

**Town of Duluth
Planning Commission
Meeting Minutes
6/23/11**

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

Roll call:

Present: Dave Chura, Jan Green, Brigid Pajunen, Paul Voge, Jo Thompson and John Schifsky

Absent: Bill Lannon,

Also present: Sue Lawson, Planning Director

The proposed agenda for the evening meeting was approved without change.

The minutes from the May 26 meeting were approved without change.

Concerns from the Audience – None

Director's Report

Sue presented the current budget summary from Ann (see attached). Permits are way down from previous years. We only have \$1300 in permit income so far. Most of the permits are for garages and additions. 2010 was also low but was higher than this. The economy is down. The summary on page 2 looks low because in July we get the second half of the levied money.

Dave said that the budget was set for this year in February of 2009 and we set the budget for 2012 this past February.

Sue said the Town Board was fine with the priorities the Commission set for itself for the year. Sue will be helping to look at the Town Hall space needs with the Board. The foundation is wood posts. It also leaks. The Board voted at the last meeting to rework around the outside of the Town Hall to get water to run away from the building. They do not want to spend too much until they figure out what they want to do overall. One option being considered is to put a basement under the building. There may be as much as \$85,000 available from the taconite production tax money by the next annual meeting and the Town may be able to use that.

Dave said that it might be possible to get a low-cost loan or a grant from IRRRB.

Sue reported that the land transfer between Odyssey Development and the City of Duluth for the Stony Point development is complete. Odyssey will next go back to the County with their platting and will then start work on a couple of the lots.

John Kessler and she conducted an inspection tour of the Township on June 16th. They will be following up on one property where a permit was granted for a shed and it appears as though there might be someone living in it now.

Barb Crow has been working on job descriptions for P&Z.

There is a meeting with the North Shore Management Board (NSMB) on June 29th that she and Dave Mount will be attending. Prior to the meeting, they will tour the Silver Bay ecoindustrial area.

The NSMB came about as a result of the 1986 Shoreland Management Program which included all lakeshore in the State. Lake Superior management issues are substantially different from inland lakeshore issues, so a joint powers agreement was established between all of the entities along the shore from east of Duluth to the Pigeon River, including Cook, Lake and St Louis Counties; Duluth, Lakewood and Silver Creek Townships; and Grand Marais, Silver Bay and Two Harbors to provide shoreland management for Lake Superior. NSMB has a narrow focus defining zoning standards for the North Shore. The Township is supposed to send them copies of CU permits and variances and they, in turn, let us know when something happens that affects us.

Jan said that the Upper Mississippi River also has a similar management board made up of a joint powers agreement.

Sue said that the Town Board is going to be looking at short-term rentals at its next meeting. Jan will be providing a list of possible conditions that the Board may want to use if it decides to continue to allow STRs in the Township.

Chair Report

Dave asked if anyone knew if anything came of the inquiry to Tim Strom about the 1971 legislation that supposedly gave the Town of Duluth the same authorities as cities. No one had.

Bill Lannon may be out for a while due to illness. Bill told Dave that if he is not significantly better within a month or two, he will let the Commission know and they can consider options.

New Business -- None

Old Business

Revising the Zoning Ordinance

Sue said that we first need to make decisions about interim use and about community participation report requirements for requests for zoning map and/or text changes.

Jan presented the research she has done on interim use. She said that the easiest way to incorporate interim use would be to make it a part of the conditional use section of the Ordinance, Article IX. As far as which uses are conditional and which are interim, one

option is to do it like Cook County and leave it to the discretion of the Planning Commission for each application. She thought this provided excessive leeway. Other jurisdictions only employ interim use for specific uses, including mining, mineral exploration, airstrips or airports, auto graveyards, gravel pits, B&Bs, campgrounds, kennel operations, and asphalt or concrete portable plants. However, she said that neither Cook County nor Lakewood Township made a list of allowable interim uses – they just put the interim use language and guidelines for using it into their ordinances.

She said that Lakewood’s ordinance is fairly straightforward. It states that an interim use will be terminated upon any of 5 events: a set termination date; conditions not met; permit is not utilized for one year; a change in zoning; or a change in the property owner, operator, or use.

Jan said that she continues to be concerned that interim use has not been tested in the courts.

