

**Town of Duluth
Planning Commission
Meeting Minutes
6/25/09**

The meeting was called to order at 7:30 by Vice Chair, Mike Kahl.

Roll Call: Present: Jan Green, Mike Kahl, Yvonne Rutford, Bill Lannon, Barb Crow

Absent: Dave Chura, Seth Levanen

Also present, Sue Lawson, Planning Director. John Kessler was on vacation.

The agenda for the evening was amended to include a brief discussion of short-term rentals in old business, at Dave Mount's request.

The minutes from the May 28th meeting were approved as written.

New Business

The first item Sue wanted to discuss was the sale of agricultural products in the Township. There are a number of places on Homestead Road that sell items or services – the Christmas tree farm, the strawberry farm, Pampered Paws dog grooming, and sale of home-made bait boxes. There has been a question from someone regarding these businesses and some issues between neighbors in the vicinity of the businesses. It was brought up at the Town Board meeting. Currently there is nothing specific in the Ordinance relating to selling agricultural products. It could possibly come under the home business category. Is it something the Commission would like to consider adding to the Ordinance? How would agricultural sales be classified and handled if we did? She pointed out that our Comprehensive Land Use Plan (CLUP) emphasizes the rural nature of the Township and, given that and the fact that it is a traditional use, it seems that you wouldn't want to discourage the sale of agricultural products in the Township.

It was felt that you wouldn't want to lump agricultural sales in with home-based businesses because home businesses require a CUP and a public hearing, which would be prohibitive. An over-the-counter permit with performance standards would better fit the situation. There was discussion of limiting agricultural sales to inland areas and to lots of 4.5 acres or more.

The Commission looked at the Zoning District Land Use Matrix table on page 54 of the Ordinance. It appears as though everything listed in the matrix is either not allowed or allowed with a permit. Including livestock as something that requires a permit was thought to be a wording oversight. Perhaps an additional use classification of "permitted with Performance Standards and no permit" could be used to correct this. The matrix should reflect the text of the Ordinance. Allowable livestock is covered on page 67 of the Ordinance in and number of allowable livestock is regulated in terms of Animal Unit Equivalents.

Suggested performance standards for selling agricultural products included:

- Parking and safe area to pull off of the road

- Signage

- Lighting

- Hours

- Product must be an on-site product, not brought in for sale

It was decided that the best way to clarify the Zoning District Land Use Matrix table was to create a PR use classification that was defined as “permit is required and performance standards, if they exist, must be met.” Then take the language referring to permits out of the P and the PS use classifications.

Sue said that she would draft the changes talked about tonight for further discussion.

Storm Water Pollution Prevention Plan. Sue said that Val Brady has been working on the annual permit for the Township that goes to the MPCA reporting what the Township has done regarding storm water management. We have wording in the Ordinance that addresses soil erosion and storm water management in conjunction with construction (Article III Section 4). The MPCA does not require a permit for anything less than one acre but our Ordinance does not have minimum lot size limits. To date, we have not been enforcing this part of the Ordinance.

Sue read from the Ordinance Article III Section 4.B.3.d regarding runoff control measures on sites with less than 2 acres disturbed at one time. She said that this would include home sites. She talked with the Board and they agreed we should be doing something to enforce this. We could start by educating Township residents and also by focusing on more critical areas such as along streams or on slopes. We can use the Newsletter to let residents know that these requirements are in our Ordinance and that we need to protect streams from runoff.

Barb felt that a pamphlet explaining the requirements for storm water runoff that would be included with a Land Use Permit would be useful.

Jan pointed out that there is no de minimis in the Ordinance – it applies to anything less than 2 acres. We need to focus on construction, not gardens. She also said that we don’t require a permit to put in a driveway and construction and placement of driveways can create runoff problems. The wording in the Ordinance regarding soil erosion control and storm water runoff is that it applies to “construction activities that result in runoff.” So it deals with erosion and runoff once it is occurring. What about more information on how to prevent erosion and runoff? The wording could be changed to “activities that *might* result in runoff.”

Sue said that what we have in the Ordinance addressing storm water runoff is already above and beyond the MPCA’s requirements. We need to focus on activities that contribute to runoff. How do we go about starting to enforce what we already have on record in the Ordinance?

