

**Town of Duluth
Planning Commission
Approved Meeting Minutes
10/22/09**

Prior to the meeting, there was a brief meeting between the Township's Board of Supervisors and the Commission on the short-term rental issue. Minutes for that meeting are attached.

The meeting was called to order at 7:05 p.m. by Commission Chair, Dave Chura.

Roll Call: Present: Dave Chura, Mike Kahl, Jan Green, Yvonne Rutford, and Barb Crow

Absent: Bill Lannon and Seth Levanen

Also present: Sue Lawson, Planning Director; John Kessler, Assistant Planning Director; and Dave Mount, representative of the Town Board.

The Agenda for the evening was approved without changes.

The minutes from the September 24 meeting were approved with the following clarification: Jan introduced the draft resolution as a motion to be discussed. It was seconded by Seth.

**Continuation of the Variance Hearing for Stoney Point Cottages, Odyssey
Development, from September 24, 2009**

Jan withdrew the motion she had put on the table at the last meeting, and made a motion to introduce a new draft resolution, with more specific conditions. She distributed copies of the resolution (see attached).

The Commission took a few minutes to read over the resolution. Dave Chura then seconded the motion and it was opened for discussion.

Jan reviewed her resolution for the Commission. She feels that Odyssey has provided the required information that the shoreline stabilization will work. She does not necessarily agree that it will work, but recognizes that she is not technically qualified to make that assessment. If the technical information is adequate, then the variance must be considered. She felt that an important part of the resolution is that by requiring each site plan to be approved along with the LUP, it allows some opportunity to learn as the development proceeds.

Yvonne said that she does not believe that Odyssey's application meets the criteria for a variance according to the Ordinance. She stated the reasons:

- There are no special conditions, practical difficulty or particular hardship that would be created by carrying out the strict letter of the Ordinance.
- The property is 18.8 acres which is ample for reasonable use.
- The plat for the property is a reasonable use.

- When Odyssey presented the plat for the preliminary plat approval at the hearing on April 24 2008, they stated that the 125 ft setback from the top of the bluff could be met.
- The applicant states that a hardship would be created if the variance were not granted in that a large portion of the site would be unbuildable and unmarketable. This statement conflicts with what they stated at the April 24 hearing. In addition, regarding the marketability of the property, the Ordinance says that economic considerations do not constitute a hardship.
- The Township's Comprehensive Land Use Plan (CLUP) speaks to developing land with respect for the physical limitations of the land. The owner has the ability to develop this parcel without the variances in a way that puts the land to reasonable use while respecting its physical limitations and carrying capacity.
- The revisions to the original plan are commendable but are not sufficient to show a hardship.

Yvonne concluded by saying that she does not believe there are grounds for granting the variance without disregarding the Township's zoning ordinance.

Mike Kahl said that he felt that Odyssey met the requirements for granting the variance.

Barb Crow spoke to the questions that are considered to evaluate practical difficulty. 1) The difference between the setback Odyssey is asking for and what the setback would be without a variance is quite substantial. The setback for the homes would be 225' without the variance. 2) What effect would granting the variance have on government services? The Commission is asking that the Township not be held responsible, but that has not been addressed to her satisfaction. 3) Can the practical difficulty be alleviated by a feasible method other than the variance? The property is over 18 acres and can be developed without a variance or violating the goals stated in the CLUP. She doesn't believe that allowing a risky shoreline development is compatible with the CLUP.

There was discussion about the revetment and whether it needed to be continuous across the front of the development or if it could have breaks in it to improve the aesthetic appeal. It was reiterated that Krech and Ojard were adamant that it be continuous. It would not work if it were broken up. Dave Chura then asked about the ends of the revetment – would the properties located at the ends of the revetment be at risk for increased erosion? Bob Ryan said that the ends of the revetment corresponded with a decreased slope and shoreline protection is not needed there.

Jan said that erosion on Stoney Point is erratic and is based on characteristics of the soil and, unlike a sand bank with a more uniform rate of erosion, the soils on Stoney Point will slump.

Dave C. felt that the continuous revetment would create a negative visual impact. Breaking it up would lessen the visual impact. He said that at least the current ongoing erosion appears natural.

