

**Town of Duluth  
Planning Commission  
Meeting Minutes  
5/24/12**

The meeting was called to order 7:05 by Acting Chair Paul Voge.

Roll call:

**Present:** John Schifsky, Jo Thompson, Paul Voge, Wayne Dahlberg, Lynn Ann Hollatz, and Don Sitter

**Absent:** Brigid Pajunen

Also present: Barb Crow, representative to the Commission from the Town Board.

First on the agenda was to elect officers. Jo and Paul were nominated for chair. In a closed ballot election, Paul was elected as chair and Jo was elected as vice chair.

On the agenda, under old business, Sue said that she postponed Clint Little's presentation to the Commission, so that item should be removed from the agenda.

Lynn Ann asked that further discussion of the Comprehensive Land Use Plan (CLUP) be added to the agenda under old business.

The agenda was approved as amended.

Sue introduced Val Brady who was here to present a program on stormwater pollution in the Township.

Val introduced herself. She is an aquatic ecologist with NRRI. She said that the Town of Duluth is a mandatory MS4, which is a municipal separate storm sewer system, and is required to have a Stormwater Pollution Prevention Plan (SWPPP). Lake Superior is considered a high value water body, which, along with the fact that we have many trout streams, puts us under extra scrutiny. Our stormwater is runoff from all Township roads and Town-owned properties. Our stormwater infrastructure consists of the ditches, culverts, outfalls, rain gardens, stormwater ponds, and swales in the Township. Any time stormwater leaves our jurisdiction and goes into another jurisdiction, it is called an outfall.

We have 11.7 miles of Township roads. The County is not required to manage their stormwater but we inherit all of their stormwater when it enters our ditches. Inside the City of Duluth limits, the County is an MS4, but in rural areas they are not. Rice Lake Township is also an MS4. We belong to the Regional Stormwater Protection Team (RSPT) along with other local MS4s so we can work together and benefit from each others' expertise.

For our permit we have to submit a yearly report on our compliance with the six requirements of the SWPPP. Education is one of the requirements. We are also required to identify and eliminate illicit discharge, control construction site runoff and post-construction runoff and inspect the Township's stormwater infrastructure. She and Jo have started looking at infrastructure. Whenever a culvert is on the border of the County, the County owns it. Construction site inspections are done by Sue and reported to Val for inclusion in the yearly report.

New requirements are coming out. A lot of them entail more reporting. The size of construction sites that must have a discharge permit will go down from one acre of disturbed soil to one-quarter acre. In addition, we will need to be able to handle an inch of rain with erosion control. Anything more than an inch is considered an act of god.

Before Europeans came to this area, the land was forested. When water hits the ground in forested areas, it does not concentrate, it creates wetlands. Once wetlands are saturated, stream levels start to rise. The forests and wetlands keep the streams from rising and falling too quickly. This system allows more water to soak in and become groundwater. With man's activities, the landscape has changed from this forest/wetland type. When the amount of open land and young forest reaches 60% stream flows can increase by two to three. In addition, we have clay soils and bedrock in the Township, which make the Township more susceptible to runoff. In our Township, we have roads with ditches that collect and concentrate the stormwater very quickly. All of that water goes very quickly into Lake Superior and does nothing to recharge groundwater. We have poor groundwater here already. What groundwater we do have needs to be protected.

During a storm event, erosion results in more dirt and nutrients in streams. Dirty water warms up faster in the sun. Some erosion in rain events is natural, but when you look at where the dirt is coming from, most of it is coming from the eroded clay banks. Stormwater carves out a big and wide channel that is not shaded and cannot maintain a flow. The goal of the SWPPP is to slow the water down, giving it more time to infiltrate. An experiment using dye at a UMD parking lot showed that it took only about five minutes for that dyed water to get to Lake Superior. It is good for road management to move water off the landscape, but we need to look at other options.

The Knife River has excessive turbidity and is considered impaired. The cold water fishery standard is 10 NTU (nephelometric turbidity units) for non-storm events. For cool and warm fisheries it is 25 NTU. Most of our streams go way above 400 during a big rain event. Many watersheds along the shore are on the impaired list for turbidity. Val said that they have been arguing with the EPA about whether any of our streams could ever meet the 10 NTU. But we do need to do what we can. The TMDL (total maximum daily load) plan and temperature plan for the watershed have been approved. The mercury plan is coming. Some groups have gotten together to do things like plant conifers. A lot of our streams are approaching temperatures that are not suitable for brook trout. The DNR says that temperature is the number one problem for trout fisheries on the North Shore.

