

**Town of Duluth  
Planning Commission  
Meeting Minutes  
February 26, 2009**

The meeting was called to order at 8:45 p.m. by vice chair Michael Kahl. An open house to gather community input on short-term rentals had been held just prior to the meeting from 7:00 to 8:30. The notes from that open house are attached.

Roll Call: Present: Mike Kahl , Bill Lannon, Jan Green, Yvonne Rutford, Dave Miller  
Absent: Dave Chura, Seth Levanen  
Also present: Planning Director, Sue Lawson, Assistant Planning Director, John Kessler

Yvonne Rutford asked that WLSSD’s request for input from the Township for its Comprehensive Plan be added to Old Business on the agenda and the agenda for the meeting was approved with this addition.

Approval of the January 22 meeting minutes: John Kessler asked that his statement regarding the use of firearms between Highway 61 and the shore should say “*owners* will want to preserve their rights,” not “people.”

Jan Green wanted to comment on the comment that John Bowen had made on her statement regarding lots of record. She said that her understanding is if a zoning change happens while you own a piece of property you still have the right to build. If that property is sold after the zoning change, then the new owner would have to apply for a variance to build on the property if the proposed use did not meet the newer zoning parameters. The standard for the variance would be hardship, usually economic hardship, but Jan said that it is not economic hardship, it is self-induced hardship when someone buys property that is non-conforming. She said we need to examine this issue of lot of record and how it applies to our variance standard for hardship. Giving a variance based on type of hardship is one of the most difficult decisions the Commission makes. We should get advice on the matter from the Township attorney.

The minutes were approved with the wording change requested by John Kessler.

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**Robert and Leslie Mohs Conditional Use Permit Hearing**

Robert and Leslie Mohs applied for a CUP for a home-based business at their home at 5163 Greenwood Road.

Sue Lawson outlined the process for the hearing.

She read the definition for a home-based business : A commercial or minor industrial business use conducted on the same property on which the owner’s home is situated, which may employ no more than five (5) persons who are not residents of the owner’s home, which is of a type or character consistent with rural residential lifestyle, and which is established and operated under such conditions that the use is not a nuisance to or otherwise incompatible with the surrounding area and is not considered a planned unit development (PUD), highway commercial, neighborhood commercial, rural industry or waterfront commercial use.

Sue read the criteria for approving a conditional use and special requirements for a home-based business (see attached Criteria and Special Requirements).

The Zone District for this property is SMU-8 which is shore land and mixed use. “This district is intended to provide residential and mixed uses consistent with the recreational and natural attributes of Lake Superior, on a large urban-scale lot size.”

The lot requirements are:

Minimum Lot Area: 1 Acre

Minimum Lot Width: 200 Feet

Maximum Lot Coverage: 25%

Minimum Side Yard Setbacks Principal: 20' Side Yard; 45' Rear Yard

Road Setback: 110' from centerline

She showed a vicinity map showing the property's location at the corner of Scenic Drive and Greenwood Road. The site map shows the house and the driveway off of Greenwood Road. She compared the dimension requirements from the Ordinance to those in the application. All dimension requirements are met.

The description of the proposed use, taken from the application, includes the following:

- A residential business to be used for occasional retail sales up to 30 days per year.
- Business will be called "Light of the Moon." Also to be used as an art doll gallery.
- Operations will be Friday, Saturday, Sunday. At this time, hours will be 9:00 a.m. to 6:00 p.m.
- Parking on-site for 10-12 cars.
- Deliveries: Minimal -UPS, FedEx, USPS
- Signage: One sign put out when business is open
- No noise level increase from business. Minimal impact on neighborhood
- Have garbage service
- Served by NSSD

She also said that there would be no outside storage. Nor are there any wetland, drainage or hazardous material issues.

Robert Mohs spoke. He said that Sue covered the basics of the proposed use. It is a small business that will be open maybe 30 days a year. There is easily enough parking space for 10 to 12 cars, right outside the entrance to the shop. The shop is in a dedicated area of the home with a separate entrance. The type of product they are selling will probably draw more of a female clientele. He felt the business would likely have a positive effect on the neighborhood with minimal impact.

Leslie Mohs said that they got a wonderful response from everyone they contacted except for one person. That person had been concerned because he had been there when they had had a wedding celebration for their daughter and he was concerned about the traffic congestion at the time. They felt that they allayed these concerns and plan to call him before first sale.

Jan Green asked what kind of signage they plan to use.

