

**Town of Duluth  
Planning Commission  
Meeting Minutes  
November 22, 2016**

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

Present: Paul Voge, Jo Thompson, John Schifsky, Jerry Hauge, Larry Zanko and Liz Strohmayer.

Absent: Wayne Dahlberg.

Also present: Sue Lawson, Planning Director; and Dave Edblom, Town Board liaison to the Planning Commission.

The agenda was amended to move concerns from the audience to immediately following approval of the agenda and to add a discussion of the Greenwood Beach Plat lot sizes to Old Business.

**Concerns from the Audience**

Cheryl Alvar spoke. Her property borders the Beck Road and the County is hauling materials from the old Clover Valley High School demolition site onto Johnny Haglund's property at the end of Beck Road for use as a base for a driveway. The material they are hauling has garbage in it, including rebar and bags of garbage. It smells. There is a designated trout stream that runs across their property and the Snell's property. Everything from the "driveway" is running downhill toward the trout stream. In addition, there has been discussion of whether the extent of Beck that reaches the Haglund property is even a road or not.

Sue gave the Commission a summary of what has been happening with Beck Road. Beck Road is a Town road that goes west off of Homestead a little north of the Town Hall. There is a land owner with property north and west of the end of Beck Road who wants to use the road to access his property. A survey was done that found that the road fell 144 ft short of the quarter section line where his property commences. The land owner then came to the Town Board. The Board found that the road had been maintained by the Town to the quarter section line for more than six years and had been in use by the public, so would be considered, by law, a Town Road to the quarter section line. With the determination that Beck Road reaches the quarter section line, a driveway could be placed from it onto the landowner's property. The contractors hired by St Louis County to demolish the old high school are crushing and selling the waste concrete as aggregate. The material was approved as aggregate with stipulations.

Sue asked the attending adjoining landowners if they have registered their concerns with St Louis County.

Roger Beck said that he talked to Darren Jablonsky from the County. The concrete is supposed to be crushed and is not supposed to have soil or garbage in it. But soil and garbage are in it and who knows what might be in the soil. Roger said that Darren indicated that the contractor makes his own arrangements for disposal of the material. Stack Brothers from Superior have the contract. As far as he knows, there is no signed contract to dispose of the waste on Haglund's property – it was a handshake agreement between friends. The first he knew of the whole thing was when a utility line locater showed up to locate underground lines for the Stack Brothers.

Roger said that they have removed a lot of soil and have no silt fences or mats in place. They are jamming the waste product into the ground with bulldozers and dump trucks. Roger told them NOT to cross his property. The first thing they did was drive over his property and over the no trespassing signs

he put up. He called the police and sheriff. The police told him that Stack Brothers are wrong to drive on his property. Roger said the truck drivers make obscene gestures at him and his wife. He is now being threatened with a lawsuit for harassing them. Sue Lawson is the compliance officer for the Town's MS4. Where has she been? Where has anyone from the Township been?

Roger said that Travis Stolp came to his house an hour prior to the meeting tonight. Travis said the Haglunds want to help by putting in trees and shrubbery, but the Haglunds have never made any effort to contact any of the adjacent land owners. The property doesn't belong to Katie and Andrew Haglund, it belongs to Johnny and he already has access to the property off of Clover Valley Drive. There is no need for another access.

Liz asked Roger and his neighbors how the Planning Commission could help them.

Roger said that the driveway access should only be allowed with a variance because there is already an access to the property from the Clover Valley Road.

Sheryl said that at a Board meeting discussion of this, it was found that the Beck Road has been maintained. But that was based entirely on the fact that the snowplow and the grader turn around in Roger's driveway so the Town was able to prove that they plowed all the way to Roger's property. In addition a culvert had been put in.

Roger said that Johnny Haglund put the culvert in when he was the Town's road contractor. The current road contractor, Rodda, later reset the culvert.

Sheryl said that if the Becks had told the Town not to plow past the road description, they would not be here. The Snells', Alvars', Becks' and Haglund's properties all meet at that corner. Because Roger allowed the snowplowing, the road became a Township road.

Roger said that Travis had the driveway permit application in August, long before Roger left town, but he never heard about it.

Sue clarified that Travis is the Road Supervisor for the Town.

