

**Town of Duluth
Planning Commission
Meeting Minutes
11/20/08**

Chair Dave Chura called the meeting to order at approximately 7:09.

Commission members present: Bill Lannon, Yvonne Rutford, Dave Chura, Jan Green, Dave Miller, Mike Kahl. Absent: Seth Levanen; he had prior commitments.

Also present: Sue Lawson, Planning Director, John Kessler, Assistant Planning Director.

Draft Agenda

Sue Lawson noted that Bob Ryan was here to determine a date and schedule for the Odyssey facilitation and asked that we move that up to the first order of business after approving the minutes.

Jan Green asked that we include a discussion on getting Planning and Zoning minutes and agendas and the last changes to the Ordinance on the Township web site.

The Agenda was approved with the above additions.

Approval of Minutes from October meeting

Yvonne wanted to clarify what she said regarding upcoming discussions with Odyssey. She felt we should clearly articulate what the intended goals would be for embarking on new discussions with Odyssey. She felt it was clear from the previous process, taking into consideration public input and its reference to the CLUP, what the Township would and would not approve at Stoney Point and that this really already provided Odyssey with the guidance they need to move forward. So we need to clearly articulate our goals with Odyssey.

Spelling correction: Al Kapps should be Al Katz.

Yvonne moved to approve the minutes with the corrections. Mike Kahl seconded and the motion passed.

Next order of business was to set a date for the Commission to meet with Odyssey Development and the facilitator. After a discussion of the options, it was decided to meet on Saturday, December 13, at 8:30 a.m. This will be posted as a public meeting. A limit of 8 hours was set to complete the process. The meeting will start at the Town Hall, where the parameters for the process will be established, followed by a visit to the site. The group will then return to the Town Hall for discussions.

Planning Director Report

Director Sue Lawson handed out copies of the current budget, prepared by Ann Cox.

Dave Chura noted that there was no date on it. Wages for January through June were almost \$10,000 but the balance sheet shows that only \$5,000 has been spent on wages so far from July through December.

Sue said that projecting out to the end of the year we are probably looking at a \$1,000 deficit for wages; we are over on legal (\$500 was originally budgeted for legal expenses); we are over on advertising because of the number of public hearings we have had.

Jan Green said that “advertising” was the wrong word for postings for public meetings; public notice might be a better term.

Dave Chura noted that there would be a discussion of fees later, but we needed to be sure that our fees were covering all costs, including public posting, postage, etc.

The Bieraugel appeal to the BOA is set for December 1st.

The North Shore Community Center Master Site Plan: The landscaping group will be mailing their plans. A meeting is scheduled on Tuesday, December 2 with the Town Board to figure out budget and strategy.

John Kessler has kept track of his hours while he is at the Town Hall for Planning and Zoning office hours and has concluded that it is much more efficient and effective to just do it by appointment and cell phone. He said that he would like to discontinue the office hours. He has only had 6-8 people come by during office hours all summer. He would prefer to make appointments by phone and meet here or at the client’s site. He did not think it would result in a significant change in hours or expense.

New Business

Sue read from a letter from the Wordens regarding the conditions set for their CUP. They had 4 concerns:

- 1) They felt that their use of the property as a short-term rental should be considered grandfathered in. Sue said that she and Tim Strom looked into this and found that because they accepted the permit, it was too late to appeal on this point.
- 2) They said that it was illegal for the Township to impose a term limit on conditional usage. Tim Strom and Sue asked them for legal information confirming this.
- 3) They want clarification of the 7 day minimum rental condition – what exactly is meant by 7 days? They listened to the recording of the meeting and felt the condition was not properly defined according to what they heard on the recording. They noted that Jan Green had said that it would be okay if someone rented it for the week but they did not have to stay the entire time.

The Commission discussed the 7 day rental period. When does it start? When does it reset?

Jan Green said the purpose of the 7 day rule was, for instance, to avoid having people coming in to rent for two days then another set coming for two days, etc.

Dave Chura said that then this meant that there could only be one renter per 7 day period. The purpose was to restrict turnover to 1 renter per 7 days.

Bill Mittlefehldt, from the audience, read the condition as set by the Commission: the property “may not rent for less than 7 days.”

There was a discussion of whether the 7 day period should be a set 7 days, e.g., Saturday to Sunday, or if it could start any time as long as there was only 1 renter in a 7 day block of time. Wording was suggested by Dave Mount: “The rental may not occur with a frequency greater than one rental per 7 day period. This means that a subsequent rental may not begin until 7 days following the beginning of the prior rental and the property may not be rented to more than one party at a time.” There was some concern about the enforceability of this. It would be hard for the Township and/or neighbors to follow compliance if they didn’t know what the rental schedule was. Sue suggested that the Commission set the day of the week that the 7 day rental could begin.

Bill Mittlefehldt brought up the issue of enforcement and the difficulty of keeping track of renters and compliance with the 7 day condition. In addition, he wanted to know if the permit would be pulled if the condition was violated.

Dave Chura said that if someone violates their CUP those violations would be reviewed and the permit would be revoked if it were determined that the conditions were violated.

Suggestions were to monitor the website for the rental or to review the rental records.

Sue said that if neighbors observed violations they would need to document them and bring them before the Commission for another hearing.