Barb suggested that they add wording to the conditions that a regular (every five years) evaluation of integrity of the revetment be conducted to identify any need for maintenance. This would be done by a qualified engineer appointed by the homeowners association. Dave C. added that a copy of that evaluation should be provided to the Planning Director.

Jan suggested that they add it to the conditions under section C for monitoring and maintenance of the revetment.

Concerns regarding the revegetation plan and landscaping plans included the quantity and type of vegetation, establishing specific parameters for revegetation and landscape plans so that there would be a clear standard against which to evaluate the plans and success of the revegetation, and what would be done about replacing vegetation that dies.

Bob Ryan said that they amended the revegetation plan to include transplanting at least 10 trees from the current site onto the previous site as construction proceeds. Any trees would be replaced if they died within a year. The homeowners' association would also have some responsibility for maintaining the landscape.

Greg Schendel handed out documents, one concerning the timing of the conditions on the resolution from the last meeting, and two amendments to the homeowners' association documentation – one about the shoreline maintenance fund and one with additional regulations. (See attached.)

Jan said that the vegetation restoration and landscaping plan should include planting, construction, monitoring and maintenance. Their current plan only has detailed landscaping plans for Lot 4 and not all lots would be the same. They need to have flexibility to work with the each site. She suggested that as they develop the lots, they submit the detailed landscaping plan for approval along with the LUP.

Sue pointed out that the density of a naturally occurring landscape at the site might be in the vicinity of 100 basal area, which is a lot of trees. The premise of the process is to improve what is there already and what is proposed is nice, but does not approach natural density.

Dave C. suggested that they stipulate that each site needs to have 34 trees, 16 shrubs, and 10 transplanted trees. That could be a minimum requirement that is more specific than Jan's language. And have the revegetation plan for each site be submitted to the Commission for approval.

Dave M. said that if something doesn't grow well, subsequent landscaping plans could be adjusted accordingly. Wording could be included to amend subsequent lot plans based on unforeseen difficulties with previous lots.

It was agreed to add the following to C2 of the resolution: At a minimum each site landscape plan shall include 34 trees and 16 shrubs (as specified in the lot 4 example restoration plan) and additional transplanting of 10 existing trees into the graded area. Each lot vegetation plan and restoration plan will be submitted to the Planning Commission for final approval.

Greg Schendel gave Sue a copy of the newly delineated wetlands for the site. She made copies of this and distributed it to the Commission.

The following addendums were added to the resolution on the table:

Addendums to Resolution

To add to Condition C.2: At a minimum, each site landscape plan shall include 34 trees and 16 shrubs (as specified in the Lot 4 example restoration plan) plus additional transplanting of 10 existing trees into the graded area as construction progresses. Each lot vegetation plan and restoration plan will be submitted to the Planning Commission for final approval.

To add to Condition B.4: There will be regular (every five years) evaluations of the integrity of the revetment to identify any need for maintenance to be performed by an engineer appointed by the homeowners association. A copy of that evaluation will be provided to the planning director.

To be added to condition B.1: Placement and coloration of rock should maximize natural appearance of the shoreline.

Add the language for 6.6 and 7.10 as submitted by Odyssey:

The resolution with the above addendums was voted on and passed. In favor were Mike Kahl, Dave Chura, and Jan Green. Voting against were Barb Crow and Yvonne Rutford.

Planning Director's Report

A hearing for a Conditional Use Permit is coming up. The property is on Johnson Road and is for a subordinate dwelling. They want to build a garage with an apartment above it for occasional use by family. A motion was made to designate the area of impact for the Community Participation Report as all abutting properties on the Johnson Road. The motion passed unanimously. Because a number of

Commission members expected to be absent for the November meeting, December 17 would be the soonest the hearing could be scheduled.

Another closed meeting is scheduled between the Board of Supervisors and the Bieraugels at the end of the month, but otherwise, there was no further news on that issue.

Jan asked if someone from the Township could attend the upcoming meeting on the Knife River TMDL (Total Maximum Daily Loads) draft report. The Township is not included as a stakeholder and that needs to be corrected, seeing as most of the Knife River is in the township.