Sheryl said that there are trucks going up and down Beck Road at speeds of 40 mph.

Roger said that the trucks are beating up the road.

Sue said that what she can do is talk to Travis and the Town Board. The neighbors should come to the next Board meeting. It is up to the Board to make decisions on Town Roads. Once the decision has been made that the road extends to the line, the property owners at the end of the road can have access to it. Where four property corners meet, 16.5 ft is allotted to access the end parcels.

Jim Snell said that the driveway is 33 ft wide. Half is on the Becks' property and half is on Haglund's property. A 20 foot driveway is what is required by the Ordinance. He said that Andrew Haglund called he and his wife and tried to get them to give him a 40 ft access.

Sheryl said that Travis Stolp could have called adjoining property owners at any time since he received the application for the driveway access in August. She felt that Travis has a preexisting relationship with the Haglunds that has given them favor.

Jim said that Johnny Haglund needs a variance for the driveway. But Travis Stolp has already approved of hauling the materials in. They have brought in at least 150 loads. As far as Jim has been able to ascertain, there has been no variance or permit issued for the driveway.

Paul reiterated that it is a Town Board issue regarding the road and an MPCA issue regarding the safety of the materials.

Roger said that he has repeatedly called the Minnesota Pollution Control Agency and left messages but has not gotten a response. He said that Kit Grayson from the MPCA came up, but he did not see him take any samples of the material. Grayson said that if the material is contaminated it will be removed. Roger is especially concerned about PCBs and asbestos.

Erika Snell asked why, if there is now a big hole at the old high school, can't the materials be left there. Why do they have to be removed?

Sheryl asked if there is a way to make sure the materials are tested. The hauling and dumping has to be stopped until these concerns are addressed.

Julie Beck asked why the Town is so concerned about the MS4 requirements in the Township but is not overseeing what is being done here.

Sue said again that she will talk to the Supervisors and will try to help figure out the options. That is all the power she has pertaining to this issue.

Jim asked about a variance for the driveway.

Sue said that they are subdividing the property so don't need a variance.

Jim said that it says in the Ordinance that if someone subdivides, they have to provide the access.

Liz said that she understands and is sympathetic to their concerns, but there is nothing the Planning Commission can proceed with at tonight's meeting.

The Becks and their neighbors asked that they get an answer by phone and in writing so they know what is taking place.

### **Meier Public Hearing**

Members of the audience present for the hearing introduced themselves: Adam Meier, applicant, and Ed and Jane Martinson, adjacent neighbors.

Sue introduced the variance and the process for the hearing. The Meiers are requesting a variance from the side yard setback for a 52 ft by 28 ft garage on their property at 5744 North Shore Road. The property is in SMU-6. In SMU-6 the required side yard setback for an accessory structure between 1000 and 2000 sq ft is calculated. In this case the required setback would be 36 ft. The Meiers would like to place the garage on an existing concrete slab that is 14 ft from the west side yard line.

The first criteria for approval of a variance are, Is the proposal in harmony with the general purposes and intent of the Ordinance and consistent with the Comprehensive Plan? Sue read the response from the application:

This variance will allow the building of an accessory structure (garage) with minimal disturbance to soil and vegetation. I am proposing to use an existing concrete slab that was installed by a previous owner and formerly had a manufactured home. I only ask to add 1' footings around the slab to adhere to building codes.

Adam said that the manufactured home was moved off of the property about a year and a half ago.

The next criteria regarding practical difficulties are:

"Practical difficulties," as used in connection with the granting of a variance, means that

- a. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
- b. The plight of the property owner is due to circumstances unique to the property not created by the property owner;
- c. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

Sue read the response from the application:

I am proposing to use an existing concrete slab that is currently too close to the western property line to build a garage. There is no other garage on the property. I did not install this slab. It was existing when I purchased this property. If we end up breaking up the slab and moving it to within the setbacks it will cause a lot of disturbance to the soil and vegetation. I would like to avoid that as much as possible.

Paul asked if there has there been a survey of the property. Some of the maps he has seen of the property make it look like the property lines go through neighboring buildings.

Adam said that he rented a locater and found the two pins on the east side of the property. He then measured from those east pins 171 feet. He found that the closest point of the slab to the line was 14 ft. He also found one pin on the west side of the property. They give their neighbor to the west access across the property for their driveway.

