

**Town of Duluth
Planning Commission
Meeting Minutes
6/28/12**

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

Present: Paul Voge, Jo Thompson, Director Sue Lawson, Don Sitter, John Schifsky, Wayne Dahlberg, Brigid Pajunen,
Absent: Lynn Holatz

Jo Thompson made a motion to approve the agenda, Don Sitter seconded. The motion passed.

BOMARC Missile Site Proposal

The Planning Commission reopened the BOMARC site use request for small arms manufacturing in the LIU zone district. There is a motion on the table by Don Sitter: Don moved to add the use Firearms Manufacturing to Table 5.3 of the Ordinance for zone district LIU-3A with the following performance standards:

1. There will be no testing of firearms or ammunition on site.
2. The lot size must be at least 40 acres.
3. Must comply with all other State and federal regulations.

Sue Lawson gave a presentation of the process and performance standards. It was suggested the motion be split into the three performance standards; each question would then be voted on separately.

Question: If we split and pass the performance standards as written, can we amend the performance standards?

Jo Thompson made a motion to split the questions. The motion died for lack of a second and went back to the main motion.

Jo Thompson made a motion to amend adding Duluth Township PD Standard #1 Security/surveillance cameras will be installed, functional, operational and record 24/7. This is the same as #2 of the Possible Standards with the exception of "Monitoring." Jo's motion died for lack of a second.

John Schifsky made a motion to add #1 "Security/surveillance cameras will be installed, functional, operational and record 24/7" of the Police Department Standards to the main motion. Brigid Pajunen seconded. Amendment to the main motion passed unopposed.

Question: Is there a statement in the document that says you have to report to local law enforcement?

John Schifsky made a motion to add #2 "After one year of operation the permit will be reviewed. If there are unforeseen issues that develop the Township may amend the permit with additional performance standards. The permit will continue to be reviewed on a yearly basis with the possibility of amending the permit to address any issues that may arise" of the PD standards to the original motion. Don Sitter seconded. Amendment to the main motion passed unopposed.

Jo Thompson made a motion to add PD standard #3 "In the event that the permittee wishes to change the scope of the small firearms manufacturing operation the proposal will be reviewed and addressed by the Planning Commission" to the original motion. John Schifsky seconded the motion. Amendment to the main motion did not pass.

Don Sitter: As long as he stays within small arms manufacturing this standard is repetitive.

Jeff Levine: I would agree. The State statute and federal regulations state what small firearms manufacturing entails.

Brigid: I am always in favor of less verbiage. I am in favor of not adding this language.

Don Sitter: I am not in favor of adding this language.

Paul Voge: We are addressing this with #2. It is redundant with #3.

Brigid: Can Jo withdraw the motion once it has been seconded?

Jo Thompson would like to add amendment #1 of the possible performance standards "The use will be restricted to small firearms as defined in MN Rules 7504.0400 (There will be no more than 50 pistols displayed for sale at any time)" as it is written. Brigid Pajunen seconded. Amendment to main motion passed unopposed.

Correction to possible standards #1 should be 7504.0100 instead of 7504.0400.

Brigid: How does that differ with all other state and federal regulations?

Sue: This motion would serve to clarify the PD Standards #3.

Jeff Levine: As a small firearms dealer which is 50 firearms or less, it is actually part of the Minnesota statute.

Sue: This serves to direct you to that rule, it is not adding a lot of verbiage, it is a clarification.

Paul: It is a clarification as to what a small arms dealer is.

Jo Thompson made a motion to add #3 of the possible performance standards "The owner of the property will provide an annual report to the Duluth Township Police chief and to the ~~town clerk~~ Planning Director demonstrating that all components of the required security system were independently tested and certified to comply with the requirements for Electronic Security for all Firearms dealers under MN Rules 7504.00" as it is written. Brigid Pajunen seconded. Amendment to the main motion did not pass.

Brigid: There are Minnesota rules. There is some oversight already that has to happen for this sort of business. I am wondering how confident we are on the State level. I don't want to overburden our police department with requirements.

Jo: I think that is required.

Don: I think that anytime we want we can ask the Police to go and inspect the site.

Paul: I think it is pretty much taken care of; I think we are pretty limited in how we ask the Police Department to do their job.

