

**Town of Duluth  
Planning Commission  
Meeting Minutes  
February 25, 2016**

The meeting was called to order at 7:00 p.m. by Chair Paul Voge.

Present: Paul Voge, Brigid Pajunen, Jo Thompson, Wayne Dahlberg, Jerry Hauge, John Schifsky, and Larry Zanko

Absent: No one.

Also present: Sue Lawson, Planning Director; and Don Sitter, Town Board Supervisor and liaison to the Commission; and Cindy Hale, Township resident and farmer

The agenda was approved as presented.

The January 26 minutes were approved with a change in wording from “the permit can be pulled” to “the permit can be revoked” on page 4, paragraph 11 of the draft minutes.

### **Old Business**

#### **Greenhouse Discussion**

Sue summarized the January discussion regarding the greenhouse that was put in without a permit and is in operation on Clover Valley Drive at the Restlawn Pet Cemetery. There was a complaint about the lights at night. The structure is a 30 by 60 ft hydroponic greenhouse and was put in without a Land Use Permit. The greenhouse operators said that the structure is temporary. They also said that it is a commercial use. The Commission needs to determine what kind of a use this is and, if permitted in the Township, what kind of permit is required – an over-the-counter permit, an over-the-counter permit with performance standards, or an interim/conditional use permit.

Neither the owner of the property or the owner/operators of the greenhouse were present tonight. Sue sent them a letter after the last meeting stating that the January 28<sup>th</sup> meeting would trigger the 60 day clock for a decision, since there was no application.

Sue said that she, Jo, Jerry and Don met and drafted a discussion outline. They looked to the Ordinance for definitions and land use district descriptions and to the Comprehensive Land Use Plan for the vision for the Township and strategies to achieve that vision. The Ordinance includes a provision for the Commission to define uses that are not listed in the Ordinance. The group proposed three greenhouse use definitions:

**Industrial/Commercial Greenhouse (ICOGH):** An accessory structure whose roof and sides are made largely of glass or other transparent or translucent materials and in which the temperature and humidity can be regulated. A business whose principal activity is the growing and selling of plants or foods at a wholesale, commercial level.

**Farmstead Greenhouse (FMGH):** An accessory building whose roof and sides are made largely of glass or other transparent or translucent materials and in which the temperature and humidity can be regulated for the cultivation of delicate or out of season plants. Is primarily used to extend the growing season for food or ornamental crops for sale or use on the farm as part of a farming operation.

Residential Greenhouse (RGH): An accessory building whose roof and sides are made largely of glass or other transparent or translucent materials and in which the temperature and humidity can be regulated for the cultivation of delicate or out of season plants. Is used primarily for the production of food or ornamental crops for use by residents and not for sale to the public.

They then looked at where, if at all, these uses would be allowed in the Township. One alternative was to not allow the ICOGH use and to allow the FMGH and RGH uses in various zone districts either as Permitted or Permitted with Performance Standards. Another alternative was to allow all three uses in various zone districts as Permitted, Permitted with Performance Standards, or Conditional Use (with special requirements):

Land Use	Zone District										
	FAM-1	FAM-2	FAM-3	MUNS-4	SMU-6	SMU-6A	SMU-8	SCO-8A	SCO-8B	COM-3	LIU-3A
ICOGH	Ø	Ø	Ø	C	C	C	Ø	Ø	Ø	C	C
FMGH	Ø	Ø	PS	PS	C	C	Ø	Ø	Ø	Ø	C
RGH	PS	PS	PS	PS	PS	PS	PS	Ø	Ø	Ø	PS

The group developed a list of things to consider for the greenhouse permitting discussion: light pollution, hours of operation, noise, water resources, wastewater treatment, hazardous waste, chemical use and disposal, setbacks and minimum lot size, screening, and road capacity. The size of the greenhouse also affects its impact.

Brigid asked if people are supposed to have a permit for a greenhouse.

Sue said that a permit is required if the greenhouse is 100 sq ft or more, whether the greenhouse is considered temporary or not.

John asked why the ICOGH use would not be considered in the FAM zones.