Chair Report

Dave complimented the Commission and staff on their work throughout the Odyssey process. It has been long and sometimes contentious and he was impressed by the respect and cooperation shown by everyone.

The November Planning and Zoning meeting will be cancelled because of the number of Commission members not be able to attend. The next meeting is scheduled for December 17.

Dave M read the language regarding subordinate dwellings. It makes it clear that the Conditional Use is applicable to the applicant's family only and is not transferable. Future use of the property as a residence including as a rental is not permitted except as specifically allowed under other provisions of the Ordinance. Sue said that it could be made a condition of the CUP that the dwelling not be used as a short-term rental.

Dave M. also discussed temporary or interim conditional use permits that some other jurisdictions use to put time limits on CUPs. It might be something to consider incorporating into the Ordinance at some time.

Sue noted that the Worden's CUP is up for renewal in January.

A meeting is being held by The St Louis County Land Department Oct 28 to discuss a proposed timber sale off of the Shilhon Road.

The meeting was adjourned at 9:20.

**Short Term Rental
Town Board and the Planning Commission
October 22, 2009**

Present: Mary Ann Sironen, Dave Mount,
Absent: Stephen Dahl, Danny Tanner, Wendy Meierhoff
No Town Board quorum for this meeting.

Also Present: Director Sue Lawson, Michael Kahl, Dave Chura, Janet Green, Yvonne Rutford, Barb Crow, Planning Secretary Beth Mullan, Assistant Director John Kessler and Clerk Ann K Cox

Dave Chura Planning chair called the meeting to order at 6:02 p.m.

Short Term Rentals can be looked at two ways: geographically and conditionally. Geographically can be broken into zone districts and require lot size, set-backs and dimensional requirements. The second option, conditions, can be imbedded into Conditional Use Permits (CUP) requirements in the zoning ordinance. At this time we have two short term rentals within the township, in one case the system we currently have worked, in the second case it is not working.

Discussion: Planning Commission (PC), Town Board (TB)

PC: There was a really good discussion during the open house, a nice mix of realtors and residents. The realtors asked if some people could rent out their homes help pay the mortgage. There is a scenic value, kind of a resort type of value but on the negative side it disrupts the neighbors. Would an overlay be possible? There are additional concerns of transients, possible drug issues, people cannot watch every minute of every day.

TB: We already allow one month rentals. Folks who are inclined might do that regardless.

PC: I don't think having short term rentals in an outlying area where people can't see and monitor is good. When you have people a stones throw from each other, you might have a party like atmosphere which makes it more difficult to deal with. Even if people can keep an eye on the rental property it might be more annoying.

Director: This is more like a commercial enterprise; it certainly isn't a single home enterprise

PC: it should be on a level playing field with any other hotel, motel or campground.

TB: Commercial use is allowed in the MIU district. I don't think saying it is commercial use should restrict it to commercial zones.

Director: One option is if you take a commercial area and expanding it with an overlay. The other option is to have it simply in commercial zones.

PC: SMU can be made to be mixed also.

Director: you can do an overlay in the SMU district.

TB: Zones where it could be potentially considered, you could put in conditions that would apply to a specific site. The difference is the setting.

PC: Density considerations and neighbor considerations. My feeling about overlay districts is that it is a basic good idea but it is difficult for people to understand exactly what it is which makes me a little hesitant to create another. If we confront this issue, my opinion is to put it in zone districts with a whole bunch of conditions, the conditions would be in the ordinance. You would have to meet them, you meet them and that might not be the end of it, you would need to reduce the impact on the neighbor's properties.

TB: You cannot consider some things that could not be required; there is nothing in the list I have provided to you that doesn't already exist. Both to help your decision making, these are things that won't strictly be conditions but that can be evaluated. Some of the wording might help put the burden on the applicant.

Director: the burden is always on the applicant but then the town gets the permit and the burden is then on the town. In the criteria for conditional uses in general, keeping with the character of the neighborhood. It is very difficult for me to figure how changing people in a house, is in keeping with the character of the neighborhood.

PC: proving you have a license and the license is up to date. If they no longer have a conditional use permit, would they continue to rent anyway?