Paul asked if it has been a problem not having interim use as an option or if we would need interim use if short-term rentals were no longer allowed in the Township.

Dave said that conditional uses go with the property forever, even if the ownership changes. He felt we should include interim use in the Ordinance so that it’s available if the need arises.

Sue said that we have been operating under the assumption that we can put time limits on conditional use permits, but it is not clear that that is legal. The Town’s attorney doesn’t think it is.

Sue suggested that we use the Table 5.3 in the Ordinance to identify uses which could be appropriate for interim use and include a phrase elsewhere that allows for other uses at the discretion of the Commission. By indicating what would be considered an interim use, people gain an understanding of what is allowed.

Jan read from the Minnesota Association of Townships website: “Like all tools used in land use management, they are only effective if used properly. The first step for towns wanting to issue interim use permits is to adopt an ordinance designating what type of uses are interim.” She felt that it would be better to not change the Table 5.3, but to make the list of allowable interim uses a part of the text of the Ordinance.

Dave thought that we should identify allowable interim uses by use. Otherwise, he thought the courts could find the language allowing interim use to be too broad. Also, if we limited possible interim uses by example, we would have to revise the whole Ordinance every time a new use came up.

Brigid asked if it would be totally up to the discretion of the Commission to set time limits on interim uses.

Paul said that it would be, but it would be important to establish adequate rationale in the decision.

It was decided to go ahead and update Table 5.3 to include interim use in the matrix. For some uses it could be up to the Commission whether to use CU or IU and those cases would be indicated with a C/I in the matrix.

Jo said that currently conditional use permits can be rescinded if not used for one year, so interim use permits would not offer an advantage over CUPs in that respect.

Sue said that the Commission should consider the initial and ongoing investment when considering if a use should be conditional or interim. For instance, if someone were to build a business like a nice B&B, they would want to know that they had a long-term permit for it and that they would be able to sell it as a business at some point if they wanted to.

Brigid thought that the C/I designation would be too arbitrary. People want to know what to expect when they come with a permit application.

The Commission went through Table 5.3 line by line to determine which uses should be interim uses, which should remain conditional uses, and which should be decided on a case by case basis (C/I).

There was a question about homestay. Sue said that homestay was originally thought to fill a niche for something similar to, but smaller in scope than a B&B.

Dave thought that homestay was essentially covered by the B&B definition. Would the MN Department of Health consider it the same?

It was decided to eliminate homestay from the Ordinance.

Jan made a motion to adopt the changes that were made to Table 5.3 (see attached). The Commission's decision for each use was based on the potential for the use to be a public nuisance and the potential for the use to be affected by land use changes in terms of use and density.

Paul seconded and the motion passed unanimously.

Jan suggested that we put the new interim use language in Article 9, retitling it "Conditional and Interim Uses." We also need to include interim use in the definitions.

Paul said that the necessary findings would be the same. But for each interim use application, the Commission would also have to address the potential for public nuisance and determine what time limitation would be applicable.

Jan read the definition for interim use from MN State Statutes: “An ‘interim use’ is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.” In addition, the Statute states

The regulations may set conditions on interim uses. The governing body may grant permission for an interim use of property if: (1) the use conforms to the zoning regulations; (2) the date or event that will terminate the use can be identified with certainty; (3) permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future; and (4) the user agrees to any conditions that the governing body deems appropriate for permission of the use.

Any interim use may be terminated by a change in zoning regulations.

Jan said that Lakewood Township put purpose and intent in their language as follows:

1. To allow a use for a brief period of time until a permanent location is obtained or while the permanent location is under construction.
2. To allow a use that is presently judged acceptable by the Commission, but that, with anticipated development or redevelopment, may not be acceptable in the future.
3. To allow a use that otherwise may require a conditional use permit under the zoning ordinance but because of its temporary nature may be acceptable as an interim use.

Some of the things that were talked about to include in the language regulating interim use were: change of ownership of the property as a cause for termination; screening from adjacent properties; rationale for why a use would be interim instead of conditional; and requirement for a community participation report;

Dave said that everyone should read through the Ordinance before the next meeting and highlight changes or things they want to talk about.

The meeting adjourned shortly before 10.