Sue said that FAM-1 and FAM-2 are mostly public land and FAM-3 is rural. She said they felt that they would not want to allow commercial entities in non-commercial rural areas.

Wayne said that industrial greenhouses could be allowed in FAM-3 with the right performance standards.

Sue said that the difference between Conditional Use and Permitted with Performance Standards is that for a CU there is a public hearing with input from the neighbors and a permit with performance standards is over the counter. For a home-based business, a majority of neighbors within ¼ mile have to sign a petition that they approve of the use.

Sue said that in FAM-3, the definition is for less development and a focus on agriculture and forestry. This is greenfield land. Does it make more sense to limit a commercial enterprise like industrial/commercial greenhouses to brownfield land which has already been developed?

Brigid said that industrial operations with lights and noise would be expected to have an impact while a farmstead or home greenhouse would not be expected to have the same impact on the community. But there is nothing in the definitions that prevents anyone from having a greenhouse and bothering their neighbors with lights or noise. So it seems that there would need to be performance standards even for farmstead or residential greenhouses.

Sue said that light during the winter is the major limiting factor for greenhouses in northern climates. But lights, ventilating systems, etc. don't necessarily define the use. They are not relevant except for their effect on neighbors. The point is the use. If a residential greenhouse becomes so big that its product is then sold to others - is this a point at which it is no longer a residential greenhouse?

Wayne noted that there are some greenhouses along the Interstate between the Twin Cities and Duluth that are lit up at night. That kind of thing seems appropriate along the Interstate, but not on Homestead Road. By the same token, he doesn't think agriculture should be overregulated. He would like to consider something sympathetic to the rural farmstead lifestyle.

Paul asked if it should be stipulated that ICOGHs be allowed only on owner occupied land. It would prevent a corporate entity from coming in and putting industrial greenhouses on land they may own but don't live on.

Wayne said that it is very common to lease someone's property for agricultural purposes.

Cindy Hale said that one distinction of the Restlawn property is that it is owned by a corporation, not by an individual. By State law, any corporation that has legal interest in agricultural land has to be registered. There is a list of criteria that determines whether a farm is a family farm. It doesn't matter if it's an S Corp or a sole proprietorship. It is the majority owner and whether they are principally involved in farming. Corporations cannot buy and sell land without a permit. When you register your farm with the State, they determine whether you are a corporate or family farm. The registration is renewed every year. The State definitions don't limit what you can do, they limit how you can transfer ownership of the property.

Sue said that arguments for limiting IOCGHs to brownfield areas are that they would be close to infrastructure needed to operate this type of greenhouse, they would be closer to ways to get the product to market, brownfields are already developed, and there are already people there. The greenhouse at Restlawn is modeled after Victus Farms in Silver Bay. The operation in Silver Bay is in an industrial park.

Cindy said that another thing that makes the Restlawn property unique is that the greenhouse would not have been built there if the pet cemetery light industrial use were not already in place.

Wayne said it happened before his tenure, but he believes there is a CU for the pet cemetery.

Sue said that even if they have a permit for the cemetery, the conditional use is for the pet cemetery operation, not additional operations.

Jo read the definitions for a family farm and a majority stockholder beneficial family farm corporation from the Minnesota State statutes, Section 500.24.

"Family farm" means an unincorporated farming unit owned by one or more persons residing on the farm or actively engaging in farming.

"Family farm corporation" means a corporation founded for the purpose of farming and the ownership of agricultural land in which the majority of the stock is held by and the majority of the stockholders are persons, the spouses of persons, or current beneficiaries of one or more family farm trusts in which the trustee holds stock in a family farm corporation...

John felt that the primary difference between the three greenhouse types is the sale of the product.

Cindy said that whether a greenhouse is year-around might be a relevant split. For year-around use you have to have light, pumps, heat, etc. It's the issues of noise and lights that affect the quality of life of the neighbors.

Don asked, if someone then puts a heater in their greenhouse one night would it then be considered commercial?

Cindy said no, it is about the infrastructure. She has stood between equidistant between Homestead Road and the Restlawn greenhouse and the pumps and burners that heat water 24 hours a day are just as loud as the traffic going by on the road.