Dave Mount said that what we just submitted was not our SWPPP. We sent in the SWPPP plan last year and it was approved. Now we do a yearly report on what we did to follow the plan.

It was agreed that educational information on preventing and controlling erosion and storm water runoff to be provided with permits would be a good place to start. Sue said she would look for materials that already existed.

Dave Mount said that there was an extensive conversation about the Board of Adjustment (BOA) at the June 3rd public hearing for the Ordinance changes. He handed out copies of what the Board proposed (see attached). In general, the Township has gone towards larger governing bodies, 5 Supervisors and 7 Planning Commission members, but the BOA is comprised of just 3 people, only one of which, the Town Board member, is an elected official. Yet this group can end up deciding if the Township goes to court. Is it appropriate to entrust this responsibility to this group? It was proposed at the public hearing that the BOA be eliminated and that the Board of Supervisors be the final appeal. This also makes sense because the Board has fiduciary responsibility for the Township.

Mike said that in his experience with the BOA, there was a lot of on-the-spot learning going on. He felt that the process was lacking in some ways.

Sue said that ours is one of few Commissions in the state that can make decisions – most just make recommendations to the Board.

Jan said that it is important to be very precise in findings of fact. It might be better if we entrusted that responsibility to people who were familiar with the process. She offered up a resolution that the Commission approves the new process structure regarding the BOA and the appeal process.

The Commission unanimously approved the changes as stated.

Dave Mount said that the Board also discussed fees for appeals. Because appeals of Planning Director decisions would ostensibly be simpler under the new process, the Board felt that the fee for those appeals should be less. They proposed that it be \$250 instead of \$1000 which is the fee for an appeal of a variance or a CUP. Dave said that there would be a lot of wording changes needed in Ordinance to cover the new appeal process in all of the places reference to it occurs. There will be another public hearing on the changes before the August Town Board meeting, and then hopefully they can approve all of the changes at the August meeting.

Planning Director Report

Sue reported that at the Bomarc site they want to add two more antennas to the water tower and at the AT&T site on Shilhon Road they want to add two antennas and replace four. There will be no height change at the AT&T site.

The North Shore Management Board forum on erosion control was held June 18th. Dan Tanner from the Town Board went and said it was worthwhile.

They will be reviewing bids for the Community Center landscaping project. These will include the new pavilion, creating a swale instead of a ditch to handle runoff and improving drainage around the building. The long-term plan for the wetland by the old skating rink is to enhance it. The swale will be a water infiltration system and the improved drainage around the building will send water to the swale. The pavilion will increase usability of the site for the community. Wayne designed the pavilion pro bono.

Minnesota Sea Grant is offering educational boat tours along the Lake Superior coastline. These tours are free for local government officials and employees. Otherwise it is \$20 per person. They depart from various towns along the shore at different times.

Chair Report

Vice Chair, Mike Kahl, reported in lieu of Dave Chura who was not in attendance.

Dean Hammermeister, who at the June Planning and Zoning meeting had presented his plans for a garage on his property that would require a variance, had hand-delivered a letter to Mike stating that he would not be pursuing a variance for this project after all. Sue read the letter (see attached).

Mike said that the group that was charged with exploring the issue of wind turbines had not made any progress but hoped to have something for the next meeting.

Jan emphasized that we would probably be seeing more inquiries and activity related to small-scale wind energy generation. Small wind turbines are eligible for tax deductions.

Lastly, Mike said that the Lighthouse Restaurant has been displaying their inflatable bottle.

Sue said that she had not gotten any complaints about it. She said that she will deal with a complaint if she gets one.

Old Business

Barb Crow said that half of her property is zoned LIU (Limited Industrial) and she would like to see that changed so that all of her property is in the MUNS-4 zone district.

It appeared as though this zoning demarcation was a clear mistake. Sue said that area of LIU was only supposed to encompass the Bomarc missile base. On page 94 of the Ordinance it states that a mistake is an allowable instance to request a zoning map change.

Yvonne made a motion to correct the zoning from LIU to MUNS-4 for parcel 315-0010-800, Barb Crow's parcel. Jan seconded the motion and it passed unanimously with Barb abstaining from the vote.

