

**Town of Duluth
Planning Commission
Approved Meeting Minutes
10/28/10**

The meeting was called to order at 7:03 p.m.

Roll call:

Present: Dave Chura, Michael Kahl, Jan Green, and Barb Crow

Absent: Yvonne Rutford, Bill Lannon, and Brigid Pajunen

Also present: Sue Lawson, Planning Director; John Kessler, Assistant Planning Director; and Dave Mount, Town Board Supervisor

The agenda was approved as written.

The minutes from the September 25 meeting were approved as written.

Larry Killien, Harbor Program Coordinator from the MN DNR, and Cheryl Erickson, a planner working with the DNR and North Shore Harbors Program, presented plans for an information center for the McQuade Safe Harbor, which will be placed on the Township's side of the Safe Harbor.

Cheryl said that she had originally been a part of the McQuade Public Access Committee, a group of stakeholders that was originally appointed by the mayor of Duluth to find a location for the Safe Harbor. Then Lakewood and Duluth Townships and the County became involved. The Committee had a joint powers agreement to participate, but that is now dissolved. They remain interested in what happens with the Safe Harbor, and work as an advisory group to the DNR.

Larry said the plan they are currently considering was designed by the DNR architect. They originally asked the McQuade Public Access Committee for input on the design, and they offered a design by a local architect. That design was an enclosed structure. The DNR architect came up with a design that is an open structure in the shape of an arrowhead, which follows the shape of the property and echoes the idea of the overall Arrowhead region. They decided to go with that concept.

Sue asked what the process is from here – how will the project move forward within the DNR at this point?

Larry said that they will have an internal review and work out the bugs with their interpretive staff -- does it fit, does it accomplish their goals, is it compatible with the location? An external review is not technically required, but it does not make sense to move forward without letting local units of government what they are up to.

Sue said that if we were the County that would be true, but it doesn't say anything about the DNR needing or not needing a permit from Townships in the Statutes.

Cheryl read from the Ordinance Article 15:

No land owned or leased by the State of Minnesota shall be subject to the provisions of this Ordinance unless agreed to by the State government.

Larry said that the DNR's internal policy is that they are exempt from local zoning, but he said that that doesn't mean that they will just move ahead without getting input from local government units and the community.

Sue asked what they would do with comments from the public.

Larry said that they would take any comments back to the DNR and would work with the architect to see if there was a way to tweak it. If there were major issues, it was possible that they would not build it.

Dave Chura asked how the Committee considered Duluth Township's Comprehensive Land Use Plan (CLUP) when they were planning the Safe Harbor.

Cheryl said that the Committee did read the CLUP and they felt like they were in keeping with its goals. They wanted the facility to be respectful of the landscape, low impact, and be placed where people can come together and enjoy the outdoors. The proposed structure offers an opportunity to learn about Lake Superior and local history. It was important to all of the stakeholders in the planning process that the facility catered to non-boaters as well as boaters.

Dave Chura asked if they considered other sites on the property for the interpretive structure.

Larry said that the location they chose is a green space on the inside of the eastern breakwater on the Lakeview Castle side. It is where the east and west sidewalks come together and is near the handicapped fishing access.

They looked at the area by the restrooms and at the area between the pedestrian underpass and the utility building and neither was quite right. The DNR interpretive staff said that being able to look at a panel and then out over the lake immerses and engages the viewer. One panel will have the history of Clifton, another one will be on local commercial fishing, and another one will be on boating.

Dave Chura asked if the structure would obstruct views from the motel or restaurant.

Larry said that they went out and put up 2x4s with flagging to represent the structure. He stood in the east bound lane from pickup height and took pictures. He also took pictures from in front of the motel. He sent them to the interpretive staff and the architect and asked that they change the shape and reduce the height. The architect took 5.5 feet off the top of the roof, reducing the overall height to 15.5 ft.

