

**Town of Duluth  
Planning Commission  
Meeting Minutes  
March 24, 2016**

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

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

Absent: Wayne Dahlberg

Also present: Sue Lawson, Planning Director

The agenda was approved as presented.

The February 25, 2016, minutes were approved with two corrections: Line 71, Sue made the response, not Jo; and Line 120, not spin-off, "modeled after."

**Old Business**

Restlawn Cemetery Greenhouse

Members of the audience who were present for the greenhouse discussion introduced themselves: Cindy Hale, Suzanne Huntley-Keith, Gene Zachow and Annie Kregness.

At the previous Planning Commission meeting, the Commission agreed on three types of greenhouses and formulated a definition for each type:

**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.

The Commission looked at the definitions and reworded the non-passive systems wording for the ICOGH definition:

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 which may include, but are

not limited to, mechanical systems, artificial lighting, plumbing, and ventilation. A business whose principal activity is the growing and selling of plants at a commercial level.

The next step is for the Commission to determine where each type of greenhouse will be allowed in the Township and what type of permit will be required for each use in each zone district it is allowed in.

Paul said that he thought ICOGHs should be permitted in the Township but confined to commercial and industrial zones because they are commercial/industrial uses. They are manufacturing a product. The greenhouse in Silver Bay is in an industrial park in Silver Bay. It doesn't mean that it can't be changed at a later date if a real need for this type use arises. In the meantime, it concerns him to put an industrial/commercial use in rural, residential zones.

Jerry said that he agreed with Paul. If, by definition, the ICOGH use is industrial/commercial, it should only be allowed in industrial/commercial zone districts.

In considering commercial zone districts in the Township, Sue asked about SCO-8B, where Tom's Logging Camp is. She said that SCO-8B was separated from SCO-8A, the McQuade Harbor area, because it is much less developed and less densely populated. It is defined for light development and SCO-8A is defined for moderate development.

Brigid said that she had mixed feelings about limiting them to commercial and industrial zones. It would mean that larger acreage farm operations could not use this growing model as a part of their operations. The models for food production are evolving and we cannot foresee what creative ways might be used to further agriculture in our area. Could the use be allowed outside of commercial/industrial areas with a conditional use permit? She would like to keep the option open for other areas of the Township.

Sue said that a farmstead greenhouse could be something very similar to the ICOGH but not be a commercial enterprise. Sustainability is emphasized in the Comprehensive Land Use Plan (CLUP). In terms of sustainability, where is the best place for something like the ICOGH use? The FAM districts are lightly developed and are farthest away from infrastructure for distribution. Should ICOGHs be located in areas that have existing infrastructure? Are there brown fields that would be appropriate locations? Is the water source for the operation a well or Lake Superior? How will wastewater be treated? By what means will the produce get to wherever it is sold? The question could be considered in terms of carbon footprint. Land use is about determining the most appropriate place to have certain activities.

Sue read the definitions for SCO-8A and SCO-8B from the Ordinance.

**Shore Land Commercial – SCO-8A**

This district is intended for concentrated, locally based, commercial development along the shores of Lake Superior, for uses consistent with providing goods and services for the local community, and incidentally for the locally based tourism industry. This district supports a moderate level of development intensity.

**Shore Land Commercial – SCO-8B**

This district is intended for concentrated, locally based, commercial development along the shores of Lake Superior, for uses consistent with providing goods and services for the local community, and incidentally for the locally based tourism industry. This district supports a light level of development intensity.

The definitions stipulate that commercial development in the SCO zone districts is intended for "providing goods and services for the local community." Would an Industrial/Commercial Greenhouse be considered local?

Paul said that to him, “local” would be things like retail and supplying local restaurants. He looked at the land use matrix for what is allowed in which industrial and commercial zones. Most of the uses that are named are allowed with performance standards and some could be considered similar to the ICOGH use and might have similar performance standards. He thought having the ICOGH permitted with performance standards would be adequate in these zones, as opposed to permitted as a conditional use.

Brigid said that she didn’t think ICOGHs belonged in the Township’s Shoreland Commercial zones. The use does not fit in with tourism. It fits better in LIU and other commercial zones.

John said that an argument could be made for allowing the use in Shoreland Commercial zones because those areas are closer to transportation and distribution networks.