TB: You know there are people in this township who if denied a permit will continue to rent anyway.

Director: If you get someone else to come in, no matter how many conditions you put down they won't care. They should be in the Commercial zone.

PC: SMU 8, which is Greenwood Road, and SCO 8a or 8b are not suitable for short term rentals. SMU 6 is the more open, it is mixed use and would be a

better place for short term rentals. There are places in SMU 6 that are just as dense as SMU 8.

PC: But they have the Scenic Café, Nokomis, rentals.

PC: Yes but there are a few businesses in SMU 8 also.

TB: perhaps the best would be to rule out those areas where Short Term rentals should not be allowed.

PC: If you allow it in one area you allow it in all areas. My preference is to not allow it at all.

TB: We have one in one area that isn't causing any problems then we have one in another area that is nothing but one problem after another. The thought is to not take away peoples opportunities if possible.

Director: it's the location and what's surrounding it.

TB: We know there are people who live there permanently and don't get along already.

Director: The one that is working is kind of an area that mixed use is in.

PC: It does meet a motel description with one suite. If you wouldn't allow an unsupervised motel in the area why would you allow a short term rentals?

TB: By taking your analogy you take small term items but you wouldn't allow a WalMart? Neighborhood scale is important.

PC: You would allow a 2 room motel?

TB: You are arguing scale doesn't matter.

PC: The type of business you are talking about, there are different types of businesses you might allow.

TB: Month long rentals? Without restrictions? Without conditions?

PC: They aren't a problem

PC: Short term rentals aren't necessarily a bad thing, when I travel it is one thing I consider. Greenwood Road is not a suitable zone district; SMU 6 is a suitable zone district. One of the unfortunate things is one rental on Greenwood Road was bought for speculative purposes. I don't know if you could factor that in, the land owner has to have some connection with the property.

PC: I think there is a difference with a snowbird who rents their house out for 2 or 3 months at a time. Is that what we want along the shore a huge stretch of rental properties? Or do we want to have a district of single family homes with families who contribute to the community.

PC: I am not in favor. When we started this the onus was on the neighbor to do the enforcing. We have had a bad experience with one short term rental but I don't believe we are getting into more than we want. If we have all these conditions to meet, conditions on the use, we need to decide site by site, overlay and enforcement.

TB: The Town Board is interested in a way to accommodate the concerns. If the commissions answer is no we understand that. We have heard so much about the small pieces but whatever we put in place has to apply additional work for all the Township residents.

PC: whatever we decide today or tomorrow will significantly decide how that shoreline will look 10 years from now. The decision is, what do you want this area to be, a rental destination or do you want it to be a part of a neighborhood.

Director: What about the community? I understand the Town Boards concern about property rights but if we didn't have a zoning ordinance or a comp plan in place then whatever you want to do with your property is fine.

PC: But you have to look at what we have done with the zoning ordinance itself SMU 6 (description was read). It is the lot size which is the difference between the zone descriptions.

TB: Allowing short term rentals is not a fair argument, I don't think the Town Board is pushing that vision but we need to come up with something between None and Cape Cod.

PC: There are a number of houses people have built on the shore which are not my idea of back country recreational houses but they can rent them out with rental management companies.

Director: There are zones in Tofte which are zoned resort. On the upperside of the road it is more like single family. Town of Lutsen? I'm not sure, it is a strip of resorts that are zoned resort.

PC: There are still homes along the shore that are rented out with rental management organizations. One of the things I am curious about is do these residents suddenly become non homestead? Is there a way to make this contingent to make it Homesteaded. You can rent your house out for several months without losing your homestead designation.

PC: Having in place a conditional plan gives people who cannot afford to build on the shore of Lake Superior the ability to build.

PC: Maybe not build an average home but a larger home.

PC: We would want to require the same things we would require a motel or hotel because they are doing the same type of service.

TB: Read from zoning ordinance there is no motel description in the use table.

Director: The Planning Commission said we do not want this, the Town Board said yes you will.

TB: Reading under planned unit development – page 29.

PC: There is no motel listing in the index but there is a hotel listing.

TB: Planned unit development commercial?