John asked about the trapezoid shape south of the garage in the photo. Is it disturbed ground?

Adam said that it is an older photo and there was a fence there. It is not a disturbed area.

Jo asked how they plan to approach the garage.

Adam said that they would approach from the outer side of the garage facing towards the highway and away from the house.

John asked what the impervious surface total is. Does it include the large chunk of the neighbor's driveway on their property?

Adam said that he calculated the impervious surface based on just the square footage of the structures. He pointed out a large section of the driveway on the photo that has been taken out and is now grass. He did not count the neighbor's driveway on the easement as impervious surface; he had not been sure how that counted.

John said that with the part of the one driveway converted to grass, he was not as concerned.

Paul noted that because it is an accessory structure over 1000 sq ft, it must meet performance standards.

Adam said that there is already some screening in place and they plan to extend it.

### **Public Testimony**

Ed Martinson spoke. He is the adjacent neighbor to the west. They have an agreement in place with the Meiers and he and his wife have no objection to the variance.

There were no written comments submitted.

John asked how they plan on using the space.

Adam said that half will be garage space, and the other half will be a family room type of area. Water and sewer are already in place from the manufactured home that was originally on the slab.

Jo said that the lot is smaller than 2 acres so it is a nonconforming lot of record.

Jerry Hauge made a motion to approve the variance because it is in harmony with the purposes and intent of the Ordinance because it will be on an existing concrete slab that had a manufactured home on it. The property owner intends to use the property in a reasonable manner as a garage and family room. The circumstances of the property are not created by the landowner because it is a nonconforming lot and the slab was already there. The essential character of the locality will be maintained because it will be replacing a manufactured home.

Larry seconded.

Paul said that the performance standards require screening for an accessory structure of this size.

John said that he would like them to consider extending the line of screening.

Adam said that they already have an agreement in place with the Martinsons to do that.

Paul said that he was concerned that because there will be water and sewer in the building, it could be used as a second residence.

Jerry said that they would need a conditional use permit to do that.

John asked if, since it is an area of potential shoreline erosion, there are other things the Commission should consider.

Sue said that work to minimize shoreline erosion was done when the Martinsons' home was built in the early 1990s. A French drain was put in and some revetment work was done along the shore. This work extends across four properties including the Meiers'.

The motion approving the variance was approved unanimously.

The Findings of Fact and Decision was written and approved.

The October minutes were approved with changes from Sue: In Old Business, delete “a traditional mound system would not work on the site.” and “it was not clear than an alternative system would be allowed.” Also, the holiday potluck would be on December 8, not December 10.

## **Old Business**

Sue said that she got an email from Stacey Seering saying that he and his wife are not going to pursue a change in their Interim Use for their short-term rental.

Regarding the potential rezoning of the old Clover Valley High School site, Sue had a draft letter recommending rezoning the site to FAM-3. She asked the Commission to consider if 1) there are any other factors that should be identified and 2) is the rationale supportive of changing the zone district to FAM-3, or would the Commission consider another zone district more appropriate. She read the letter:

The Planning Commission recommend(s) that the site be rezoned from LIU-3A to the surrounding zone district FAM-3 based on the following:

1. Since 1977 many attempts have been made to develop the property. None have had long term success and subsequently the structure deteriorated over time to the state that the structures were hazardous to public health and safety.

Some may question that the right industrial fit has not been found, however, it would seem that almost 40 years of trying to find a long term use is an adequate amount of time. It appears that the uses in a LIU zone district are not suitable uses for this property.

The surrounding zone district, FAM-3 emphasizes the following: “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.”

There is enough acreage in the parcels to allow for re-sale by St. Louis County for a FAM-3 district. It would be unsuitable to create a zone district with smaller lot sizes and a different purpose than the surrounding FAM-3 zone district. Rezoning to a FAM-3 would add consistency to the land use patterns already occurring in the surrounding area.

2. A trout stream and a tributary to a trout stream flow though the north, south and east parts of the property. Significant wetlands are also adjacent to these streams. In 1981, the MNDNR secured an easement along the streams with plans for fish habitat improvement.