Sue: Is this something that is absolutely necessary to have the owner do? This may be an additional burden. Make sure it is not already covered under another rule.

Jeff: I think part of where the surveillance comes in is more of a store where there are glass counters and the guns stay out there at night. I don't plan on displaying in a glass case. I am going to have a vault in a secure room.

Sue: Remember this is not just about Jeff's operation.

Don: We have to write this as if someone else also wants this sort of business and might want to display in a glass case.

Jo: So it is required that they have someone come in and make sure everything is working correctly.

Jo Thompson made a motion that we consider #4 of the possible performance standards "The Federal Firearms license will be held by the owner of the property." Brigid Pajunen seconded. Amendment to the main motion did not pass

John: You might want to amend Don's motion to include "mall" before the words "firearms manufacturing."

Don: What would happen if he sold the business?

Jeff: Someone else could be an FFL and lease from me. The new applicant would have to come before the Commission and make their application.

Can we issue permits to the lessee?

I don't think we really want to do this.

Jo: I actually added this from another performance standard. It adds another layer of complexity.

Brigid: I'm just not certain we can do that. It just doesn't sit right with me.

Wayne called for the question. John Schifsky seconded the call. Question call passed.

Jo Thompson made a motion that we consider #5 of the possible performance standards "The owner will obtain any MPCA permits as required." Brigid Pajunen seconded. Amendment to the main motion did not pass.

Yes Jo Thompson

No Don Sitter

No Wayne Dahlberg

No Paul Voge

No John Schifsky

Brigid: What are the required MPCA permits?

Sue: We do not regulate hazardous waste. All this is saying is that if there is an MPCA required you have to get it.

Paul: We already stated in the main motion that they are required to get all Federal and State permits and requirements.

Jo Thompson made a motion to consider as stated #6 of the possible performance standards “There will be no testing (discharge) of firearms on the property of the business. If the nature of the business will require on-site testing of firearms, a permit for an interim/conditional use for a shooting range must be applied for. There is no guarantee that a permit will be approved. If approved, the owner will meet all performance standards, MN guidelines for Shooting Range Best Practices and all requirements of Minnesota Statutes, Chapter 87A.” Brigid Pajunen seconded. Amendment to the main motion did not pass.

Jeff: The guns are tested in a certified range.

Don: I think we should stop with “there will be no testing.”

Jo Thompson made a motion to consider as stated #7 of the possible performance standards “As stated in MN Rules 7404.0400, the 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 the MN rules. The local law enforcement official is not required to give advance notice of the inspection. The owner will provide the Duluth Township Police chief with a schedule of regular business hours.” Paul Voge seconded. The amendment to main motion did not pass.

What is the difference between this and what the State statute already requires?

Correct the MN Rule from 7404.0400 to **7504.0500**.

We need to establish normal business hours. John Schifsky reminded us that this is not just for Jeff, it is for the larger business as a whole.

Wayne: Can anyone call?

Jo Thompson would like to make a motion that the business owner provide the Police Chief with a schedule of his business hours. The motion died for lack of second.

Performance Standards for Rural Industry:

1. Hours of operation
2. Noise
3. Road capacity
4. Individual sewage treatment systems (ISTS) – *We do not manage ISTS.*
5. State Fire Code
6. Notification to Fire Department
7. Outdoor lighting – *we have already discussed downlighting for security.*
8. Waste – *we do not regulate waste*
9. Lot width, siting – *buffers*
10. Screening.

John Schifsky made a motion that the Planning Commission will determine if the road can be utilized by the applicant without adversely affecting the natural resources or the ability of the road to support the activity. Don Sitter seconded. The amendment to the motion passed.

John Schifsky made a second motion to change the second and third word of the performance standard which should now read that the Planning Director will determine if the road can be utilized by the applicant without adversely affecting the natural resources or the ability of the road to support the activity. Seconded by Don Sitter. Amendment to the motion passed.

Don Sitter made a motion that the fire department and police department must be notified within 30 days of receipt of the FFL. Brigid Pajunen seconded. Amendment to the motion passed.

Jeff: Yes, we are going to be making ammunition also. The sheriff and the State Fire Marshall are notified once the FFL is approved. But do the local law enforcement and the local fire department really need to be notified?