Val said that research has shown that watersheds with more development have higher gains of suspended sediments. Lawns do not infiltrate groundwater well. Roots help water get through the clay surface. Short grass has short roots. Bigger, deeper roots do a better job of getting water into the ground. Open space development – small lots with dedicated undeveloped larger sections of open forested space – should be encouraged. Grants are available from the Coastal Program. They looked at an area of Lakewood Township and showed how conservation design could be used. Instead of 17 acre lots with long driveways, homes could be placed on smaller 6 acre lots with the extra space being community-owned and not developable. This kind of design reduces impervious surfaces and creates less runoff.

Val said that we need to encourage homeowners to reduce driveway runoff and construct and maintain ditches properly. The lakesuperiorstreams.org site is a great resource. If everybody does what they can it will help.

Next on the agenda is a use proposal for LIU-3A – the old BOMARC missile site.

Sue introduced Jeff Levine. He is the owner of the BOMARC site and wants to manufacture small arms there. The site is zoned LIU-3A. This proposed use does not exist in Table 5.3 in Article V of the Ordinance. When a use is not listed in this matrix, it is to be determined by the Commission (Article 5 Section 4.E). So what the Commission needs to do is determine if the use should be added to Table 5.3, and if so, name the use and determine what would be required to permit the use, if at all.

Sue said that the proposal is to operate a “small family-run business to help individuals wanting to conceal and carry light and compact firearms for personal protection and/or alternatives to guns such as

personal safety devices like pepper sprays and alarms, special order guns for sports shooting and hunting and firearms for law enforcement.” The proposal is for “assembly of and manufacture of small arms along with gunsmithing that allows for modifications and repair to existing firearms. Also, firearms transfers, wholesale to other FFL (Federal Firearms License) dealers, sell at gun show and retail sales.” He will have limited business hours, by appointment.

Jeff said that he would like to get to the point where he can develop different guns and manufacture them on-site. He doesn't know if it would be just assembly or if they would make them on-site. It would depend on the economics. It takes several years to get something to market. The business would be very limited, mostly by appointment or through their website. They expect to manufacture maybe 50 to 100 guns per year, most of which would be sold on-line. Appointment retail would maybe be 20 individual items. There will not be any test firing at the facility. He has other properties that are more appropriate for testing.

Wayne was concerned; he said the business would evolve in time.

Jeff said that local sales would probably not ever be an issue. If he were to develop a product that was successful, sales would increase, but most orders would go out by Federal Express, for example, and would not result in a lot of additional foot traffic.

Don asked if there would be a security system.

Jeff said that he has a license to store arms off-site with a Federal Explosives License (FEL), so he would probably store them at home. He has five security cameras on the BOMARC property already. His license allows him to warehouse at another facility but he cannot make transfers from that facility.

Jo was concerned that some gun and munitions manufacturing processes like plating and bluing involve caustic chemicals.

Jeff said that those processes won't be done on-site. The guns will be mostly aluminum components which are anodized and they will be sent out for that process.

Paul asked which of the buildings on the site the operation would be in and which license among those listed on the application he would apply for.

Jeff said that it would be in the main building. He does own the property and rents part of it out to other businesses. He said that finished guns will be taken to his home where he has a license for storing them. Ammunitions may be stored on-site. You have to have an FFL to be a dealer or a manufacturer. He has an FEL for his home site. He said he would get the 07 License -- Manufacture of Firearms Other than Destructive Devices.

Don asked for clarification on what he will be doing – he won't be testing or storing the product there, but customers will come to pick the product up?

Jeff said that if someone wants to buy something they can purchase it online and the seller will send it to him and he will complete the transfer for the customer. He has to have an address for his records that is in a commercial or industrial zone. It cannot be in his home. The ATF (Bureau of Alcohol, Tobacco and Firearms) will contact the Township to verify that they will allow the use before issuing the FFL. He said that there is already an FFL dealer in the Township operating as a home business.

Sue put up Google Maps and Jeff pointed out where his property is. He said the manufacturing site is a concrete vault.

John asked about the plans to produce pepper spray.

Jeff said that they will not actually produce pepper spray. He will just stock it as another option for customers.

Paul read from Minnesota Administrative Rules 7504.0500: "A firearms dealer shall make its place of business available to local law enforcement officials during normal business hours for the purpose of verifying compliance with this chapter. A local law enforcement official is not required to give advance notice of an inspection." This means that the Town would be required to inspect the operation.

Jeff said that based on his experience with his FEL, the ATF out of Minneapolis inspects his magazine once every year or two. They inspect the magazine and do an inventory.