Brigid and Wayne agreed that they did not want to see the Town to be so regulatory that a Conditional Use would be required for every greenhouse.

Wayne also said that he would not want to prohibit sales from farmstead greenhouses.

Sue said that it is a question of scale and purpose. For the Restlawn greenhouse, it is a larger scale operation and there is a lot of light and heat needed to grow their crops during winter months.

Cindy asked if the issues could be addressed by Performance Standards. Maybe it is a question of decibels.

Don asked why you would control decibels in a greenhouse if you don't in a barn or a house.

Jo said the Ordinance says that for noise, the Township will follow current Minnesota Pollution Control standards.

Wayne said that the relevant distance for measuring noise would be at the line of the adjoining property owner.

Sue asked how the Town would go about measuring decibels. She read some descriptions of decibel levels: A passenger car at 65 mph at 25 ft is 75 dB. Bird calls are 44 dB. Living room music is 76 dB.

John proposed that the Commission identify ICOGH with those things that are characteristic to industrial – size, lights, scale, noise, etc. and require a CU for that use. And then for FMGH and RGH, determine performance standards for each zone district.

Larry said the phrase “to function as intended” could be added to the definition for ICOGH. And include year-around use as a part of the definition.

Paul asked about selling or advertising from a farmstead greenhouse.

Cindy said that if she has a retail establishment she has to have a building, a bathroom, inspections, etc. On-farm sales puts it into commercial retail. MN Departments of Health and of Agriculture jointly handle retail farmsteads and processing facilities. If her vinegar processing was on her property, she would have to meet MN Department of Agriculture standards. For retail it is even more stringent, requiring licensing and annual inspections. Technically, setting a box of vegetables at the end of your driveway is not legal. But people do it. Again, it is a question of scale.

Jo asked about CSAs.

Cindy said that CSAs are considered delivery. You have to meet packing standards and people can pick their share up, but you could not have random customers coming in to buy items.

The distinctions and definitions the Commission decided on are:

**Industrial / Commercial Greenhouses: ICOGH**

A structure with roof and sides made largely of glass or other transparent or translucent materials that, in order to function as intended, requires non-passive systems such as mechanical artificial lighting, plumbing, ventilation, etc. A business whose principal activity is the growing and selling of plants at a commercial level.

**Farmstead Greenhouses: FMGH**

A structure with roof and sides made largely of glass or other transparent or translucent materials and in which the temperature and humidity can be regulated for the cultivation of delicate or out of season plants. It is primarily used to extend the growing season of plants or ornamental crops for use on the farm or for off-farm sales.

**Residential Greenhouses RGH**

A structure with roof and sides made largely of glass or other transparent or translucent materials and in which temperature and humidity can be regulated for the cultivation of delicate or out of season plants. Is used primarily for the production of plants or ornamental crops for use by residents and not for sale to the public.

**Trails Plan**

Sue said that James said he is almost done with the Trails Plan and that he would help the Town write grants.

**Director's Report**

Sue said that Don is not running again for Town Board Supervisor. She thanked him for everything he has done for the Township and we will miss him a lot.

**New Business**

Sue said that the Commission needs to think about a plan of work for 2016. Over the last year the Commission completed the Stormwater Ordinance and updating of the Zoning Ordinance and Town brochure. The Congdon trust lands are on hold indefinitely.

She thought that the Commission might consider looking at SMU-8 to see how many lots are out of compliance because of the lot size dimension requirement for that zone in the Ordinance. She said that when they are all out of compliance, it is no longer something that is unique to the property as required for a variance.

Think about it for the next meeting.

Brigid's last meeting will be the March meeting. She has completed two terms on the Commission.

Jo said that the Town is still out of compliance on some of the Stormwater requirements – SOPs, and environmental response. These items might be more of the Board's responsibility.

The annual meeting is on March 8. Sue encouraged everyone to let people know to vote and to come to the annual meeting.

**Concerns from the Audience**

None.

The meeting adjourned at 9:45.