Paul suggested not allowing the use in SCO-8B. The Commission agreed. SCO-8A is more tourism and local businesses, so it might not be appropriate in that area either.

Jo said that some of the LIU-3A areas, like the one on Ryan Road, are very small properties.

Sue said that when the Town originally set up zone districts, they looked at sites where manufacturing was occurring and zoned these for industrial. Instead of grandfathering these industrial uses in a non-industrial zone, these small areas were made industrial zone districts. The old tank farm on Ryan Road is an example. Should it be a conditional use in these areas?

John was not sure the use would be appropriate in those small areas of LIU zoning. He would consider the old Bomark site appropriate but as a conditional use.

Sue suggested that if the size of the LIU-3A areas was an issue, a minimum lot size could be required. There is also a small COM-3 at the old French River Store. A small business still exists there. The only other COM-3 area is the McQuade/Lismore area.

Jerry said that he thought a conditional use would be more appropriate for ICOGH because it requires notification of neighbors. A permit with performance standards is just an over-the-counter permit. Brigid agreed.

Paul disagreed, saying that the use is one that is consistent with a commercial zone. A conditional use is for a use that doesn’t fit in the zone district. All of the uses in the commercial zones are either with performance standards or just permitted. An ICOGH would be surrounded by commercial uses such as manufacturing and light warehousing.

It was agreed that the ICOGH use would be permitted in LIU-3A, COM-3 and SCO-8A zone districts with performance standards.

Regarding the farmstead greenhouse use, Brigid asked why in the sub-committee’s original recommendation they did not have it permitted in SMU-6 and SMU-8.

Jo said that it was because the lots in those districts are so small.

Jerry asked why the FMGH use would not be allowed in FAM-1 and FAM-2. There are farmsteads in those zone districts.

It was agreed that FMGHs should be allowed in FAM-1 and FAM-2.

Jerry said that for FMGHs in MUNS-4, the building would be considered an accessory structure and would have to meet the requirements for accessory structures.

Paul said that if ICOGHs are allowed in commercial areas with performance standards, FMGHs should be as well. He suggested permitting FMGH with performance standards in every zone except SMU-8.

The Commission agreed.

For residential greenhouses, Paul said that he was not sure they needed performance standards and that they could perhaps be allowed wherever they met setbacks. But lighting could still be an issue.

Jerry said that people have yard lights that are on 24 hours a day for security purposes. There are also no restrictions on lighting for people's homes or porches.

It was agreed to not have performance standards for the RGH use.

John moved to adopt the three greenhouse definitions as amended. Brigid seconded. The motion was approved unanimously.

Brigid moved that the land use matrix be amended to 1) allow ICOGH with performance standards in zone districts SCO-8a, COM-3 and LIU-3a because these zone districts allow industrial and commercial uses; 2) allow FMGH with performance standards in all zone districts except SMU-8, because of the small lot sizes in this zone district; and 3) allow RGH in all zone districts without performance standards. Jerry seconded.

Paul said that the crux of the matter is that ICOGHs are industrial so they fit in industrial/commercial zones. Other uses are more widespread, are less intrusive and support the concept of growing food for your own use.

The motion was approved unanimously.

It was asked, given the Commission's decision that ICOGHs are not an allowed use outside of industrial/commercial zones, what will happen with the greenhouse at Restlawn. Could the owner get a variance?

Sue said that the owner could appeal the Commission's decision to the Town Board. She read the beginning of the definition for variance from the Ordinance. A variance is "any modification or relief from a Town of Duluth Land Use Ordinance within a permitted use..." Because the use is not permitted in that zone, a variance would not be an option.

The Town attorney has said that when the Commission determines new uses and parameters for permitting those uses, as allowed for in the Ordinance, the Town does not have to go through the Ordinance amendment process before enforcing the new uses and requirements. She said that she will write a letter to the property owners to let them know that, based on the definitions approved by the Commission, they have an industrial greenhouse and that ICOGHs are not allowed in their zone district so they will have to remove it. She will also discuss it with the Town's attorney.

Sue provided a list of potential performance standards that could be relevant. Some were derived from the performance standards for other uses in the Ordinance and some are specific to greenhouse uses. The Commission went through the list to set performance standards for ICOGH.

John asked why the Town would be concerned about hours of operation. Given where the ICOGH use is to be allowed, they wouldn't be disturbing anyone even if they had retail sales.

