

**Town of Duluth
Planning Commission
Meeting Minutes
9/27/12**

The meeting was called to order at 7:10 p.m. by Chair Paul Voge.

Present: Paul Voge, Jo Thompson, Wayne Dahlberg, Don Sitter and Brigid Pajunen

Absent: John Schifsky

Also present: Planning Director, Sue Lawson

Don asked that the agenda be amended to add discussion of the date for the November P&Z meeting. This was added under the Director's Report and the agenda, as amended, was approved.

Jo had a correction for the August 23, 2012 meeting minutes. It should say that Sue would try to have Scott Smith come to talk to the Commission, not the Board. John Schifsky suggested punctuation clarifications by email, and the suggestion that the following sentence "They have 30 days to submit that report." be rewritten as follows "Officials and agencies have 30 days to submit that report." The minutes, as amended, were approved.

Sue introduced Scott Smith, Land Use Manager for St Louis County, who was here to answer questions about the County's new subdivision ordinance, Ordinance Number 60. She distributed a synopsis of the new ordinance (see attached).

Scott said that the revision of the County's subdivision ordinance started in 2003. He said that the County tried to be as inclusive as possible, reaching out to all the entities that are involved in subdividing. They wanted to simplify the ordinance, clean up the language, and make the definitions the same as in other County ordinances. One major factor was the County's development of a parcel layer. When they had the parcels drawn, they came up with over 5000 errors (also called discrepancies). He said that anyone can write a legal description in a vacuum without regard to adjoining properties and this resulted in some of the discrepancies. They dropped the language in the ordinance regarding townships because it was too prescriptive. Nothing has changed when creating a plat under Minnesota Statutes Section 505. Plats have to be approved by the township. For minor subdivision, there will be an initial plan review before the application is submitted. The purpose of this meeting is to iron out details before the application is submitted and the 60-day clock starts. The Township Planning Director could attend this meeting.

Paul said that one question the Commission had was, in Section 4.2.E, what exactly is a government lot, how are they subdivided, and what is the approval process?

Scott said that most government lots are adjustments from previous surveys. In 4.2.E they are primarily looking at everything that they think of as a 40 acre parcel. He said

that his understanding is that townships have authority to approve these subdivisions, but he questioned how a township would even be aware of a subdivision of land under 4.2.E.

Paul said that that was another question. If someone subdivides in violation of the County's ordinance, there is no way to know. The Town doesn't have a mechanism for knowing if a lot is legal or not.

Scott said that the County can look and see when a deed is recorded. They expect that there will be people who are not aware of the new subdivision ordinance who will just have a legal description written up by a title company, etc. If this happens and they do accidentally get it right but don't have it reviewed, the County doesn't plan on penalizing them.

Sue said that the Township doesn't require that someone provide a copy of their deed or title before issuing a permit.

Scott said they update their records from the County Recorder's records. He said that any lot created by metes and bounds requires a survey. He said that the tax statement is good for showing ownership, or the deed. The deed is the only true legal description of a piece of property, not the auditor's record. Any time the applicant is not the owner-of-record the owner has to sign the application.

Paul asked what the process would be for dividing a 6 acre lot into three 2 acre lots where zoning allows 2 acre lots.

Scott said for that they would have to do a full plat. Simple division of a 40 acre parcel, on a public road, into 10 acre lots could be done as a fractional description under 4.2.E or 4.2.F. It may also be done by metes and bounds. There would have to be a certificate of survey in that case. They consider simple description like "easterly 320 feet," etc. as fractional. Metes and bounds is distance and bearing and always requires a recorded survey.

Paul said that as the ordinance is written, it seems as though a parcel has to be a full government lot or a full 40 acres to subdivide under 4.2.E or 4.2.F.

Scott said that they expect to tweak the ordinance to fix small problems and he has made a note of this.

Paul asked if, for a subdivision defined by metes and bounds, proof of ownership would be required as well as a certificate of survey.

Sue noted that people don't necessarily record everything. They give parcels to others, they contract for deed, etc.

Brigid asked what the procedure is if someone wants to let their child build on their property.

Wayne said that the banks will not loan unless the title is clean and clear so the only way someone could build without the property being a separate and legal parcel is if the project were self-financed.

Paul said that someone could subdivide illegally and then apply for a land use permit a year or two later. Is there a process where we can check with the County to see if it's a valid subdivision?

Scott said that they would go back to the deed and see when the parcel was created. He said that it is fine to come to them with any questions like that.

Jo asked if someone has 40 acres and gives their child 10 acres, does the County verify that that 10 acres is an actual lot? And what would happen if the parent were to go back on the agreement and, for example, give the child 2 acres instead of 10, but the home is already built?

Sue said that there are a couple of ways in our Ordinance that someone could build on a parcel without dividing it first. There is an allowance that you can build provided that if you were to divide the property, the lot with the new construction would meet the zoning requirements. In this case, the owner would have to sign the land use permit application, not the child. There would be documentation from the permit it was 10 acres and that is what they would have to do.

Paul asked why the County adopted the minor subdivision language.

Scott said that the County tried to hit a threshold below which public input was not useful or necessary. Plats can take 6 months or more. A minor subdivision should be a 60 day process, meeting Statute Section 15.99 requirements. So the question is, did they hit the right threshold? The Town of Duluth can choose not to have minor subdivisions. He said that there is no way the County can complete their process for minor subdivision and accommodate the Township's process and still meet the 60-day requirement as required under Section 15.99.