Paul Voge made a motion that the structure for the manufacturing be centered to the extent possible on the property. Brigid Pajunen seconded. The amendment to the motion failed.

Discussion on the motion:

Brigid: This is already in our ordinance.

Sue: This is a special use.

Jo: I don't know why we have to put more regulations or restrictions on the property, there are no lights.

Jeff: If I warehoused black powder that would fall under the ATF storage guidelines. It actually falls under the explosive ATF scale. If you are going to store an explosive item you then have to meet the ATF scale, federal rules.

Sue: In an earlier discussion there were allusions to retail sales which were not resolved. Should retail sales be allowed?

John: Why are you bringing this up? Is this something over which we have control?

Sue: I would say it is a grandmothered use in that everything here has gone through contortions; there have been sales going on on the site for years. In Table 5.3 in Article 5 of the Ordinance, sales are not permitted.

Paul: Are they or are they not allowed?

Sue: They are not.

Brigid: There are no retail sales allowed?

Sue: The Zoning Ordinance looks to the future more than into the past. It is a use that is going on. If another LIU-3A were to be zoned you would not have retail sales.

John Schifsky made a motion that for this particular use no retail sales be allowed. Brigid Pajunen seconded. The amendment to the motion did not pass.

Jeff: Could you clarify? If you go to Gander Mountain and buy a gun, you take it home and shoot it. It has never been shot before, it is brand new. We are going to build guns and modify them to fit specific orders or handicaps. Once you get the permit you get demos set up, you send them out to distributors and they set them up. The end user doesn't come to the store and say I'm not going to buy it unless I can shoot it.

Brigid Pajunen made a motion that we allow retail sales by appointment only. Jo Thompson seconded. The amendment to the motion passed.

Discussion on the motion:

You get into parking problems.

John: You are talking about making this possible.

Don: This gives him retail sales but it is going to limit it. This will be for all LIUs?

Sue: We do have parking standards in our Ordinance for LIU.

Jeff: Like a home business you must have some clarification.

Sue: It is based on the number of employees you have although it is not a good way to measure retail sales.

Wayne: We are pursuing this as a redefining of the matrix instead of as a business. Quite frankly they are operating as a retail business there, I don't know why we would limit the sales by appointment only.

Paul: But retail sales are already a prohibited use. It protects the land use interest going forward.

John: It is not what is going on at the site now, we are defining the use for LIU. My sense is among the group that there is some hedging.

Jeff: That would not be an issue for this particular business.

Sue: If you are a small specialty business you would not ask someone to be at the counter for 8 hours a day to purchase a very specialized item.

Don: Would you want to sell a box of ammunition if someone walked through the door? I could easily see a buzzer on the door.

Wayne: I am just afraid of just totally hemming him in and hounding him to death.

Brigid: I am trying to say we are not having a Gander Mountain where someone can walk in and buy a gun whenever they want.

Sue: It is the intent here.

Original Motion with amended Performance Standards.

Don Sitter 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. (The original motion was seconded [see May 2012 minutes]).

1. There will be no testing of firearms or ammunition on-site.

2. The lot size must be at least 40 acres.
3. Must comply with all other State and federal regulations.
4. Security/surveillance cameras will be installed, functional, and operational and record 24/7.
5. After one year of operation the permit will be reviewed. If there are unforeseen issues that develop the Township may amend the permit with additional performance standards. The Permit will continue to be reviewed on a yearly basis with the possibility of amending the permit to address any issues that may arise.
6. The use will be restricted to Small Firearms as defined in MN Rules 7504.0100 (there will be no more than 50 pistols displayed for sale at any time).
7. The Planning Director will determine if the road can be utilized by the applicant without adversely affecting natural resources or the ability of the road to support the activity.
8. Upon receipt of the FFL that they notify the fire department and police department of the approval within 30 days of receipt of license or permit

Wayne Dahlberg made a motion that we bring lot size down to 10 acres instead of 40 acres. Don Sitter seconded. Amendment to the main motion did not pass.

Discussion:

Paul: What is the average size acre in that area, there are three?

Jeff: It depends on where the next house is that is lived in. You can have your storage by a barn as long as no one is living in the barn.

Sue: I would speak about history on 10 acre LIUs.

Discussion on the 40 acres.

