

**Town of Duluth  
Planning Commission  
Meeting Minutes  
January 28, 2016**

The meeting was called to order at 7:02 p.m. by Vice Chair Jo Thompson.

Present: Jo Thompson, Wayne Dahlberg, Jerry Hauge, John Schifsky, and Larry Zanko

Absent: Paul Voge and Brigid Pajunen

Also present: Sue Lawson, Planning Director; and Don Sitter, Town Board Supervisor and liaison to the Commission

The agenda was approved as presented.

The November 19, 2015, minutes were approved with a correction to the attendance and a clarification on a pronoun reference in line 97.

**Public Hearing**

Sue started the proceedings with introductions around the room, review of the Town's Communication Agreement and an overview of the Conditional Use hearing process. She then presented the request. Stacey and Shelley Seering were issued an Interim Use Permit (IUP) for a short-term rental on their property at 5902 River Road on February 27, 2014. They came to the Commission last November asking that this permit, due to expire in February of 2016, be made a Conditional Use Permit (CUP). A CUP stays with the property, even if ownership of the property changes. An IUP can be granted for a certain date or period of time. Sue read the findings from the February 27, 2014 hearing:

3-A. Dimensional requirements

The proposed use meets all of the dimensional requirements for FAM-3.

3-B. Necessary Findings

The Planning Commission determined that the proposed use met all of the necessary findings for a Conditional/Interim Use in Article IX Sect 7.B.

4-A. Interim/Conditional Use

The Planning Commission determined to hear application as an Interim Use due to heightened concern for public safety on the part of neighbors, requiring closer monitoring of the use.

4-B. Conditions

In addition to the required Performance Standards for high-frequency short-term rentals listed in Article VIII Sect 15.A, the Planning Commission imposed the following conditions:

- 1) A two night minimum stay will be required.
- 2) At least one of the renters will be 25 years old or older.
- 3) There will be no more than seven persons in a rental party.
- 4) The building will be rented for no more than 140 days per calendar year.
  - 5) The applicant will meet all of St Louis County ISTS requirements including the addition of a 1000 gallon tank as already recommended by the County.

#### 4-C. Decision

An Interim Use Permit for a high-frequency short-term rental at 5092 River Rd for Stacey Seering was approved on February 27, 2014, with the conditions detailed above

The zone district for the property is FAM-3. Sue read the description of the zone district and the dimensional requirements:

This district is intended to recognize and promote the development of the Township's forestry and agricultural industry, to maintain and promote the rural character of the Township, and to prevent urban and suburban encroachment on the area. A low level of development is important in this district since the uses encouraged in FAM-3 would be less compatible in a more urban setting.

Minimum Lot Area: 9.0 acres  
Minimum Lot Width: 300 ft  
Maximum Lot Coverage: 5%  
Minimum Side Yard Setback: 75 ft  
Minimum Rear Yard Setback: 100 ft  
Maximum Structure Height: 35 ft

Sue showed the vicinity and site map. All of the dimensional requirements for FAM-3 are met. The Seerings stated in their original application that the house will be used for short-term rental with a minimum stay of two nights. Renters must be a minimum of 25 years old with no more than seven people in a rental party. The building would be rented for no more than 20 weeks per year. The hours of operation would be seven days per week; 24 hours per day; the number of visitors to the site, per day, would be up to seven; additional car traffic would be an average of .38 units per day with a maximum of .76 units per day. There would be no signs for the rental. Parking would be right next to the rental unit. Anticipated activities would be hiking, fishing, swimming in the Sucker River, and a campfire by the rental building. It is possible that smoke from the campfire as well as noise from guests talking around the campfire or on the porch could impact neighbors. The septic system was built in 1994 and was inspected in 2013 and certified at that time. Water is supplied from a well. Waste disposal would be household waste included in regular garbage collection.

For the Community Participation Report submitted with the original application, the Seerings reached 20 of the 21 neighbors in the notification area. The concerns that neighbors had were

- making sure renters knew what land was private,
- renters not trespassing on others' land and/or easements,
- renters not being able to use recreational vehicles departing from the rental,
- renters driving habits on Wildwood Road,
- renters cleanliness at the river, and
- renters hiking along the river.

The Seerings responses to these concerns were

- Provide a webpage showing where the nearest public recreational trails are located, along with a detailed map in the rental showing public and private lands.
- Include in the rental agreement that hiking along the river can only be done on the rental side of the river, downstream, and a sign will be placed at the river access point asking that the river be kept clean.
- State in the rental agreement that the power line easements are not public and should not be used for recreational vehicles.