Paul asked what other townships that have their own zoning are doing about minor subdivision.

Scott said they are leaving it entirely to the County.

Paul asked if we decided to have the Town's Planning Director handle subdivisions instead of the County, would we need the County's signature as well?

Scott said that his understanding was that it could be entirely the Town's responsibility.

Sue said that the crux of the matter was whether or not the Town wanted any subdivision in the Township without public input and approval.

Scott said that the clause not allowing any new dedications of roads is a threshold limiting minor subdivision.

Sue said that if the Commission adopted all of the County's subdivision ordinance, then she and Scott would work together on any minor subdivision in the Township. Other options are to not have minor subdivision in the Town or to do the same thing regarding minor subdivision as the County only under the Township's auspices.

Scott said that the maximum number of parcels that could result from minor subdivision is six, provided you have a perfect 40 acre parcel – four 2.5 acre lots along the front and two lots in back. If it is not completely clean and clear it needs to be a platted subdivision.

Sue noted that the role of the Town was not to put up road blocks to subdivision, but to help people, with the caveat of looking out for the greater good of the Township.

Scott said that one standard the Town can apply that the County doesn't consider is the Town's Comprehensive Land Use Plan.

Paul asked how PUDs and conservation plats dovetail in the new ordinance. He said that it seems as though there is a lot of overlap between the two.

Scott said that typically a PUD establishes density and use, and the subdivision itself is the mechanism for creating or transferring ownership. PUD came from the DNR as a part of the shoreland standards. Conservation design is good for sites with limitations. It is required for certain lakeshore situations but is otherwise only encouraged.

Sue said that with PUDs you can have mixed uses, which is good for the shore area. A conservation plat is not mixed use.

Scott said that the only time the County uses conservation design is for existing resorts or resort conversions. These have been conservation designs based on PUD and are the only ones that have worked.

Sue said that the Township would not be involved in lot line adjustment.

Scott said lot line adjustments will almost invariably result from the discovery of a mistake and the County would probably make the Town aware of any adjustments.

At this point, Scott left and the Commission worked on deciding what language to include in the Town's Ordinance regarding subdivision.

Sue said the first thing to decide is whether the Commission thinks it is important to include the public when considering minor subdivisions.

Jo said that she is hesitant about not allowing minor subdivision. People buy property as an investment and that would limit that potential.

Don noted that Scott said that the County hasn't found public input on small subdivisions to be of value.

Brigid said that she thinks the public hearing process is still important to the Town.

Sue agreed, saying the Town has always been transparent in their processes. What could or would we change if we went through the public process? It gives people and the Commission a chance to look at it. But what would we do with the input?

Wayne said that he had a concern about everything having to go through a public hearing process. Under the last County ordinance, you could split 20 or 40 acres into four parcels as long as you followed the timeline and you did not have to go through a subdivision process.

Don asked how often we would actually see a request for this type of subdivision.

Sue said that we have had one in the last 15 years. She said that the requirements for minor subdivision and regular platting are the same except for the public hearing for a plat and the expedited timeline for the minor subdivision. St Louis County is the largest county east of the Mississippi River. What works at the county level may not work at the township level.

Paul said that we would have to develop standards.

Sue said a public hearing is a decision-making process, not a negotiation. Community involvement early on helps this. The Community Participation Report (CPR) and public hearing have been a part of the Town's Ordinance since 2003.

Brigid thought that it was a good idea to do a CPR to address simple concerns before having the public hearing.

Don said that if we were to remove minor subdivision it might take care of the concerns everyone has expressed.

Sue said that then every platted subdivision would require a CPR and hearing.

Don made a motion to adopt all of St Louis County Subdivision Ordinance Number 60 except for minor subdivision. Brigid seconded.

Jo asked if we adopted this, would the County be able to override it?

Paul said no, because our Ordinance would be more restrictive than the County's.

The motion passed unanimously.

Sue said that she would put together the language for the Ordinance.

Director's Report

For the November Commission meeting, Sue suggested that we meet on the 5th Thursday in November, November 29, since the 4th Thursday is Thanksgiving. If there were a public hearing in December, the Commission could decide on a date for that. Otherwise, there would not be a meeting in December. Everyone agreed to this.

Sue said that John Kessler resigned his position due to illness. The primary contact will now be the Town Clerk. The tentative plan is for the Town Board Personnel Committee to split John's responsibilities between Sue, Ann and Beth. She would like to recognize John with a plaque or something. He has worked for P&Z for nearly ten years and always went the extra mile for people.

Not a lot of permit applications have come in. We continue to get questions and inquiries.

There has been an application for the vacancy on the Commission – Jerry Hauge on Homestead Road. The Town Board will do interviews. John Schifsky will miss one more meeting.

Sue said that in October we will focus on the Comprehensive Land Use Plan. She said that she will try to have Clint Little come for the October meeting.

Jo said that the DNR moved all of their GIS to a different office and Clint no longer works on GIS.

Jo said that Dianne Desotelle, Sea Grant's climate change educator, would be willing to give a presentation on adapting to climate change. It is good information on things like rain and erosion. Events like the June rain and flood may not be rare now with global warming. Would the Commission be interested in this?

Paul thought it would be timely with our look at the CLUP. Climate change was not something the Town was dealing with when the CLUP was originally written.

Sue said it would help the Commission think about things like landscaping. When Jo is able to schedule it, we could put it in the newsletter and invite the community.

Concerns from the Audience

None

The meeting adjourned at 9:30.