The Commission decided not to set hours of operation in the Performance Standards.

For lighting, Jerry asked if the Commission set the hours growing lights could be used, but the greenhouse owner wanted more, could they apply for a variance?

Sue said, yes, because it is a permitted use.

It was decided to include the lighting performance standard as written, altering the hours that lights are permitted to the period of one hour before sunrise to one hour after sunset.

The Commission decided to include the performance standards for wastewater treatment, and for hazardous waste and chemical use and disposal as Sue wrote them.

For water resources, the question was, how do you verify that there are adequate water resources? Larry said that it could be required that the applicant state how much water the operation would consume per day. Jo said that if the greenhouse is on a well, the recharge rate would need to be determined. Would you measure the neighbors' wells, too? John said that no other uses had a performance standard related to water resources. It was decided not to include this requirement.

For dimensional requirements, the Commission kept the wording "siting of the structure will be centered in the lot to the extent possible" and changed the minimum lot size to 40 acres for LIU-3 so that there could not be an ICOGH use in the smaller LIU-3 areas that are in the midst of residential areas and are too small to provide a buffer to neighboring lots.

It was agreed to include the performance standards for screening, notification to the Fire Department, and State Fire Code.

Jo asked about noise. Paul said that because the use is only allowed in commercial zones, noise shouldn't be an issue.

Following are the Performance Standards the Commission set for the ICOGH use:

1. Lighting
  - a. All lighting, interior and exterior, shall be fully shielded and downward projected.
  - b. Interior lighting utilized for growing of plants shall not be operated between one hour after sunset and one hour before sunrise (times determined by the USNO).
2. Wastewater Treatment

All waste water treatment must be approved by St. Louis County through their permitting process.
3. Hazardous Waste, Chemical Use and Disposal

All solid and hazardous waste shall be stored and disposed of in accordance with County, State and Federal regulations.
4. Dimensional requirements
  - a. Siting of the structures will be centered in the lot to the extent possible.
  - b. Minimum lot size for LIU-3A is 40acres.
5. Screening

All structures will be visually screened from neighbors, as well as from the road. Natural vegetation is preferred, although fences and other human constructed elements are permissible.

  1. Screening may consist of walls, fences, landforms or natural or planted landscape materials, and shall effectively screen the use or structure from roads or adjacent residential parcels.

Screening must be on the same parcel as the structure or use being screened, and it shall be the responsibility of the owner to maintain the screening.

2. The order of preference for screening is as follows, from most preferred:
  - a. Maintaining existing vegetation and using natural topography.
  - b. Planting native vegetation that is a minimum of four (4) feet high at the time of planting, and is planted and maintained in accordance with accepted silvicultural practices.
  - c. Construction of a berm, which must be seeded and have side slopes, not to exceed a 2:1 ratio. The planting of vegetation shall meet the technical standards of the Soil and Water Conservation District.
  - d. Construction of a solid wood fence.
  - e. Construction of a chain link fence.

6. Notification to Fire Department

The Fire Department must be made aware of any hazardous, toxic, or flammable materials kept on the property.

7. State Fire Code

The design, placement of structure, and operations must meet State Fire Codes.

For the FMGH use, it was agreed that accessory structure requirements would automatically apply. It was agreed to use the same performance standards as for ICOGH, excepting the standard for screening, the standard for dimensional requirements, and the standard for State Fire Code.

Performance Standards for the FMGH use:

1. Lighting

- a. All lighting, interior and exterior, shall be fully shielded and downward projected.
- b. Interior lighting utilized for growing of plants shall not be operated between one hour after sunset and one hour before sunrise (times determined by the USNO).

2. Wastewater Treatment

All waste water treatment must be approved by St. Louis County through their permitting process.

3. Hazardous Waste, Chemical Use and Disposal

All solid and hazardous waste shall be stored and disposed of in accordance with County, State and Federal regulations.

4. Notification to Fire Department

The Fire Department must be made aware of any hazardous, toxic, or flammable materials kept on the property.

The RGH use will be allowed with an over-the-counter permit without performance standards.

Jerry made a motion to approve performance standards for ICOGH and FMGS as discussed. Larry seconded and the motion passed unanimously.

Sue said that the allowed zone districts for each type of greenhouse will be inserted into the Table 5.3 of the Ordinance and a new section, 20, will be added to Article VIII for performance standards.