- Post “No Trespassing” signs along the driveway easement which will further encourage renters to realize those woods are private.
- Include a section in the rental agreement addressing the speed limit on Wildwood Road along with talking to renters about it upon their arrival.

In the time the Seerings have been renting the property under the Interim Use Permit, they have rented it 83 times. The Town has received no complaints regarding the rental.

Stacey said that when they originally applied in 2014, they had hoped to get a Conditional Use Permit. But there were some concerns because there has not been a similar use in the neighborhood. So at the time, it made sense to issue an Interim Use Permit for 2 years to see how it goes. He said that a major difference from some rentals is that they live next door to their rental, they meet all of the guests, and they never rent the unit when they are not there. They also encourage renters to frequent businesses in the Township. They meet all of the criteria for a Conditional Use. The original reason for the Interim Use was a concern over safety. There have been no issues.

Shelley said that they interact with renters a lot during their stay. They have a treasure hunt that they participate in with the kids. Their renters are guests, not customers.

John said that he was concerned because a Conditional Use goes with the property. The letters neighbors submitted regarding the rental for this hearing are all positive. But if the property were sold, the next owner might not be as responsible. Would an Interim Use Permit for, say, 5 years be acceptable?

Shelly said that their concern is that they book out 6 months in advance and if they were to sell the property there would be guests on the books. There is usually a 60 day window between purchase and closing. The buyer would not have time to go through the process of getting their own Interim Use Permit for the property before the closing to honor those reservations.

Stacy noted that that Article IX Section 6 has provisions for termination of a Conditional Use Permit if things don't go well.

Jo asked what would happen if they sold and there were renters on the books, but the new owners did not want to rent.

Shelley said that it would be a negotiation with the buyer. She would hope that the buyer would honor the reservations. If not, she would make every effort to find alternative accommodations to honor those reservations. She asked if an Interim Use time period could be for as long as they own the property and then for 6 months after sale of the property. This would give new owners time to get their own permit if they wanted to continue renting.

Sue said that the Ordinance says an Interim Use allows “for a use for which there is a time certain (for example, a date or a particular event) when the use will terminate.” The event could be the sale of the property.

### **Public Testimony**

Sue read four letters/emails submitted to the Town regarding the CUP application from Rita Bergstedt, Steve Willemarck, Sheila Packa, and Don McTavish (see attached).

Alexandra Reynolds, attorney for Robert Collison spoke. She said that in 1994 the Collisons granted an easement to Rita Bergstedt. The easement was for her use only. Since then the property has been subdivided. Mr. Collison has filed a lawsuit against Rita Bergstedt. Mr. Collison opposes the proposed

Conditional Use and the continuation of the Interim Use. The easement was granted to Ms. Bergstedt and she did not fulfill the terms of the contract. Even if the Seerings were considered assigned, it would certainly not be to run a business. The business is listed online on some web pages as a hotel. The term hotel connotes many guests – in the summer there would certainly be increased traffic. Mr Collison has tried, since 1994, to get Rita Bergstedt to fulfill the terms of the contract.

Jo asked if the easement accompanies the property.

Ms Reynolds said that the easement is a perpetual easement so it goes with the property.

Robert Collision said that the easement has become a named road.

Larry asked if the easement goes with the property and if the property is subdivided, does the easement go with the subdivided property.

Ms Reynolds said that that will be in litigation and is why granting an Interim or Conditional Use is not timely. The term “assign” is ambiguous in the law. It is possible but unlikely that the Seerings will be considered assigns.

Wayne said that in Minnesota, you cannot have a land-locked parcel. Is this correct? The litigation may not hold up in light of this. It may take cartway proceedings.

Ms Reynolds said that Wayne was correct. Her client is seeking extinguishment of the easement as well as damages.

Shelley said that they were served papers on Friday night. She immediately changed the “hotel” listing on Facebook. At the time she set up the Facebook page, “hotel” was the only option that fit. She has changed it.

Ms Reynolds said that although it may be changed now, the rental is a heavily advertised business. The problem is that the access road to the business is in litigation.

Don Sitter recommended that the Commission let the legal process work through. A decision can still be made regarding the Interim/Conditional Use. If it turns out that they don't have legal access, the permit can be revoked.

John moved that the Interim Use be granted to continue for as long as the Seerings own the property plus an additional 6 months after sale of the property to another party, should that occur.

Wayne seconded.

Larry made a motion to amend the motion to include that the current conditions be continued.

Sue went through the necessary findings for a Conditional/Interim Use from Article IX Section 7:

1. The proposed use is consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance.
2. The use is compatible with the existing neighborhood.
3. The use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district.
4. The location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area.