PC: A planned unit development is not allowed in SMU 6 or SMU 8 (table on page 55). Commercial is short term lodging spaces, maybe those are the areas the overlay should apply.

TB: We shouldn't have an overlay unless we can't find another way.

PC: So the Town Board's decision trumped what the Planning Commission wanted?

TB: We felt under pressure with the time line. We understand why you said what you said but we are uncomfortable with an absolute no we wish to find a third way.

Director: It isn't about "I" it is about community.

PC: We thought that bit by bit those various commercial organizations would die by they haven't.

Director: The work that Dave Mount has done is good. You have the ability to change the ordinance, you may change the format, short term conditions could be added where conditional use permits are. People are going to look for a short term rental and see that they are going to have to meet these conditions and perhaps a few more.

PC: At the least we should do that. It would still allow short term rentals in all zone districts but with standards. Maybe what we need to do is have a little working group with a final proposal we can act on.

TB: If there are zones you feel it is inappropriate you need to let us know.

PC: If it is acceptable in one zone then it should be acceptable in all zone districts. It should be everywhere. If you aren't willing to have it in your back yard then It shouldn't be in anyone's back yard.

Dave Chura/Yvonne Rufford PUD residential discussion

Dave Chura/Barb Crow B&B discussion

Planning Chair Dave Chura then gathered a list of Commission members interested in a small group discussion. The small group will bring their findings back to the bigger group in November.

Discussion closed.

Motion and second to adjourn the meeting. Motion passed 6:56 p.m.

**Town of Duluth Planning Commission
October 22, 2009**

RESOLUTION:

Resolution to approve the variances requested by Odyssey Development from the Town of Duluth Zoning Ordinance #3, Article VI, Sec. 3 (1-5), and Sec. 2 A (2), (3) and B (1), (2), (3) for the Preliminary Plat Submittal for Stoney Point Cottages Subdivision with conditions that are detailed below.

The township shall be held harmless for any slope erosion failure or vegetation restoration failure.

Because this is a phased development with lots 1 and 2 developed first, there is the opportunity to learn from experience. As each land use permit is given for each house construction, the conditions that are attached to this variance resolution apply unless they are modified by subsequent variance applications and approvals.

I. REASONS:

A. Technical information

1. Sufficient technical information has been submitted to satisfy Article VI, Sec. 3 (1-5) requirements for a variance in the Lake Superior Shoreland — Erosion Hazard Areas. Specifically technical data that the Erosion Hazard Area “can be mitigated by structural protection” was submitted in the document entitled” Stoney Point Cottages: Shoreline Stabilization, Technical Data, Project History, Engineering Calculations” dated September 21, 2009, with explicit mitigation given in the following:

- Letter from Krech Ojard, dated July 2, 2007
- Diagrams and maps in the sections of the Preliminary Plat Submittal, dated September 21, 2009, entitled:
 - Shoreline Stabilization (project No.05 1404)
 - Preliminary Plat proposal.

In the latter section the cross section which shows a 4:1 foundation protection line is important for erosion hazard mitigation. However, it should be understood that there is still risk of erosion in this bluff of unstable soils, as testimony in this hearing and previous hearings has shown. Technical data submitted has not documented that there is an inherent 1:3 long-term “stable” slope in these glacial red clay soils.

2. The technical information in these two documents submitted by Odyssey Development and referenced above also address the variances required from Article VI, Sec. 2, A (2) & (3) and B (1), (2) & (3). In addition, the Landscape Restoration Plan submitted by Odyssey as part of this variance request addresses the vegetation alteration requirement in Article VI, Sec. 2.

B. Criteria for variance decision

1. There is a practical difficulty in developing this site due to the nature of the erosion of the bank at the lakeshore and the presence of extensive wetlands landward from the top of the bluff.
2. These unique natural characteristics cause a particular hardship because a large portion of the site would be unbuildable and unmarketable for this subdivision.
3. The plan is in keeping with the character of the locality with the development of lots for single family residential use.
4. The plans for Construction and permanent erosion control, phased and selective shoreline stabilization, and landscaping and revegetation are in keeping with provision in the Town's Comprehensive Plan to develop land by respecting the physical limitations and natural character of the land.