**Concerns from the audience**

Cindy Hale said that the greenhouse at Restlawn is unique because there was a preexisting commercial use there, so the infrastructure was already in place. There is no other property in that area that would have worked. It feels inappropriate because there is a grandfathered industrial use that is already in place and now they are trying to expand it. She thinks commercial uses should be confined to commercial areas.

It was asked if the Town might review the pet cemetery use. It does not fit in the neighborhood and affects all of the neighbors. The smell and noise from the pet cemetery are bad and the neighboring property owners are unhappy about it.

Sue said that the crematorium was included in the conditional use application and that Minnesota State Statutes would most likely regulate pet cemeteries.

### **Trails Plan**

(In order to not unnecessarily inconvenience James Gittemeir, the Trails Plan discussion actually occurred midway through the greenhouse discussion, which resumed following the Trails Plan discussion. The two discussions are presented separately in these minutes for the sake of continuity.)

James Gittemeir of the Metropolitan Interstate Council was present to discuss the draft Trails Plan. He distributed a copy of the plan to the Commission. He asked that anyone finding errors in the Plan give them to him or Sue.

James outlined the structure of the plan. The plan looks at each trail, the type of trail, what it connects to, the length, infrastructure needed, estimated cost, and priority. The estimated cost does not include any costs for easement or acquisition or for bridge construction.

He said that IRRRB funding can be used in Duluth Township.

Sue asked who is liable if trails are constructed in the Township.

James said that anything on the roadway would be the roadway authority's liability and anything outside the roadway would be the Town's.

John asked about the distinction between paved and natural surface. Gravel is indicated on Old North Shore Road -- is that just walking along the side of the road? James said that it was.

Homestead Road from the expressway to Shilhon is included in the plan, but north of Shilhon would only be included when the County redoes the road. Sue asked that that portion of Homestead be added to the Plan as priority 6.

James said that St Louis County is redoing the bridge at the French River. The plan is to provide space for pedestrians and a pavilion. Sue suggested he add that information in the details for the Ryan Road trail on page 8.

Brigid asked if the group working on the trails plan talk to the bike group that regularly bikes through the Township.

Paul said they didn't. Chances are they would continue to use the road anyway.

John asked about crossing major highways like Highway 61. Is that taken into consideration in budgeting?

James said that provisions for crossing the highway are not in the budget. MNDOT does not want to put pedestrian crossing signs on Hwy 61. The trail plan currently stops at the highway.

Paul said that he thought that one of the main goals of the Trail Plan was for non-motorized access to the shore.

James said that with a trail plan in place, when the State replaces the Hwy 61 culverts, they will consider access.

Paul said that if there is no plan in place, you cannot work with the County or State to move anything forward. It is important to have a trails plan in place.

Jo moved to move the draft Trails Plan on to the Town Board and to recommend that they approve the plan. Larry seconded and the motion passed unanimously.

James was going to correct road names and other minor errors before giving it to the Board.

### **Director's Report**

Sue reported that Dave Mount and Barb Crow were elected as new Town Board supervisors at the election in March. The Commission will have a new liaison.

Regarding the old Clover Valley School, Sue said that the property is all tax forfeit land and the County and the Town are looking at ways to get rid of that structure. It is all very preliminary, but at some point, the Commission may want to look at the zoning for that area.

Sue said that there may be a variance hearing in April or May for a parcel down on the shore for the road setback on shore and to exceed the maximum expansion of a nonconforming structure on a nonconforming lot.

Larry and Jerry both said that they would not be here at the April meeting.

Elections of the Chair and Co-Chair will be at the next meeting.

Paul noted that the lights at the hockey arena at the school are very bright and are not down lit.

Sue said that she has heard several comments on those lights and will bring the matter up at the Town Board. The Ordinance says that new fixtures have to be shielded and down lit.

### **Plan of Work for 2016**

Sue suggested looking at SMU-8 zoning. Few of the lots in that zone district meet minimum lot size.

Paul suggested rewriting the Ordinance Article on PUDs. The way it is written now caused some confusion during the PUD process for Kiviranta. He also suggested looking at Article VIII where performance standards applied to uses are mixed in with performance standards applied to zone districts. A zone is not a use. The Commission agreed.

### **Concerns from the Audience**

None.

The meeting adjourned at 10:18.