Leslie Mohs said they would put a sign in the front yard. It would not be big and it would hang from a wrought iron post.

Bob Mohs said they would leave the standard in ground and would bring the sign out when they were open for sales.

Jan asked what the Ordinance says regarding sign requirements.

Sue said that the regulation says it must be set back 10 ft from any lot line, not illuminated, and be smaller than 50 sq ft (later corrected to 20 sq ft).

Dave Miller complimented the Mohs on their Community Participation Report (CPR). He said it could be used as a model for the Township.

Yvonne Rutford asked if the business would be seasonal.

Leslie Mohs said that they expect to have a sale in September, one in December and one in the spring. Probably no more than four times a year.

Robert Mohs said that the response for their CPR was good. They had 25 responses out of the 33 residents they contacted. They tried hard to get ahold of everyone.

Dave Miller wanted to know what they thought about the CPR and how their experience was.

Robert Mohs said that they were amazed by how positive the response was and Leslie Mohs said they did meet their neighbors through the process and in those respects it was very positive.

Public testimony:

David Wright said he and his wife live closest to this property. The driveways are across from each other, but offset. Neither he nor his wife has any objection whatsoever. He noted that every vehicle that would go to the Mohs has to pass by their property. He doesn't expect there to be any problem at all.

Carolyn Shallman said that she agreed with what David said.

Wayne Dahlberg said that he is in favor of the conditional use. He wanted to know why this use was subject to Conditional Use permitting.

Sue said that it was because it is retail-based business, not a service, for example like an architect who works out of his home. They are selling a product.

Wayne asked about internet sales from the home.

It was agreed that because an internet business would not result in increased traffic or waste disposal issues that it was not subject to a CUP.

Wayne pointed out that the Township's Comprehensive Land Use Plan speaks highly of the home-based businesses. He thinks this will be very compatible with the neighborhood and a plus in terms of the intent of the shoreline mixed use plan.

Bob Mohs asked for clarification of the 5 employees allowed under the Ordinance for a home-based business.

Sue said that it would be her understanding that it would apply only to someone who is working on-site.

Yvonne made a motion to close the hearing and Jan seconded. The motion passed.

Commission discussion:

Dave Miller said that he would move to grant the application. He was not sure if any conditions needed to be applied. Jan seconded.

Jan said that it meets all the performance standards for a home-based business and all the special requirements of a conditional use. Instead of listing all of them would it be sufficient to say that it meets all of the performance standards for home-based business as presented on page 79 and 80 of the Ordinance? She went through the list of necessary findings on page 78 of the Ordinance. She said it is consistent with the CLUP, it is compatible with the existing neighborhood, it will not impede the normal and ordinary development of that neighborhood, and it is consistent with the desirable pattern of development in the neighborhood. Nor are there any wetlands, impervious surfaces, topography, vegetation, soils, or runoff issues. There are adequate utilities and no potential health and safety, environmental, lighting, noise, signing or visual problems. It is also appropriate with respect to current and future traffic patterns.

Sue asked if the CPR would suffice to meet the requirement in the Ordinance for a petition supporting a proposed home-based business.

Mike said that he felt the CPR would be sufficient and a petition was not necessary.

The motion to grant the CUP was approved unanimously.

The meeting paused while the decision was put into writing. The decision was read back to the Commission:

A Conditional Use Permit (CUP) for Robert and Leslie Mohs at 5163 Greenwood Road was approved at the February 26, 2009 public hearing of the Town of Duluth Planning and Zoning Commission. Dave Miller made the motion, and Janet Green seconded. It passed unanimously.

The CUP application was found to meet all performance standards in Article IX Section 7 of the Township's Zoning Ordinance.

It was found to be consistent with the Township's Comprehensive Land Use Plan. It was also found to be consistent with existing neighborhood use. It also meets all conditions set out by **Special Requirements and Conditions for Home Based Business** of the Township's Zoning Ordinance, Article IX Section 10.

The Commission accepted the Community Participation Report as adequate to meet the requirements of Section 10H of Article IX (petition of adjoining property owners).

A check for \$46 for filing was received.

Mike Kahl made a motion to approve the decision as read, Jan Green seconded, and it passed unanimously.

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### **Planning Director Report**

Sue outlined the changes that were made to the proposed 2010 budget at the Town Board meeting. Mileage was reduced from \$1000 to \$800 and they changed "Service Fee" to "County Filing Fee" to make it clearer. They added "Town Hall/Fire Hall Planning" to the title of "Planning Projects/Education." Everything else remained the same.