Don Sitter made a motion to change his motion from "Firearms Manufacturing" to "Small Firearms Manufacturing" (on page 5 we did say small firearms manufacturing). John Schifsky seconded. Amendment to the main motion passed.

Jeff: Will the review process be in the form of a hearing? No.

The motion to add Small Firearms Manufacturing to table 5.3 of the Ordinance for the LIU-3A zone district was read in its entirety. The motion passed unopposed.

Chelgren Variance Hearing

Wayne Dahlberg recused himself from this variance hearing because he is the architect for the Chelgren property.

Sue Lawson gave a basic description of the property, the variance criteria and the MUNS-4 zone district. The Chelgrens are asking for a variance from the standard 50' side yard setback to 40' (10' difference) and a variance from the standard rear yard setback of 50' to 35' (15' difference). Because the statute change last year, Sue showed the criteria on which the Planning Commission would base their decision.

The property does meet impervious surface requirements, lot area, lot width, lot coverage and minimum road setback. The Chelgrens are seeking a variance from side yard and rear yard setbacks. They are approximately 490' from the Hastings property and 150' from the nearest property.

Ted Chelgren: We are asking for a 10' and 15' change. The intent is to move the house to the north and the west. If we move the house we actually gain quite a bit. The house is at an angle so only two corners of the house would go into the set back area. We have been designing the house to try and fit it into the property and have drawn it down to 1100 square feet. I've talked to all the neighbors and they have been very supportive, Ed Morris, Dale Lewis, Lounsberry's and a letter from Adam and Alyssa Hastings. The only other thing I would say is that we love this township, we love the way the area is, we like the features and we would like to build in a way to maintain the beauty of it. Our plan is actually trying to

accomplish a way to do that, keeping the separation of the trees and that sort of thing; I believe we are meeting the gist of the comp plan.

Dave Edblom: (general contractor for the Chelgrens) I support what Ted Chelgren is saying, we have shrunk this house 3 times at least and are right up against the mound system. The Health Department left us a very narrow space in which to build. Stormwater issues around the mound will be protected.

Paul: You purchased the property from Grady?

Ted Chelgren: Yes

John: I was up there earlier this week and not entirely sure where you were. I had no idea how quickly the road drops off. I have no idea how you will deal with stormwater issues. Related to set back issues, I noticed it is very heavily wooded but 156 feet isn't much. Even in woods, it doesn't necessarily screen you that well.

Sue: In terms of vegetation, if you are closer to the shore more than likely you are more open, you are in a different sort of woods, it is more dense the further into the Township you move.

Jo: I had the same concerns John did. I was playing with the contour lines on the drawing. I also visited a few days after the recent storm event and while there is excavation going on, the way the land lays it did not erode. It is about 1200 feet and drops down to 1170 on the contour map. At the top of the hill it goes up and then down, it kind of protects the property.

Don: Could you give me a dimension of your house?

Ted: About 50 x 35.

Don: I walked the property on Sunday and I saw the lot line which was about 75 feet to the edge of the mound which is a little bit strong. The corners of the house were staked off. The lower side of the house was probably 12 to 15 feet from the mound.

Ted: The house, because it is on an angle, is further down the hill.

Don: It seems you have about 40 feet with which to work.

John: Could you say something about the disadvantage of being too close to the mound?

Dave Edblom: Maintenance. On a hillside if you plunk a house there you are going to interfere with the drainage. If we are right nosed up against the mound it doesn't give you much room with which to work.

John: So your concern is there isn't enough space between the house and the mound?

Dave: It would be more difficult to maintain the mound.

John: Is that the reason for cocking it at an angle for the view?

Ted: No, it seems to be a little better use of the space.

Paul: You mentioned in the application that there are springs on the property?

Ted: They are kind of all over the place and they come and go at will.

Dave Edblom: The further east you go the wetter the property gets.

Paul: Request for public testimony?

Wayne: I will stay quiet.

Paul read a letter from Adam and Alyssa Hastings.

To Whom It May Concern:

This letter is in support of the variance requested by Ted and Paula Chelgren regarding the setback requirements on their property at 2018 E. Pioneer Road.

Adam and Alyssa Hastings.