Cheryl said that she looked at the Township's zoning requirements for the Shoreland Area for similar water-oriented structures like fish cleaning houses, saunas, gazebos, etc. The allowed dimensions are 200 sq ft maximum size, 12 ft maximum height and a minimum 50 ft setback for a sauna; 200 sq ft, 12 ft height and 30 ft setback for a fish cleaning station; and 150 sq ft, 12 ft height, 50 ft setback for a gazebo or screen house. This structure will be 170 sq ft and about 15.5 ft high and the setback will be between 50 and 75 ft, depending on where it is sited.

Jan Green said most of the people who go by that site are not visitors. When you come around that corner, you are looking at the lake. The structure would break up the whole view. The same

problem exists with the kiosk at Lester River. People come to look at the lake. There might be a better place to site it than right where you want to look. Move it back so it is closer to the road and the shore.

Marland Hildebrandt, owner of the Beachway Motel directly across the highway from the harbor, said that it would have been nice for the DNR to have checked with them and seen what the obstruction would look like from their property. They would have liked to have seen the 2x4 and flag structure.

Dave Chura wanted to know if it would be possible to just have interpretative panels along the sidewalk like a mural and not actually have a structure.

Larry said that they could do the panels, but their intent was to protect the panels with a roof and create some shelter for people viewing them. They lowered the point of the arch toward the lake in order to deflect the wind. There will also be two benches built in to view the panels.

Cheryl said the structure is designed to draw people out to the location-- it creates a destination.

Shirley Hildebrand asked if the funding was already in place. She was concerned about safety and thought that the DNR could improve safety if there was available money. Not long ago a deer was trapped in one of the gaps in the breakwater. She was concerned that the same thing could happen to a child.

Sue read from page 10 of the CLUP:

The most prominent aspect about Duluth Township is its diverse natural beauty- the streams, Lake Superior, mixed forests, native species, open spaces and contiguous green spaces for habitat. These features are the threads that naturally weave the community together... It appears the Township has managed its land and land development in a sustainable and ecologically sensitive manner given the erosion control along the streams/creeks and lakeshore and the protection of natural resources and open space. Special natural areas have become recognized and protected by the Township. Views to the lake and views from the lake have not been obstructed by development..

Dave Chura continued from page 11:

The shoreline's natural character has not been degraded; the lakeshore and its expansive views are accessible to everyone.

Sue said that the whole point of the CLUP is to preserve the natural beauty of the area. Putting a structure in the middle of the view of the lake is not compatible with that.

Cheryl noted that with the breakwater in place, the view is no longer of a natural lake.

Jan said that the view of the lake is still intact, even though the natural features of the shoreline have been compromised by the breakwater.

Larry said that they spent a lot of time working with the Army Corps of Engineers. The Corps' normal construction for similar breakwaters is at least 19 ft above the water elevation. The DNR

was reluctant to put in something of that magnitude and actually had a lab create a large, exact-scale model of the planned breakwater with the correct density stone and used wave generator to generate waves of the same size and frequency as on the lake, and, based on this data, the Army Corps allowed them to proceed with a nonstandard design.

Dave Chura asked what their timeline was for finishing and Cheryl said they hoped to have it in by spring.

Larry said that regarding the viewshed, the current design is designed to be looked through. It also helps law enforcement because they can see into the structure and it does not provide a hiding place.

Jan Green said that there are other places on that strip of land that it could go that would preserve the sweep of the view. Your eyes would be riveted on the structure rather than on the lake itself. People park there to look at the lake. She would prefer it back in the corner or closer to the road rather than in the middle of the view.

Cheryl said that if you get too far back, the view is blocked even more.

Jan asked why not put it on the upper side of Lake?

Cheryl asked what the point of that would be. She said that they wouldn't build it at all in that case.

Sue thought that it was closer to the parking lot, more people would see it and it would not obstruct the view.

Larry said that they looked at the upper location, but the interpretive staff did not think that was a good location. The further out it is the less it will block the view.

Marland Hildebrandt said that the State put in a guard rail and raised the road and that has already taken away 20 percent of their view. People who rent their cabins come especially for the view. He would have liked to have seen what it would do before they did it. He also heard that in a second phase of development, the lot by him was going to be made into a wayside. Others drive by, but they have to live with it.