The Township received a summons to court on the matter of the denied CUP for the Worden's 5232 Greenwood Road property. Huck Andresen, the same attorney who represents the Bieraugels, is also representing the Wordens.

The Worden Board of Appeal hearing that was postponed because of the ice storm has been rescheduled for March 5. They are appealing the interpretation of conditions set by the Commission on their 5249 Greenwood Road rental property. They are also arguing that the rental cannot be restricted because it is grandfathered in due to preexisting use. The placement of the fire pit is also an issue.

Dave Mount said that the process regarding the summons will proceed like the first one. There will be an administrative review of the record. The attorneys will argue their legal theories. The Commission will not have to be involved. It is expected to be resolved without huge expenditure.

### **Old Business**

Sue said that Dave Chura sent out a proposed revision of the fee structure. The March P&Z Commission meeting, since there is no hearing, will be a good time to go over the new fee structure, along with the 60

day rule and the clarification of the BOA authority. The Commission needs to get their recommendations to the Town Board for their meeting in April.

Yvonne emailed Dan Belden at WLSSD to ask what kind of information they want from the Township. Areas of interest to the district are areas the township is expecting, promoting or has zoned for development, both commercial or residential. Any concerns about Township communications with DNSSD? Are there any areas of failing septic systems within the Township that are of particular concern? Any other questions or concerns township has regarding wastewater, water quality, sampling, billing, CIF, odors, etc. Yvonne thinks they are concerned about areas outside the DNSSD boundaries -- like perhaps Larsmont -- that may at some point request an extension to the sewer district to include them.

Sue said that we wouldn't anticipate any extension of NSSD inland, since the minimum lot size is 4 ½ acres outside the shore area.

It was felt that WLSSD was just looking to get an idea of the vision for the Township and expected density of development. Our CLUP and Zoning Ordinance cover this.

John Kessler said that there have been numerous requests for extensions of the sewer system across or under the freeway in the area towards Duluth. He knows of at least one request from Lakewood Township. Maybe this is the kind of need WLSSD is trying to anticipate.

It was suggested that we respond that there are no areas of the Township that are zoned for density greater than one resident per 4.5 acres outside of the shore area.

Sue said that there are probably a lot of septic systems in the Township that are on the verge of failing. But the county has ordinances in place for failing systems.

#### Tax forfeit land

Sue talked about the 10 acre tax-forfeit parcel just south of the old Clover Valley High School that the County was putting up for sale. Dave Mount and she talked extensively to the appraiser for the Land Department. Dave wrote a letter to the County, asking them to not sell it at this time. The County took it off the sale list. They are looking at options to purchase it, perhaps Lessard money or free conveyance.

Dave Mount said that the DNR suggested 50' setback for this parcel and the County made it 100' foot. But they allowed one stream crossing. So a buyer could get to the back of the property where there could potentially be a small building envelope. The front part of the property is not wide enough to meet the requirements of the zoning ordinance. The Township wants to avoid having someone buy it and then come in saying they have a hardship and wanting a variance to cross the stream and wetland. There is a 5 acre parcel that sits in the L shape of the tax-forfeit parcel. If the person with this 5 acres bought the tax-forfeit land and combined it with their 5 acres, they would have a buildable lot that would meet the Ordinance requirements without needing a variance. But the County won't reveal who asked that the parcel be put up for sale.

Jan said that the chance for getting Lessard money at this point is low. It is possible that in the future, once they have funded some of the smaller projects, that there would be a better chance.

Dave said that we made the first cut and are in the higher priority category. There is only one project in the highest priority category. He said that he is also looking at other options. In addition, he will continue to ask the County to tell us who requested that it be put up for sale.

Jan pointed out that it had to go through the State Legislature to be put on the sale block. That was quite a while ago and it is possible that whoever requested that the property be put up for sale may have lost interest in it by now.

Jan asked what the status was of the two billboards that are on the Scenic North Shore Drive. It is a Scenic Byway and as a part of this they are trying to prohibit billboards. Off-site signs, e.g. billboards, are prohibited by our Ordinance but these two billboards on Scenic North Shore Drive were in place before the Ordinance and are grandfathered in. Her question is if this ever expires or amortizes. No one knew for sure, but it was thought that as long as they were in continuous use, they could remain in place.

This is Dave Miller's last regular Commission meeting. There are no applicants yet to take his place, so the Commission will be short until he can be replaced.

The meeting adjourned at 10:05.

Attachment: Mohs hearing introduction Power Point presentation