A petition to the County Planning Commission to rezone the property commercial was denied because of the property’s proximity to Stanley Creek on the north edge of the site. Continuing to use the property for commercial uses was recognized by the County as not appropriate and should be continued to be recognized by the Town. Hence, it would be more appropriately zoned as a FAM-3 zoning district which would not have the risks associated with it as does a Commercial (COM) or industrial use (LIU-3A)

3. The Comprehensive Plan directs the Town to limit or redirect development that puts at risk the carrying capacity of land or watersheds. Further, it directs that land should be developed with respect for the physical limitation of natural resources so that a quality environment can be enhanced and preserved. The Plan directs the Town to control the effects of development to minimize the risk of water contamination of Lake Superior and its tributaries. It also directs that the Town Identify and preserve all significant wetland areas vital to the protection of fisheries and wildlife, and to minimize flooding trial uses poses more of a hazard to the streams and wetlands.

Rezoning the area to FAM-3 would offer more protection to wetlands and stream on the property.

In summary, based on the past history of uses, the significant risk to trout streams and wetlands, and to meet the direction of the Comprehensive Plan the Planning Commission recommends an amendment to the Zoning Map rezoning the property from LIU-3A to FAM-3. This would best meet the direction of the Comprehensive Plan as well as protect the streams and wetlands on the property. The Commission recommends that a Public Hearing be held to move forward with the Zoning Map Amendment process.

John moved that the Planning Commission concurs with the reasoning in the letter and, following approval from the Board, that the Commission proceed with a public hearing for a Zoning Map Amendment to rezone the old Clover Valley High School site from LIU-3A to FAM-3.

Larry seconded and the motion passed unanimously.

Sue said that when the Commission worked with the greenhouse on Clover Valley Road and formulated the types of and definitions for greenhouses in the Township, they discussed having LIU land uses closer to areas of population and transportation opportunities. Is this something that should be discussed in this letter regarding the former Clover Valley High School site?

The Commission agreed that the letter should be left as is.

### **Clover Valley Road Greenhouse Update**

Sue said that Mike Mageau, the greenhouse owner, did not provide an update for the October Commission meeting. Since then, he sent Sue an email indicating that they are still working on removal of the greenhouse, but have encountered some problems. Sue read from the email she received from him.

We have been working with the City of Duluth to change our zoning from Ag General to Commercial Light Industrial to locate in the Duluth Air Park or the Atlas site. We are now working with the City Economic Development officials coordinating these industrial parks to secure a lot in one of them. These are good locations for us, the sites are perfect and the price is right so I think we should be able to make this work. We are not sure about the exact timeline. Once we've agreed to a price, we'll need to enter into a development agreement with the City of Duluth and move through the purchase process. They assured us we would be ready to construct in the spring as soon as winter reduces its grip. In the meantime we continue with production and hope to maintain healthy plants through the winter. We turned our lights on this week. I believe that they are running from 7 am to 6 pm so let us know if anyone has complaints and we can adjust the timers.

Larry said that in the motion from September, the Commission gave them until May to move the facility.

It was decided to postpone the update on the Greenwood Beach Plat lot sizes until the next meeting in January.

### **Director's Report**

Sue noted that there has been a general sense of disharmony since the November election. She thanked the Commission for the work they do. She said that they have a difficult job and they work with issues that are not black and white. It is important how you talk with people, and the thought you put into the words. The Commission does a terrific job with that. It is a great part of what makes the Township what it is. She showed a brief video demonstrating the effects that words and word choices can have.

Continuing with the Director's Report, Sue said that a permit application has come in for a commercial enterprise on the corner of McQuade and Lismore. It is zoned Commercial already. Seth Levanen owns it and was interested in putting apartments above it. But that is not allowed in a commercial zone under the Ordinance, so he will not be including those. Sue said that this kind of mixed use is becoming more common in other areas. Seth asked her to suggest that the Commission consider at some point whether it would be appropriate to have some residential use in commercial areas in the Township. It is something to consider adding to the work plan for 2017.

Jo noted that there is a construction sign up at the new Dryco site and asked if that was okay. It was.

John said that he heard that the Kiviranta construction was on hold because the construction bids were too high.

Sue reminded everyone that there will be a holiday potluck following the December 8 Town Board meeting. There will be no December Planning Commission meeting.

The meeting adjourned at 9:33.