Don noted that on the ATF application it says that only 20% of FFLs were inspected by the ATF and of those, only 50% were in full compliance.

Barb said that there are specific requirements in both State and Federal regulations. We should not have to reiterate those as conditions or performance standards if they are laws that he is already required to follow. Is this something that we want neighbors to be able to weigh in on? If it is, then a conditional use permit would be the way to go.

Jeff said that if he were operating there today, no one would know that he was there. He does not want to cause any problems and he wants to fit in with existing businesses. The business that he is proposing is really no different from other businesses at the facility except that it requires an FFL.

Sue suggested the Commission look at what uses are similar to this use in the LIU-3A zone district. Going through the Ordinance, in Table 5.3 it says that rural industry is allowed with performance standards in LIU-3A. It also says that retail is not allowed in LIU-3A. The definition of rural industry in the Ordinance is "small industrial uses in low development density areas." Performance standards for LIU-3A are in Article VIII Section 18: Light Industrial District (LIU-3A). This section also refers to Article IX: Conditional Uses, Section 14 (15): Special Requirements for Rural Industry.

The definition of LIU-3A from Article VIII, Section 16 is

This district is designed to accommodate small industrial and manufacturing uses in low density areas that foster orderly economic growth without adversely affecting the residential character of the surrounding area through the use of site design, performance standards and review processes. Through the implementation of conditional uses and imposing performance standards, it is intended to minimize conflict between dissimilar uses and by prohibiting uses that may contribute to environmental, social, or economic deterioration.

So it is not clear whether the process for permitting light industrial uses was meant to be a review process with performance standards or if it was meant to be a conditional use process. As a part of Article IX, Section 15, Conditional Uses, Special Requirements for Rural Industry, support of nearby landowners through a community participation report is required. If the Commission were to call firearms manufacturing use "Rural Industry" this section indicates that it would be permitted with a conditional use permit. However, if the Commission chose not to call it Rural Industry, but called it instead small arms manufacturing, that specific use, small arms manufacturing, is not in the Ordinance, so the Commission could add it to Table 5.3 and decide whether or not to allow it and, if allowing it, could decide whether to permit it with an over-the-counter permit, permit it with performance standards or

permit it with a conditional use permit. The conditional use process requires a public hearing and neighbor notification and the permitted with performance standards process does not. The difference is the process. If it were allowed in Table 5.3 in LIU-3A, it would also be allowed in other areas zoned LIU-3A and those areas might not be as appropriate to the use as his site is.

Jo asked if he has the support of local landowners.

Jeff said that he has 140 acres and will be operating within a building. There will not be any noise or increased traffic; it is not really rural industry as described in the Ordinance.

Paul asked if we would apply the use to the entire 140 acre parcel.

Sue said that the conditional use goes on the deed to the land.

Jeff said that it has been tough keeping industry on the property in order to pay taxes. It was sold as industrial property, zoned as M1 at the time. It has been "down-zoned" many times since. The property was given to the Township for \$1 and then sold to Mattson Tire Company. The Town didn't want it because of liability issues with the underground storage tanks.

Don said that if wanted to allow the use we could list it in Table 5.3 as small arms manufacturing and include as performance standards that there be no testing of firearms on-site and a minimum lot size, perhaps 40 acres.

Jo noted that there are requirements in the State statutes for shooting ranges. So that would be a separate issue if they ended up wanting to test on-site. She asked if the manufacturing use could be grandfathered in since the site is already being used as industrial.

Sue suggested that the Commission decide what they think is appropriate for the neighborhood and see if language in the Ordinance supports it.

Paul and Lynn Ann thought that the conditional use process would be more appropriate because it would involve the public and because of the nature of firearms and explosives.

Sue said that the CUP process would require a community participation report, neighbor notification, a public hearing, and a fee of \$350. Permitted with performance standards would not have those requirements.

Jeff said that since there is already an FFL in the Township, he doesn't know that another one could be denied. He felt that it is a minimal thing he is asking, to be able to operate a small business out of the facility, given the taxes he is paying.

Barb said that as a neighbor, her primary concerns were shooting, noise and possible environmental impact. She feels that what she has learned tonight satisfies those concerns. So to her, the question is would you want to use a process that includes notifying neighbors.

Jeff said that if neighbors had a legitimate complaint, he would address it. He cannot imagine that anyone would even know he was there.

Jo asked if he anticipated employing anyone besides family members.

Jeff said maybe one or two at some point.

Don asked what would happen if the business were sold.

Jeff said that the FFL application process starts over. He could sell the business name, but the new owner would have to start over.

Paul asked what the process is for changing performance standards if the business were to grow and he wants to change scope?

