

**Town of Duluth
Planning Commission
Meeting Minutes
8/28/08**

Michael Kahl called the meeting to order shortly after 7 pm.

Roll Call: Present: Mike Kahl, Seth Levanen, Dave Miller, Yvonne Rutford, Janet Green, Bill Lannon.

Absent: Dave Chura.

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

Agenda for the meeting was approved and minutes from the last meeting, July 26, 2008, were approved.

Planning Director Report given by Sue Lawson:

The recent fire in the Township that took the life of a child was acknowledged and a moment was taken in respect for the Johnson family.

Odyssey appealed the denial of their Conditional Use Permit (CUP) to the Township Board of Adjustment (BOA) and the BOA affirmed the initial decision. The minutes and the Record of Decision from that meeting had been approved.

The Wordens are appealing the revocation of their CUP to the BOA. The date for that hearing is set for September 15.

North Shore Management Board's (NSMB) Technical Advisory Committee is meeting next week to look at the standards that are in the NSMB Plan. If anyone has comments or input they would like to provide, they can give them to Sue.

To clarify what the NSMB is looking at, Sue read from a letter from the Board indicating that there has been a request to consider delisting Erosion Hazard Area(s). The meeting will be on September 3, 2008. Jan Green was concerned about why they were looking at this particular issue now and requested that Sue ask them about this when she is at the meeting.

John Kessler and Sue Lawson have been dealing with two issues in the Township. Our zoning ordinance addresses stormwater management on lots less than 2 acres in size and there was an issue with a lot near the shore where there was quite a bit of disturbance and no stormwater mitigation measures in place. There was also a complaint from the northern part of the Township concerning sled dogs and barking. Sue and John are looking into both of these issues.

Permits are being issued as usual; there are no variance or CUP requests coming up at this time.

The Master Site Plan for the Community Center meeting was held August 27, 2008. Turnout was not great and they want more ideas from the public. There are some good ideas so far. One is to put a swale between the softball field and the woods that would allow for drainage. This could include some wetlands and rock gardens which would have educational value as well. They continue to look at how the Community Center and the School work together and how this relationship can be expressed by space as they plan for both the outdoor space and the addition. There will be displays and information at the NSCS Fall Festival. They are also waiting for the Building Assessment Team's recommendations for the building addition.

After the last P & Z meeting, it was decided to consider a moratorium on short-term rental CUPs. Sue wrote a letter to the Town Board. The Board is going to meet September 4 to consider a one year moratorium on short-term rental CUPs.

Sue is also working on a new Variance request form that should be clearer. She is also working on the CUP form.

Earlier in year we were way ahead of average on the number of LUPs, but business has slowed, and we are currently issuing an average number of permits.

Chair Report given by Vice Chair, Mike Kahl:

Because Mike was filling in at the last minute, he did not have a Chair Report prepared. Instead he asked Committee members if there were issues they wanted to address. Dave Miller said there was only the moratorium on short-term rental CUPs and Sue had just covered that.

At that point Mike went over the procedures for the Public Hearing and invited anyone who wanted to speak to sign the sign-up sheet.

Sue indicated that we would initiate a slightly different process this time – instead of approving the decision at the next Commission meeting, there will be a recess after the decision is made and Sue and the Commission Vice Chair will write up the decision and the reasons behind it. It will then be brought back out for corrections and approval. The applicant will then have the approved decision in hand and 30 days will be cut out of the process. Sue said that other townships are doing it this way also.

Public Hearing on Bieraugel Land Use Variance Permit request

Sue provided background for the request:

The lot is next to Bluebird Landing in Zoning District Smu6.

It is on a suburban scale lot size.

2 acres is the required lot size. The applicant is still computing the acreage. It is listed as 1.97 by the county Assessor. If it does turn out to be under 2 acres, they would need a variance for that and another public hearing might be necessary. Given that, should we hear this variance tonight? The NSMB guidelines say that if it was a buildable lot before it would be considered buildable now. It depends on when it was platted and when it was established. In some instances it may be considered a buildable lot. The survey shows a date of 1980 but no one is sure when the lot was actually established.

Jan Green pointed out that requirements for construction are different for nonconforming lots of record. Sue read from page 46 of the Ordinance regarding nonconforming lots of record and exceptions to the zoning requirements for these lots.

The Commission decided to hear the current variance request. The setback requirements being addressed in the current variance request are a crucial part even for nonconforming lots of record and will be a part of the overall decision, but the final judgment might not be made until the lot size is known for sure.