Larry said that the wayside is already incorporated. The lot by the motel gets used for overflow parking. It will stay like it is.

Mike Kahl asked what the change in elevation was.

Larry said that from the roadway to the sidewalk is about 9 ft.

Mike said that from the road to the lake is probably about 20 ft so the view from a vehicle coming around the bend would be about 25 ft above the lake level. Given that, he said, he would find it hard to imagine that a 15 ft structure would obstruct very much of the view from the road.

Dave Chura asked if they brought copies of the photos of the 2x4s and flags.

Cheryl had two generated views of the structure when it was still 5 ft taller.

Larry said that the architects and the interpretive staff both said that it impacted the view less in this location than if it were closer. In addition, the location serves to invite people to come out to look at it. The roof on the original plans was red and that was changed.

Dave Chura asked if they anticipated holding an open house for the public. He noted that the Township is currently not represented on the planning team. Will there be any opportunity for the public to comment before they just see it this spring?

Larry said that they had not planned on it. The original discussion of the facility included talk about an interpretive structure.

Marland Hildebrandt said that he would like them to put the 2x4s and flags back in so that people could see what effect it would have.

Dave Chura asked if they could put in signs that said something about the location being the future site of the McQuade Safe Harbor Interpretive Center.

Sue asked if they could use their software to generate views from the road and the motel, etc. The Township could host an open house and display them. It would be good to have enough advance notice to put it in the newsletter.

Larry said that they intended to bring more such views for tonight's meeting but weren't able to get them done.

Cheryl wanted to know if there were other issues that the Commission had. Did they think it was too big or too small or did they want more benches or anything else.

Dave Chura said that where it is actually sited and what impact will it have on the community and the existing area were the primary concerns. He, too, thought it would be a good idea to have an open house.

Marland Hildebrandt said that the lake is what is unique – people can see unique buildings anywhere.

Sue said that she would like to see it lower.

Larry said that the pitch was 6:12 and it is now 3:12.

Sue said that it would be important for the public to know how their comments would be addressed if they held an open house.

Jan said that if you want people to give opinions, you cannot give the impression that it is fixed in stone.

Cheryl said that they can generate the perspectives. But people had to recognize that they cannot meet everybody's desires.

Sue asked, what are their design criteria for the site?

Larry said the purpose of the building is interpretation. And the interpretive staff said the best location for an interpretive structure was where they have placed it.

Sue said that the design criteria goals should include that the structure have minimum effects on the viewshed.

Barb agreed, saying that creating a “wow” factor for the structure would not necessarily be a design criteria that was consistent with the community's goals.

It was agreed that they would look at having an open house. The deadline for advertising it in the January newsletter was Dec 23rd. If there was no open house, possibly a letter could be sent out that described the project and invited comments. If they were able to have an open house it would be good to have the generated photos of the interpretive center in addition to actual photos of the 2x4 and flag structure in place.

Marland Hildebrandt asked that if they have extra money, could they consider putting in a fish cleaning station. The DNR had originally said that a fish cleaning station would be a part of the development.

Larry said that when they built the Safe Harbor complex they used a lighting engineer and they felt that the resulting lighting was too much. They then took out 50% of the wattage. It was still too much so they put shields on them. It's still a lot of lights so they often one bank of lights off. At some point would like to put in LED lighting.

Planning Director Report

Sue said that the Bieraugel appeal to the Town Board is November 10.

Sue distributed copies of the financial report for Planning and Zoning (see attachment 1). Estimated permit revenue for the year was \$10,000 and we have \$6600 so far. The second installment of the levy comes in December, which will be about \$12,000. It does not show that P&Z has been charged for legal costs incurred so far this year.

Dave Mount said that, no, the Commission has not been charged for any legal costs this year.

Dave Chura asked what the \$326 payment to MATIT insurance is.

Dave Mount said that it could be the Planning and Zoning rider on the Township's insurance policy. We paid over \$1000 for the original lawsuit and then 10% up to \$10,000. We are on a percentage basis on the Bieraugel case. It could be some of that percentage. He was not certain.

Sue said that the long and short of it is that we are doing alright. The remaining amount is of the budgeted amount, not actual numbers.