Sue said that they cannot be changed.

Jeff asked if his business were to grow to a point where he needed an addition, would that trigger a review of his permit?

Sue said that it would.

Paul said he was concerned with potential public nuisance problems and that the public be made aware.

Sue said that public nuisance issues are not land use issues.

Jeff said that there are already regulations in place covering that. He said that explosives are not involved. Guns are essentially a chunk of metal. He has no overnight storage there for gunpowder.

Sue said the Commission could put a new use, small arms manufacturing, in Table 5.3 with performance standards. It would not require an amendment to the Ordinance to do that.

Paul said that we have three choices. We can not permit it, permit with performance standards or permit it through conditional use. But we should still resolve the ambiguous language in the Ordinance.

Don moved to add the use Small Firearms Manufacturing to Table 5.3 of the Ordinance for zone district LIU-3A with the following performance standards: there will be no testing of firearms or ammunition on-site, the lot size must be at least 40 acres, and they must comply with all other state and federal regulations.

Jo suggested a friendly amendment to the motion to table the development of performance standards until the next meeting. Paul seconded.

It was accepted with a vote of 5 to 1.

The original motion was tabled until the next meeting.

Don said that he was concerned about public perception of allowing an arms manufacturer in the Township without involving the public.

Jo said that Table 5.3 indicates no sales or retail is allowed in LIU-3A.

Sue said that limited sales could be allowed through performance standards.

Jeff said that other businesses are doing limited sales. If you took limited sales away from everyone and allowed only wholesale they would probably all fold. It seems to him like the Town is making it difficult to use the land.

Wayne said that most of the businesses in that area pre-existed the modification of the industrial use language. He said that a typical tenant in that complex who wants to do woodworking or sheet metal would not have to come before the Commission for permission to do that. They would be just leasing space that is appropriately zoned for the use.

Jeff asked if the Town has ever had a complaint about the facility.

Sue said that at one time there were rumors of runoff, but it was not substantiated.

Lynn Ann asked why there was objection to making it a conditional use. She asked if Jeff objected to it. A conditional use would give the Commission the option of being able to revisit it.

Paul said that Sue can pull the permit as an administrative action if it is issued with performance standards and the standards are not met. It would not come back to the Commission.

Jeff said that his objections were the cost in time and money.

John said that he feels like the use fits the zone as it is defined. He agrees that notification of neighbors or maybe even the whole Township would be good.

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The minutes from the April 26 meeting were approved with the following changes:

In the paragraph that Jo discusses structure size versus lot size, the last two sentences should read “She said that in the table of allowed uses...we list accessory building size as a use; we should not have the size of a building listed as a use.”

Two sentences relating to Lynn Ann looking at sustainability issues for the comprehensive plan should be removed, because in the end, it was not agreed that we would look specifically at sustainability. She also asked that the sentence in that discussion regarding documentation should read “Lynn Ann said that for anything we bring forward, we should have some documentation to support it.”

Paul said that in the paragraph on St Louis County’s subdivision ordinance, it is written that Lakewood Township has a minor subdivision ordinance. That should be Lake County.

### **Planning Director Report**

Sue said that regarding the Ordinance, the Board has gotten through all of the comments and has made decisions on them. They are going to make a decision on short-term rentals at the next meeting. They are talking about using interim use permitting for them, but they are not sure that will be any more useful in terms of control. They are talking with the Town attorney. They do want to address the subject in the Ordinance, not just leave it out.

The old Clover Valley School tax forfeit land is back up for sale. The Board wrote a letter to the County in 2008 asking for it to be withdrawn from sale because it is basically unbuildable. It was taken off the list then, but is back on now. The Board will decide whether to try to deal with that again.

She and Paul talked about the County subdivision ordinance. Although we should look at lot line adjustments and minor subdivision, it is not a big priority – we have not had the need. She will be talking to St Louis County more.

Paul said our Ordinance is less restrictive than the new County Ordinance. We will need to get a process for dealing with small subdivisions.

### **New Business**

Sue said that she will meet with Clint Little again. Hopefully, he will be able to come to the next meeting.

Sue said that a variance application may be coming in for the June meeting. It is on Bergquist Road and is a house that is set back 87 ft from the center of the road. They want to add a garage entry onto the house. In Article IV it says that "A nonconforming structure may be enlarged or altered in a way that does not increase the non-conformity provided that: 1) The proposed addition meeting the required setbacks for the zone district shall not exceed seventy-five percent (75%) of the original ground floor area of the structure..." Their proposed garage addition is larger than the home.

The meeting adjourned at 10:20.