C. Variance approval is conditioned by the requirements listed below

II. CONDITIONS and Schedule:

A. Before any development activities, including shoreland stabilization, the following should be submitted to the Township Planning Director:

1. The recorded subdivision plat approved by St. Louis County Planning Commission with any conditions that were required.
2. The final wetland delineation report by the County's Wetland Technical Evaluation Panel.
3. The wetland replacement plan and wetland credits required for wetland mitigation by St. Louis County.
4. Copies of the final deeds filed to fulfill the Real Estate Exchange Agreement between Odyssey Development and the City of Duluth which was approved by the Duluth City Council on July 10, 2006 by resolution 06-06-021, [This covers approximately three acres at the mouth of the Little Sucker River conveyed to the City of Duluth in exchange for land owned by the City for the easement for the Congdon Blvd. that is with this preliminary plat.]

B. Shoreland revetment requirements:

1. Only native rock should be used for the revetment that is similar to local bedrock types.
2. The revetment should be placed so that a natural beach remains lakeward to allow for the traditional shore fishing access below the OHWL. This placement would be similar to the pictures #53, 56, 59 Burlington Bay campground area, submitted by Krech Ojard as examples of shore stabilization (document of Sept. 21, 2009).
3. Any permits and plans for Construction required by the Minnesota Pollution Control Agency for stormwater pollution prevention under their NPDES/SDS

program should be submitted to the Township Planning Director.

C. Before any vegetation and soil removal activities for slope stabilization the following should be submitted to the Township Planning Director.

1. Any amendments or corrections to the DNR Division of Waters protected waters permit #2008-0218, Shoreline Stabilization, Stoney Point Development Plan
2. The vegetation restoration and landscape plan including planting, construction, monitoring and maintenance. The planting should use species of plants that are native to the site.
3. The Minnesota Pollution Control Agency's NPDES/SDS Permit for Construction Stormwater and the required final stormwater pollution prevention plan (SWPPP) that explains how they will control stormwater.

D. When there is an application for a land use permit for a housing unit the following should be submitted to the Township Planning Director:

1. A survey and diagram for:
 - House setback from the OHWL
 - Slope angle before any slope alteration for stabilization
 - Slope angle after any slope alteration
 - Revetment placement
 - Shows the 4:1 foundation protection line; 3.5:1 building setback line; 3:1 stabilization grading line
2. Revegetation plan (C2 above) that includes a schedule for monitoring and maintenance
3. Erosion control plan and structures for ongoing management of stormwater that includes a schedule for monitoring, maintenance and implementation
4. The provisions of the escrow account for maintenance of the lakeshore as required by the "Cottages at Stoney Point Neighborhood Association", including funding and compliance standards.

Attachment 3: Addendums to Jan Green's Resolution

Addendums to Resolution

To add to Condition C.2: At a minimum, each site landscape plan shall include 34 trees and 16 shrubs (as specified in the Lot 4 example restoration plan) plus additional transplanting of 10 existing trees into the graded area as construction progresses. Each lot vegetation plan and restoration plan will be submitted to the Planning Commission for final approval.

To add to Condition B.4: There will be regular (every five years) evaluations of the integrity of the revetment, to be performed by an engineer, to identify any need for maintenance to be performed by an engineer appointed by the homeowners association. A copy of that evaluation will be provided to the Planning Director.

To be added to condition B.1: Placement and coloration of rock should maximize natural appearance of the shoreline.

Add the language for 6.6 and 7.10 as submitted by Odyssey:

6.6 Shoreline Repair and Maintenance Fund.

There shall be established a shoreline repair and maintenance fund to insure the long term stability of the Lake Superior shoreline stabilization on the Stoney Point Cottage site. The board shall include in each subsequent annual budget a reasonable amount of capital to maintain the stone toe revetment, regraded slopes and landscape and vegetation on regraded slopes. There shall be contributed on a one time basis for each lot sold an amount of \$1,250.00, \$10,000.00 total by Odyssey Development. This contribution shall be made at the time of closing of sale of each lot.

7.10 Lot and Shoreline Clearing.

All owners and occupants and their guests shall follow all Township and County ordinances as they pertain to any vegetation clearing on their property.

