legislative findings
- Interim use permit language for zoning ordinance: Green – On hold to legislative findings.

Close/Adjournment

- Motion Jan made a motion to adjourn, Yvonne seconded. Motion passed.

Zoning Requirements

Zone District - SMU 6 (This district is intended to provide residential and mixed uses consistent with the recreational and natural attributes of Lake Superior, on a suburban-scale lot size.)

	Lot Area	Side Yard Setback	Road Setback	Shore Setback	Lot Coverage
Required	2 Acres	35 Ft	110 Ft	125' -Bluff	25%
Actual	1.85	38'	71'	76'	4.8%

Comparison of Proposals

	Lot Area	Side Yard Setback	Road Setback	Shore Setback	Imperv. Surfaces
Required	2 Acres	35'	110'	125' -Bluff	25%
Original	1.85	35'	110'	Revetment •Remove 2082 CY •Revet. Rock -977 CY •Move drainage/stream	Bldg = 1700 SF Drive = 2532 SF
Current	1.85	38'	71' (V)	No Revetment 76' TOB (V) Stream / drainage not moved	Bldg = 1536 SF (1152) Drive = 2218 SF

Site Plan