Don McTavish, from the audience, asked about a scenario where one group rents the unit for seven days and a different subgroup comes each day.

Yvonne Rufford felt that this would undermine the 7 day rental period condition because people would be coming and going constantly.

Dave Chura suggested the possibility of limiting the comings and goings to 6 individual names.

Bill Lannon noted that the City of Duluth controls coming and goings.

Regarding enforcement, Sue said that she and John are responsible for enforcement. The Town Board has established policies for enforcement. If something blatant is seen or someone reports something, they look into it. Because there is a limited budget of both funds and time for enforcement, it is important to make it as simple as possible to enforce. Having a set rental week would be the simplest in this case.

The Commission decided they did not want to have a moving week. Dave Chura suggested that they require that the 7 day rental period for the unit begin on a set day and that they will be required to report this day to the Planning Director on a yearly basis. “Rentals may not occur with a frequency greater than one rental per 7 day period. A seven day period will always begin on the same day of the week; that day will be established annually by the property owner and reported to the Planning Director.”

Jan Green wanted the minutes to reflect that the last sentence of the concern regarding clarification of the 7 day condition did not make sense.

4) They don't believe the location of the fire pit as dictated by the conditions is a safe spot. They also think this location favors one neighbor over another.

The Commission decided that that condition should stand as originally written.

There was a concern from the audience that whatever we agree to now will be grandfathered in when the CUP comes up again. This person felt the CUP should not have been granted to begin with. Commercial property does not belong in residential areas.

There is currently a moratorium on short-term rentals. The Commission will be researching the issue and reviewing it. There will be an open house for public input.

Next Sue presented the list of draft issues of concern that she put together for the Odyssey meeting.

She started by talking about conflict and different levels of conflict and how issues are resolved between parties. Each party needs to know and understand the other party's interests. "Why" is important. Why does the Town want one thing and why does Odyssey want another? Understanding why can help clear the way. You need to go down to that level – the whys, the purposes. It is more than numbers.

There are two basic issues 1) Maintaining the existing natural character of the community, and 2) Preservation, protection, and sustainable development of our natural resources. The details within those broader issues are the placement of the structures, the site design, and the extent and nature of land and vegetation alterations.

Jan Green said that the first 2 parts relate to the CLUP and are addressed well. She felt that there was a 3rd part that needs to be included relating to erosion control and their variance request.

There was a discussion about the variance, what defines hardship or practical difficulty, and how does it relate to the fact that the subdivision has already been granted as reasonable use of the land.

Jan Green felt that the issue of erosion control is unavoidable. The Ordinance says that if they want to build in an erosion risk area, they can plan mitigation and apply for a variance.

It was pointed out that there are not many areas in the Township like this, so it is not likely to come up again. Sue said that Tim Strom said that CUPs and variances are not considered precedent-setting. Jan pointed out that each site would be unique and would have its own erosion potential issues. Dave Chura said that we only have one chance to make this decision and it's important to get it right. Dave Miller said that we have to consider our Findings from the original hearing and stay within the framework established by those Findings.

Jan Green was concerned that they were not able to show that erosion can be mitigated successfully. All they have are engineers who say it can be done. They have not provided examples of successful erosion control projects in similar circumstances.

It was decided to approve the Issues of Concern as drafted by Sue and forward them to Odyssey.

Jan Green asked about the wetland delineation report. She wanted to know what the statute of limitations was for the wetlands. The date on the current report is October 5, 2005.

Sue thought the statute of limitations was 3 years and is probably due to be reevaluated. They would probably not make any changes. The approval of the wetland could be appealed if someone wanted to do that.

The next order of business was to determine a use category for a storage facility.

Sue said that in the Ordinance it says that if the use isn't in the Ordinance the Commission will decide what kind of use it is, if it would need a conditional use permit or variance. The strawberry farm on Homestead Road was exploring options for putting in a storage facility. That area is zoned Fam3 with 9 acre minimum lot sizes. Fam3 is not zoned for commercial use so it was thought it would require a CUP. The Fam3 definition for neighborhood commercial use was read. It was felt that a storage facility would not necessarily fit this definition of neighborhood commercial use.

Concerns from audience

An audience member said that after hearing the definition of neighborhood commercial use, he did not think that the short-term rentals on Greenwood Road fit that definition.

Don McTavish asked for guidance on how to report a Land Use Permit violation in the newsletter. The Commission wanted it to be presented without the names of the parties involved and in a general fashion. It was pointed out that the Town Board made the decision to pursue the violation, not the Commission.

Old Business

Jan Green wanted to be sure to get Planning and Zoning information on the website. The last round of revisions to the Ordinance is not on there. We also need to get the minutes on there and perhaps agendas also. It was decided that we can start by providing approved minutes to Ann to give to the webmaster. Because the Township website is run by a volunteer, getting items posted at the last minute, such as agendas for meetings, might not be feasible.

There was talk about putting together a Planning and Zoning web site for getting information to the public. Sue was also interested in having a web site for Planning and Zoning member use only in order to facilitate getting information to members.

The Commission split into two work groups, one looking at changes to the Ordinance and at fees charged by Planning and Zoning, and the other looking at the issue of short-term rentals. There were no reports from these groups.

The meeting was adjourned at 9:25 p.m.