5. The proposed use will comply with the wetlands requirements in Article III, Section 6 of this Ordinance.
6. The total amount of impervious surfaces will not exceed that allowed in the zoning district where the conditional/interim use would occur.
7. The topography, vegetation and soil conditions are adequate to accommodate the proposed use.
8. The proposed use will not impact public waters during or after construction or impact wetlands without appropriate mitigation measures.
9. Adequate utilities (water supply, wastewater treatment), access, drainage, stormwater retention, and supporting facilities have been provided or are being provided backed by appropriate financial assurance.
10. The proposed use will not create potential health and safety, environmental, lighting, noise, signing, or visual problems.
11. The location of the site is appropriate with respect to existing or future access roads.
12. The demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, which would be affected by the proposed use, and the adequacy of existing services to meet the increased demand can be met.

The Commission agreed that each of the necessary findings was met by the proposed use. Item 10 is enhanced by the addition of the berm between the property and the closest neighbor.

Jo said that she considered the access road issue and found nothing in the Ordinance for the Commission to consider or decide regarding the easement, so she agreed with Don's assessment.

The motion, as amended, passed unanimously.

Writing and approval of the decision was put to the end of the meeting to allow for other business to proceed.

### **Director's Report**

The discussion about the greenhouse structure already in place at Restlawn Pet Cemetery was postponed until later in the meeting because not all parties were present.

### **Old Business**

Sue reported that the Trail Plan is not yet completed. James Gittemier hopes to have it completed for the February meeting.

### **New Business**

Sue proposed a budget for 2017 (see attached). The Cost-of-Living Adjustment for 2017 is estimated to be 1.7%. Due to additional site visits anticipated with the MS4 requirements, she increased mileage over 2015 and 2016 figures.

Jo suggested that a stipend be added to the budget for Val Brady who does the stormwater report for the Town every year. Val has estimated that she puts in about 8 hours to do the report. Would \$350 for professional services be appropriate?

John asked about budgeting to improve audiovisual equipment for meetings. It was talked about when the addition was in the planning stages, but it hasn't gone anywhere.

Don said the focus has been on getting the addition completed. He will bring it up again. But it would not come out of the P&Z budget.

The Commission agreed to recommend the proposed budget to the Board with the addition of \$350 for Val Brady's work.

### **Greenhouse Discussion**

Sue said that there is a new greenhouse structure in place at the Restlawn Pet Cemetery. It is 30 by 60 ft and was put in without a Land Use Permit. She has received complaints about its lights at night. The Commission needs to determine if this use fits into one of the categories in the Ordinance, and if not, determine the use and whether to permit it. If is permitted, it has to be decided if it is an over-the-counter permit, permitted with standards, or a conditional use, which is defined as a use that doesn't normally occur in the area. It would also have to be decided what zoning districts it would be permitted in. She said it is not a home-based business because the owner of the property is renting out the property for a business.

Mike Mageau, UMD professor and head of the Victus Farm project, Linda Klint, landowner, and Baylor Radtke, working for Victus, were present for the discussion. Mike said that the greenhouse at Restlawn is a part of an ongoing research project called Victus Farms in Silver Bay. The greenhouse at Restlawn is a spin-off pilot business to determine if this type of production is economically viable at this scale. They decided the only way to find out is to do it. They put the greenhouse up in October and November of last year.

Mike said that there are no fish at this greenhouse installation, just hydroponics. The growing structures are 24 by 48 inch troughs, 3 to 4 inches deep. They use the well to supply water. A little water is lost to evaporation, transpiration, and harvest. They add water to offset this loss. No water is dumped. A nutrient solution comprised of fish emulsion, nutrients and organics is all that is added. This solution is delivered in 5 gallon containers to their homes and they bring it to the greenhouse.

Linda said that she agreed to the project and was under the assumption that it was a simple temporary structure.

John said that he looked at the website and it doesn't sound like an experiment, it sounds more like a long-term business.

Mike said that the Silver Bay project is a business, but it is also an ongoing research project to improve the model to make it more economically and ecologically viable for a cold climate like Minnesota.

The zone district for the property is FAM-3. Sue read the description of the zone district:

This district is intended to recognize and promote the development of the Township's forestry and agricultural industry, to maintain and promote the rural character of the Township, and to prevent urban and suburban encroachment on the area. A low level of development is important in this district since the uses encouraged in FAM-3 would be less compatible in a more urban setting.