Jan Green made a motion to proceed with tonight's variance request with idea that the lot size would still need to be assessed. Bill Lannon seconded.

Sue continued reviewing the requirements for SMU6. The side yard setbacks are 35 ft; the drawing submitted shows only 20 ft. There is room for the 35 ft setbacks but it would need to be changed on the drawing. Huck Andreson said they would change that.

The required setback from the road is feet and is ok.

The normal shoreline setback for Erosion Hazard Areas is 125 ft from the top edge of the eroding bluff. The Bieraugels are asking for a variance from this.

Lot coverage must be no more than 25% Coverage for this project is calculated at 20%, including some of the shoreline work.

The applicant claims that if the variance is not requested they will not be able to build a reasonably sized home on the property and this constitutes a hardship. The applicant did not create this hardship.

Huck Andresen spoke: The application is for a unique project on a unique lot. An earlier zoning request several years ago was turned down. Since then, they hired Krech and Ojard to come up with a plan for the lot that would be approvable. Krech and Ojard have designed other plans that have been effective. They also resurveyed the property to make sure that the property line to the east (up the shore) is correct. The property is directly east of the City of Duluth-owned Congdon property.

Prior to the establishment of the present zoning code a permit was issued to a previous owner for this property for a septic and well which were installed. The septic was never used. The septic would be removed in the course of the construction for the new property.

Huck Andreson said that they believe there is a hardship and it is not self-created. This is the only reasonable use this property can be used for. It is also the only location on the property that works for a single family dwelling. They have tried to create a design with the least impact on the site. The property has an estimated value (St Louis County) of \$113,000, a taxable value of \$84,000, and annual taxes in excess of \$9,000 (sic).

Sue Lawson read from documents she was given showing that Bieraugel applied for a zoning permit that was approved on 9/19/81. She was also given the septic permit.

Rich Ojard, President of Krech and Ojard and Associates spoke. He said they do a lot of work in the area and nationally and internationally. They have 25 years of experience in shoreline projects.

Ojard said clays such as are in the area of the project have been shown to slough back to an angle of repose of 3:1. If erosion is stopped at the toe, and nothing is done with the clay slope, it is still going to go to 3:1 – it will just flow over the toe and fail. They recommend stabilizing the toe by putting in a rock revetment at the toe and then cutting the clay slope back to a 3:1 slope. They have done many projects like this. They have all been successful and they have not had a failure yet.

Where there are major culverts coming through, they propose building rock swale spillways for water from culverts to flow over.

Dave Miller asked what kind of disturbance would be created at the top. Would trees be removed to bring materials in?

Ojard showed the area that would be cleared and would need to be revegetated.

Bill Lannon asked what the distance was from where slope naturally drops off to where house would be built.

Ojard said it appears to be about 20 ft.

Bill said that it appears that the proposed erosion control would change where the edge of the eroding soil is.

Ojard said that it looks like the eroding edge is currently at the point where the proposed toe of the slope would be.

Sue asked how much vegetation would be left between the house and the lake when done?

Ojard: About 40 to 45 ft will remain.

Jan Green asked if access would be needed from the beach side.

Ojard: It could be done from the beach or they could create a road from the top. If done from the beach, they would have to get a permit from the DNR.

Andreson said that the individual owns to the ordinary low water mark, subject to DNR regulations.

Dave Miller: Do they want a variation from the ordinary high water mark?

Andreson: Yes.

Jan Green: So the variance request is for a variance from the required 125 ft from the top of the bluff. She noted that that line is not on any of the drawings.

Sue asked to see what the available building site would be if they used that line. There was no building site left if they moved to that setback.

Bill Lannon asked what the setback would be from the top of rock revetment to the structure?

Ojard guessed about 125 ft.

Sue read the criteria upon which the Planning Commission would base their decision. (Available on page 90 of the Zoning Ordinance.)

Yvonne Rutford asked what is considered a reasonably sized dwelling?

Huck Andreson said that “reasonable” is in the eye of beholder. They are not building a “mcmansion.” The home would be compatible with others in area, maybe even smaller.

Yvonne asked why couldn't the building be moved closer to highway?

Andreson said that they would then need a variance for that since they are already at the legal setback from the highway. In addition, soil conditions towards the highway would make it difficult. The proposed site is the only place that a home could be placed. Ojard also said that a major drainage ditch between the highway and the site would make it difficult to move the site towards the highway.