Dave said that at the June 3rd public hearing there was a lot of discussion on the short-term rental issue. The Board questioned if we would be "throwing the baby out with the bathwater" if we decided not to allow short-term rentals in the Township. In response to the concerns expressed by the Board, Dave put together a list of conditions the Board talked about that might be applied to short-term rental CUPs that could potentially mitigate some of the problems that caused the Commission to recommend that they be discontinued. He provided this list to the Commission (see attached). He emphasized that the Commission didn't have to reopen the discussion again if they didn't want to and that the Board hadn't come to any conclusion either – they were just considering the options.

Sue read the letter she submitted to the Board in May summarizing the Commission's decision regarding short-term rentals (see attached).

The current moratorium on short-term rentals expires on August 12. The Board meets on August 13th. Dave didn't think that the Board could extend the current moratorium or institute a new moratorium.

If the Commission decided that they still wanted to consider different options concerning short-term rentals, there were basically two options, 1) to recommend that the Board disallow the use outright – but indicate that they will continue to work on the options, and 2) continue to work on short-term rental options but let the moratorium lapse and deal with any forthcoming short-term rentals according to what is in the Ordinance now.

Jan noted that we have already held a number of public hearings on the issue.

Problems with enforcement continued to be a concern for Commission members. They agreed with the list of conditions and guidelines that Dave provided, but enforcement has been and will continue to be an issue. Requiring licensing information on a yearly basis might provide a way to revoke permits for non-compliance.

Dave thought density was the primary factor that created problems with short-term rentals. Areas where they would be allowed would need to be large enough to be buffered.

Even if the areas short-term rentals were allowed were very limited, the question would still be whether or not it is an appropriate use for these areas in the Township.

Sue outlined the some of the issues that were identified at the open house: 1) People didn't want a decision to ban short-term rentals to be made based on one problem rental. 2) Property owners felt that short-term rentals changed the character of the neighborhood by having people coming and going that they didn't know. 3) Current economic conditions may make it necessary for individuals to use short-term rentals to pay for their second home. The Township should not create a burden by taking away people's rights to rent their property.

Jan said out that that some people are renting short-term anyway and will probably continue to do so. Nonetheless, requiring all the state and county licensing materials might limit the number of requests for short-term rental CUPs.

Some Commission members felt like they had made the decision and were not anxious to reverse it. But they also did not want to end up in a situation of changing the Ordinance first one way on the issue and then another way at a later date.

Dave said that the Commission could recommend to the Board that they recognize that there are additional things that could be considered, but that they stand by their original recommendation. If the Board does nothing, the Ordinance will continue as it stands. The Commission could then consider these guidelines for any short-term rental CUPS that come up in the future.

Jan said that the Commission has recommended that the Board eliminate short-term rentals. Let the Board decide differently if they want to and then use that experience to construct another amendment to the Ordinance in the future, if necessary. It would be impossible to decide in this short time frame which zone districts would be appropriate for that use and which would not.

Dave said that another thing to consider was that the permit that was issued to the Wordens for their short-term rental expires in January. If everything about short-term rentals was removed from the Ordinance, as some people have advocated, their use would be grandfathered in and there would be nothing in the Ordinance to regulate them.

Sue said that some attorneys believe that time limits cannot be put on CUPs.

Jan said that the Commission would need to take time to figure out where short-term rentals would be an appropriate use. She said that a couple of items on the list of guidelines were much more stringent than the Commission has considered in the past. She felt that if the conditions were phrased such that it was clear that you would lose your permit if you didn't comply it could make enforcement easier.

It was felt that the discussion would just continue to go around and around. Dave agreed to report back to the Board details of the evening's discussion on the subject.

It was agreed that the Commission would need more time if they were going to reconsider their recommendation on short-term rentals and it would be best to just let the moratorium expire and continue to work on it.

As the last order of business, it was moved that the Planning and Zoning Commission monthly meeting time be changed back to 7 p.m. The motion was approved unanimously.

The meeting was adjourned at 9:45.

Attachments:

Proposed review and appeal processes (Dave Mount)
Letter from Dean Hammermeister to the Commission
Possible conditions applicable to CUPs for STRs (Dave Mount)
Letter from Sue Lawson to Board of Supervisors re: Commission's STR recommendation