Sue looked at the uses listed in the Ordinance in Table 5.3. None of the uses quite fit this project. It's not exactly Rural Industry, which requires a Conditional Use Permit; it's not Livestock; the definition of Home-Based Business is that the owner lives on the property; it is not a Commercial, Highway and Accessory Structure; and it is not a Commercial, Neighborhood and Accessory Structure. Rural Industry is the closest. The definition for Rural Industry in the Ordinance is "Small industrial uses in low development density areas" and the definition of Industrial Use is "The use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items." So this isn't a good fit either. In Silver Bay Victus Farms is in an eco-industrial park.

John asked if the structure has a concrete floor and if there is any possibility that any solutions could leach into the ground.

Mike said that the floor of the greenhouse is 6 to 10 inches of sand, and the troughs are lined. Nothing leaches into the ground. It is cleaner than conventional agriculture.

Jerry asked if there are other greenhouses in the Township and how they are classified. Is this greenhouse different from other greenhouses?

Sue said that existing greenhouses are classified as accessory structures.

In response to complaints about the lights at night, Mike said that the reason the lights are on all the time is because they only have enough lights to light each set of plants for 8 hours so they move them between groups of plants every 8 hours. He said that they could turn off the lights at night.

Wayne asked if people will come to the greenhouse to buy the products.

Mike said no, the produce will be delivered.

Wayne asked about the foundation.

Baylor said that the greenhouse is on a perimeter footing of railroad ties anchored 4 ft into the ground.

Jo said that the trend towards local food is continuing to grow. A few years ago the Town made a resolution to support local food. In her research, she found a township in Pennsylvania that lists a use for controlled environment agriculture. She thought it would be appropriate to allow this type of a use in Duluth Township with standards.

Mike said that with Victus Farm in Silver Bay, they dealt with the MN Department of Agriculture and the enterprise fell under agriculture. He built another 1,000 sq ft system in Normanna Township and they called it agriculture, too.

Sue said that St Louis County does the permitting in Normanna Township.

Baylor said that he has a 1200 sq ft system on his property in Rice Lake and the Township there didn't require any permits for it. His is in a more wooded area. His neighbors were supportive.

Wayne said that FAM-3 is zoned for agriculture. The greenhouse seems appropriate as far as growing things. But it still needs a permit and a decision about how to classify it. It puts out a lot of light and light pollution is not allowed in the Township.

John said that in Silver Bay, Victus is in an urban area with a concentrated grouping of structures. The location of this spin-off greenhouse in this Township strikes him as urban encroachment.

Wayne asked if a hoop structure would require a permit.

Sue said yes, it fits the definition of a structure.

Jo said that people in the Township rent land out for crops and the Town doesn't regulate that. In this case we have a crop, the difference is that in the Township we are used to defining agriculture more as row crops and not in a structure.

John said that there might be something to be gained by clustering these types of activities and buildings together so they can work together and use common resources.

Cindy Hale, who is a farmer in the Township, and owns the adjacent property, was invited to give her perspective. She agreed that the Township needs to address this type of use. It needs to be regulated so that it works for everybody and is compatible with the neighborhood. Decide what the use is and distinguish it from hoop house or high tunnel systems. Hoop houses and high tunnels do not require heat or ventilation. By USDA Natural Resources Conservation Service definitions, a greenhouse has ventilation and heat and light while a high tunnel has none of those things. She agreed that defining the use and determining where it is allowed, with performance standards, is probably the way to go. Maybe the lights can't be turned off, but they could be shielded.

Mike said that the lights could be on for just 8 to 10 hours.

Jerry Henkle, the nearest neighbor to the greenhouse, said the he thought he could hear the pumps, but was not always sure if it was a new sound or the sound of the burners in the crematorium.

Cindy said that she has noticed a new a new sound and it is a twenty-four-hour-a-day noise.

Mike said that the noise from the pumps might be more difficult to deal with.

Don suggested insulating the motor area.

Cindy said that as the process moves forward, it would be good to include neighbors. They are the ones who will recognize problems. Because the permit process didn't happen, the whole information exchange didn't happen either.

Sue said that today will be considered the start of the 60 day clock, the period of time in which the Town has to provide a decision or, alternatively, obtain an extension by writing the requestors a letter. She suggested putting together a working group to come up with a proposal for discussion at next meeting. Jo, Jerry and Don agreed to meet and work with Sue on this.

Don summarized. The lights will be turned off at night. We need to determine if there is a noise problem. There will be a working group to look at the use. And there will be a permit fee assessed, but we don't know what it will be yet. He said that as the Commission thinks about how to handle this type of agriculture, they should keep in mind that the next request might include fish or might be three of these greenhouses in a row.

### **Concerns from the Audience**

None.

The meeting adjourned at 9:23.

Attached:

- Bergstedt letter
- Willemarck email
- Packa email
- McTavish letter
- Proposed 2017 budget