Prior to public testimony, Mike Kahl read the Public Meeting Agreement.

Public testimony

Joe Perrault, 5668 North Shore Dr., was concerned with the aesthetic views of the shoreline. A lot of rock would be brought in that doesn't currently exist on the shoreline. They would need construction access to bring the rock in and he was concerned about the 15 ft temporary construction access that they showed bringing it in from Bluebird Landing. He would rather have them come across their own property. Some of the proposed access includes an area of clay with trees – how would that disturbance be treated after construction?

Phil Meany, 5672 North Shore Dr., is a longtime resident and has property about 200 ft from the Bieraugel property. He had to move his house back 180 ft from the shore because of shearing. It is impossible to stop shearing once it starts. Moving his house back was less expensive than trying to put in a retaining wall. Along the shoreline in that area there are areas of clay and there are veins of sand and clay below the surface that are constantly wet. These areas are soft and would create constant pressure against a wall. He ultimately got a grant from the Water District for a water abatement system that carries water from the shore directly into the lake and avoids the bluff completely. Will this project have some kind of water abatement installation? Also, because of the power of wind and waves, anything less than 180 to 200 feet from the lake gets coated with ice. Exposed buildings cannot be protected. He thinks the variance should be rejected. The natural look of the shoreline is at stake. The other properties along there have room to move back from the shore if necessary. He was also concerned about bringing construction equipment and rock in from Bluebird Landing. It would disturb public property that is also a historical site. They would need to reinforce the existing road and cut into the bank, altering the shoreline. They would need to bring in heavy rock and pit run to carry the weight. The original character of that area could never be restored. This project would sacrifice the existing natural and rural look just to put a single family dwelling in. A certain amount of erosion is part of the natural process and not much can be done to stop it. A solid wall would undercut the natural look that the Ordinance tries to preserve. He left a letter with the Commission.

Tim Strom, 6297 Homestead Rd, was born and raised on Bluebird Landing. His family still owns land across from the Bieraugel property. He emphasized that he has personal and financial interest in this project and is speaking as a citizen, not as an attorney for the Township. He was concerned about the actual size of the lot. One map shows it to be only about 1.5 acres. If acreage is actually 1.97 acres, that would be closer to the required lot size. He believes the Commission should hear all of the variances that might apply to this property together. On the side yard setback, if they move the building over 15 ft to meet the setback requirement, it moves the site towards the narrow end of the lot and he felt something had to give as you did this. The required setback from the erosion area at the top of the bluff is 125 ft, but they want 100 ft from the ordinary high water mark, which is actually more than 25 ft difference because of the difference of where the measures are taken. The applicant claims that the burden of hardship is that they can't build a reasonable structure without the variance. He believes that "reasonable" is in the eye of the beholder and that there are many reasonable uses the property could be put to without asking for a variance. He thought the property would be suitable for a small cabin, a trailer, a gazebo, etc. The property would also have a reasonable use as recreational access to Lake Superior without adding any structures at all.

Another element of the claimed hardship is the plight of the landowner due to circumstances unique to property – the uniqueness is the fact that setbacks limit use. Lots of properties have this limitation – this is not unique. It is true that the circumstances were not created by the landowner, but the plight is that of someone who would rather not build within the setbacks and this, Tim says, is not a hardship. He does not believe that economics are an issue either.

He also believes that the extent of change from the required setbacks that the variance asks for is so far beyond what the Ordinance dictates that granting the variance would require a much greater hardship than he believes is demonstrated here.

Mary Ann Sironen, 5647 North Shore Dr., lives across from the Congdon Trust property. Her primary concern is erosion. She said that erosion at that property is significant – the land slumps off in terraces. She believes that this may have decreased the size of the lot over time and it may not still be 1.97 acres. She also wanted to point out that the ravine containing Jeanie's Creek (?) is quite deep and carries a lot of water in the spring. She is concerned about cutting back to a

3:1 slope. It seems like that action would disturb the majority of the lot. It would remove many of the trees and the bank. Granting a variance like this would go against the intent of the CLUP (Comprehensive Land Use Plan) to maintain the integrity of the North Shore and to keep it as natural as possible.

Orlando Fladmark, 5683 North Shore Dr. He said that he has watched Phil Meany and his wife for years dealing with the erosion issues on their property. He believes that they are experts on shoreline revetment in this area. He wanted to know the exact size of the house. Although he had no particular objections, he was not sure it was a buildable piece of property, but felt that it was up to the Commission to decide that.