Deliberation

1. The requested variance (is/is not) in harmony with the purposes and intent of the Ordinance.
2. The requested variance (is/is not) consistent with the Comprehensive Plan because. . .
3. The Commission (has/has not) established that practical difficulties exist in complying with the Zoning Ordinance.
 - a. The property owner (does/does not) propose to use the property in a reasonable manner because . . .
 - b. The plight of the property owner is/is not due to circumstances unique to the property not created by the property owner because . . .
 - c. The variance, if granted, (will/will not) alter the essential character of the locality because. . .
4. The Planning Commission imposes the following conditions:

Discussion:

Don: As I walked the property I had a problem with the practical difficulty. He could turn the house any way and stay within the setbacks.

Jo: I guess I just got a different feeling. Using the proposed setbacks, if you turned it you noticed in the woods a seep, if you turned the house it would be right on the seep. There is almost always a wet area between the area structure and the mound and you don't want to get to close to that.

Don: Certainly there has to be a drainage swale. I just have a hard time seeing where 10 feet is going to make that much of a difference.

Paul: 9.4% impervious surface; there will be a required stormwater management plan.

Sue: You could also put conditions on this.

Jo: How close is the house to the road? It is 150 feet to the lot line.

Brigid Pajunen made a motion to grant the variance without conditions. It is in harmony, it is consistent with the comp plan, and the practical difficulty is one they didn't create. Jo Thompson seconded.

Paul: Essentially the 5 factors have been met.

John: You can do single amendments to the motion now that the motion has been seconded.

Sue: In your discussion we can probably come up with the whys.

Discussion on the motion:

1. Yes. Setbacks: it is a wooded area and there are significant buffers.

Don: A lot of the trees have been removed almost to the lot line so a lot of that screening is almost gone.

Brigid: Create neighborliness: he has already proven neighborliness by visiting the neighbors.

2. It is consistent with the comp plan in maintaining its rural character by creating space from one building site to another building site. They are trying to deal with stormwater management.

Jo: The design: they are trying to treat the land with respect to the natural resources.

3a. The owner does propose to use the property in a reasonable manner. It is a reasonable use consistent with the property.

3b. The plight of the property owner is due to circumstances unique to the property and not created by the property owner. He has 5 acres, he has the road, he has the springs and he has the septic requirements between the soils. The septic requirements are the driving issue for the mound site.

John: Ted you chose to build your house below the mound?

Ted: The property is wetter lower.

3c. The variance will not alter the essential character of the locality. There are a series of houses scattered some distance from each other. They will open up a little more of the wooded area but I don't see that changes the essential character of the area. Dispersal is pretty consistent all around.

Vote on Motion: Don Sitter Nay

John Schifsky, Jo Thompson, Paul Voge, Brigid Pajunen Yea. Motion passes.

Approve Minutes from May 2012 Meeting:

Corrections/Amendments

- On page 6 of 8, Don made a motion to read Small Firearms Manufacturing.
- On page 3 of 8, 1/3 of the way down Wayne was concerned; I expressed that the business would evolve in time.

Jo Thompson made a motion to approve the minutes as corrected. Brigid Pajunen seconded. The motion carried

Director's Report

Not a lot to report.

- A letter which Paul forwarded to the Commission: Lynn Holatz regrettfully resigning from her position on the Planning Commission due to the flood and family medical issues. Sue will recommend to the Town Board that the position will need to be filled.
- Bieraugel property: The new owners are going to be building on the site and are aware that they have to do a stormwater management plan.
- A few permits have come through.
- Adoption of the Zoning Ordinance: The Town Board did get one small step further, they do agree they need to say something about short-term rentals. The Chair of the Town Board was absent for the last meeting, the remainder of the Board did proceed further but really want Dave Mount's input.

New Business

No new business at this meeting.

Old Business

- Comprehensive Plan work is still on the agenda.
- One possible variance in July. Hopefully we can spend some time working on the comp plan.
- Paul will be out of town July 26th. Wayne Dahlberg will also not be here for the July meeting.
- FYI: The Town Hall will be closed for floor refinishing the last week of August.
- If there is variance for July, Sue will e-mail the Commission to make sure there will be a quorum.

Concerns from the Audience

No concerns

Brigid Pajunen made a motion to adjourn at 10 50 p.m. The motion was seconded by Jo Thompson. Motion passed.