John Bowen, 5409 Greenwood Rd., said that the NSMB came into being in the late 80s or early 90s. Lots that were 1 acre in size and were buildable lots at the time became unbuildable. That is why it states in our Ordinance that if it is a lot of record and the setbacks can be met, it can be built on.

Wayne Dahlberg, 6022 Bergquist, said that he is not particularly for or against the project. He is just looking at the 125 ft vs 100 ft issue. 100 ft is the normal setback without an erosion hazard. 125 ft is the required setback from the slump line. The slump line on this property is probably at the crest of the property. If you applied all of the setbacks to the property, without variances, there would be no spot at all left to build.

Ojard answered the questions from the public. He said that the contractor will almost certainly come through the owner's property, not along Bluebird Landing. There will be work along the shoreline. The clay bank would not be required to carry any weight; the rock revetment and the 3:1 slope would take the weight off of the toe. The 3:1 angle of repose is the angle the slope would end up at naturally through sloughing because of circle failures.

Regarding water abatement, they will put a berm in at the top of the slope to direct the water away from the slope.

As for aesthetics when the project is completed, he pointed out that just down the shore from the Bieraugel property the shore has been armored with rock and he thinks it is quite scenic. Along the shoreline, they intend that it will be a level, straight line.

Huck Andreson wanted to clarify the hardship issue. He said that in the Ordinance it says that economic hardship can be considered, it just cannot be the only determining factor. He said that the shape of the lot is the hardship – it is truly unique. And as for reasonable use, a residence is a reasonable use.

Jan Green moved to close the public testimony portion of the hearing. Yvonne seconded and the motion carried.

Commission discussion

Jan Green felt that the first decision to be made was that of hardship. The diagrams don't show where setbacks would be without the variance. There is a lot of confusion between the 100 ft and the 125 ft measurements. The setback without variances would be from the top of the bank (where the contour lines stop) which would obliterate the house site. There is no buildable spot on the lot if the existing setbacks are used. She believes this does constitute a hardship. It is a very difficult lot. The drainage area for Jeanie's Creek is a very steep dropoff and contributes to creating the very small buildable area. Even if the dwelling were downsized, there would be no space to build it.

Bill Lannon said that his personal experience with Krech and Ojard has been very positive. He wanted to know why there wasn't a survey done to see if there is enough room for the house even after the stabilization. He is concerned that there is not enough land there.

Yvonne Rutford was also concerned about the lot size. She wondered about postponing the decision until they get that information. She said that lots of record are buildable if setbacks are met, which is not the case in this instance: they are asking for variance from the setbacks. She is not convinced that there is a hardship, given the existing information available.

Sue Lawson said the Commission can postpone its decision until they get more information if they desire. However, the 60 day rule needs to be considered. An extension to the 60 day rule could be granted if both parties agreed.

Jan Green made a motion to suspend the application and ask for a 60 day extension to get additional information, including a better diagram of the property showing 1) sidelot setbacks correctly, 2) the shoreline itself, including existing shoreline, ordinary high water mark, and showing all the way up to the road, including elevations and topography, 3) the top of the eroding bluff and where a 125 ft setback from that would be, and 4) the actual size of the lot. Bill Lannon also asked that

they show the measurement from the proposed top of the rock revetment to the house. They also want the location of the house within the triangle. Seth Levanen seconded.

Discussion:

Dave Miller said there is more than hardship at stake. The project would conflict with a number of criteria included in the CLUP including policies, 3D, 3E, B4, B5, and, under Housing, # 6. He feels that there are at least 6 policies in the CLUP that need to be considered that concern the quality of the natural environment and have nothing to do with hardship. He is sensitive to anything that disturbs the natural shoreline. He felt that the proposal needs to be brought forward with all the variances and all requests put together into one package. He also believes that there are other house designs or uses that would be more suitable.

Seth Levanen said that regarding the house size and shape, he thinks there are some other options. He felt if they omitted the garage and modified the front of the house by removing what appears to be a 10 ft jut-out for the dining room, they could shrink the footprint and still maintain the square footage. It could help with the setbacks. Also, under Criteria #3, the applicant is required to describe the extent of environmental damage. Should that be included in the motion?

Yvonne Rutford said she agrees with getting more information, but she also agrees with Dave Miller in considering the conflicts with the CLUP. The shoreline of the lake must be considered beyond hardship.

The motion to request a 60 day extension was voted on. Ayes were unanimous. It was agreed that the Commission would write a letter detailing the additional information that was desired. A discussion of the 120 day time period followed. Huck Anderson said that they could get the information to the Commission by Friday, Sept 19, in time for the next meeting. The hearing would be continued on September 25 at 7 pm.

Bob Krepps from St Louis County Land Department was present to talk to the Commission about tax forfeited land, especially the 10 acre piece to the south of the old Clover Valley High School, and how the county decides what they sell. Karen Zeissler, St Louis County Tax Forfeit Land Coordinator accompanied him.

Mr Krepps said that the parcel to the south of the old high school has 150 ft of frontage on the Sucker River. Whenever a parcel has 150 ft or more of waterfront, the DNR must get clearance from the State Legislature to sell it. The Legislature okayed the sale, provided a conservation easement 100 ft on either side of the stream is put in place before the sale. This particular parcel was requested to be put up for sale. The county decides whether or not to sell it. There are about 6,000 acres of tax forfeited land in the Township. They intend to retain most of this land in tax forfeit status for long-term benefit for open space, public access, as well as timber production and revenue generation.

A computer model generates list of parcels to look at. Area land managers then look at the list. They focus on small tracts that are disconnected and difficult to manage. When they look at properties to sell they also look at non-economic value. They are all looked at individually. There are many non-dollar benefits in public lands.

There are parcels (shown in yellow on the map) that are available for exchange. There is a piece of property on the Sucker River that Sue Lawson said is important to the Township. Sue was also concerned that there are wetlands on the piece of land by the old school and that the person to the north of the property has already had wetland violations with the DNR. Is this taken into account when deciding to sell the parcel? She thought there was a general goal to conserve wetlands. Mr Krepps replied that the piece of property was in private ownership prior to 1995 when it was tax forfeited. In 1996 the County Board recommended that it be classified as non-conservation land. A letter would have been sent to the Township at that time. There is a statute that determines the criteria for best use of tax forfeited land. It does not address streams or wetlands which is why it goes to the DNR for approval on parcels with water issues. Nor does the Statute require public input on sale of tax forfeit land.

When a parcel is too small for building it is first offered to adjacent landowners. If it is not purchased by adjacent landowners it can be put up for auction after 6 months to 1 year. If the Township is interested in a parcel, they should submit a written proposal to the county. The county looks closely at those.

It was felt that the Township needed to have better communications with the County regarding tax forfeit land. The Township would need to know if there was an easement on a piece of property that was sold. When the piece is submitted to the sale catalog, the Township is notified for the last time. At this time the Township can object to a sale. There is then a period of time that the Township can acquire the property.

If the Township wants a piece of land that is proposed for sale, the Township can purchase it, or, if there is a planned designated purpose for the property, the Township can ask for free conveyance of the property. The Township then has three years to implement the plan for the property. The property must then be maintained for that purpose. To use a piece of land as a park the expectation would be that it would have walking trails, picnic tables, etc. Green space is not enough. The Township would also have to have the legal authority to do what they have planned for the parcel. The entire parcel must be used.

Forestry plans do require public input, but there is no public review of land sales. There is a county forest management plan. There are internal and external audits every year on the forest management program, including gravel supply, roads, pesticide use, etc. They operate on a 60 year rotation on forest management. There is also a system for handling and tracking complaints such as garbage dumping, trespassing, etc.

Bob Krepps also wanted to point out the value of lands to the Township. An apportionment comes back to the Township and the schools from land sales and from income from land such as timber harvest. Operating expenses come off the top. Then 40% goes to the school district, 20% goes to the Township. The average over 5 years up to and including 2006 was about \$2200 per year for the Township and about \$80,000 per year for the school district.

Old Business

Yvonne Rutford came up with guidelines for CUP Community Participation Reports. It will be handed out for comments at the September 25 meeting.

Dave Mount brought up the issue of the 60 day time limit for hearings, including appeals. Tim Strom has indicated that we have not been accomplishing this. We are working towards the goal of compressing the process.

The Town Board is looking at enacting an Ordinance declaring a moratorium on short-term rentals. If they do, the portion of the Ordinance dealing with short-term rentals will need to be looked at again and volunteers will be needed.

Dave Miller made a motion to adjourn. Seth Levanen seconded.

The meeting finally adjourned at about 10:10.