Dave Mount said that the levy amount is not exact, because it is a fraction of what they collect. It will probably end up being about 95% of this amount.

Sue said that because of Thanksgiving, the next Planning & Zoning meeting would be held on December 2 and we would hear the Krook request then, provided we got the materials from him.

Dave Chura said that we got the resolution for the Bieraugel variance and it now needs to be approved to be finalized.

After assigning a Resolution number and changing Mike Kahl's title to Vice Chair from Chair on the document it was approved unanimously. (See attachment 2.)

Jan said that for the Odyssey Development variance approval, one of our conditions was that they were to provide us with a copy of the final deed for the exchange of land with the Sucker River land. This exchange was approved by the Duluth City Council in 2006, but it is not clear that they have transferred and registered the deed. She asked that Sue write to Odyssey to see where they are at on that.

Chair Report

Dave Chura noted that the meeting in December would serve as the December meeting as well as the November meeting.

Dave had put together and distributed a new short-term rental (STR) proposal (see attachment 3). He said that as we continue to deal with STRs and debate their appropriateness in our community, he senses that the Commission still feels strongly that these rentals should not be allowed. Although the Commission had previously passed a resolution to recommend to the Board that STRs be discontinued, he has prepared a new resolution that if the Board does not want to discontinue STRs that they establish a licensing process for them that goes through the Board instead of through the Commission as a land use issue. He moved that the Commission approve the resolution and Jan seconded.

Barb asked him to clarify what he means by establishing licensing requirements. The State doesn't license them, does it?

Dave Mount said that he doesn't know if townships can do licensing and Tim didn't know either when he had asked him. Minnesota Association of Townships might know.

Dave Chura said that the Commission already tried the route of recommending to the Board that STRs be discontinued. But the Board decided against that, which put it back in the Commission's lap. He feels that our tools have not proven adequate and he thinks if the Board wants STRs, they need to find a way to manage that use.

Dave Mount said that he inquired to the State what requirements they had for rentals that were 7 days or longer. These do not appear to fall under vacation rentals, and the State told him that they are not licensed by the State.

Barb said that the person she talked to at the State said that townships could require that STRs get a state license. State licensing only looks at safety and sanitation, not neighborhood or environmental issues.

Dave Mount said that he thought the Commission was in favor of the licensing route because it would require reapplying regularly. He said that he was not sure how much that would actually solve – a license renewal would have to be denied for a reason and that could put us in same position we are in now.

Jan said that she felt that the Commission should wait to vote on this until there are more Commission members present. She felt that there are 3 options available to the Commission – licensing, with the Town Board as the licensing authority; continue doing as we are doing now; or

set more comprehensive conditions that address problems of land use and neighbor conflict. She said that there is quite a bit that could be done with conditions to have a stronger effect.

Mike said that he has only seen one problem with STRs in the Township and that is just the situation we are currently dealing with. Others, including some that are probably operating under the radar, are not problematic. He also doubts that there is anything we can do that will address the problems with the one situation.

Dave Chura agreed, saying that that situation tends to cloud people's minds when considering STRs. It is his feeling and he believes it is the feeling of people in the Township that STRs do not fit into the vision of the Township. If the Commission does consider them, they need to think about where in the Township they would be appropriate. Greenwood Road may not be appropriate and Sue has said that inland rural may not be appropriate either, so where is the appropriate location? Nor does he see people lining up for short-term rental permits.

Mike said that he lived next to a bed and breakfast and the only difference is on-site supervision. Even that doesn't mitigate the overall impact. But he does support the resolution overall.

Dave Chura said that B&Bs are licensed by the State.

Jan said that someone lives at the B&B and that makes a difference because rowdy behavior is one of the main problems we are encountering.

Sue said that when dealing with STRs as a land use, it can get more complicated because so much is decided by the courts and decisions rely on case law, precedence, etc. She thinks licensing might be clearer and easier to enforce.

Dave Mount suggested having a joint meeting with the Commission and the Town Board.

Jan made a motion to table the matter until we can have that meeting. The motion passed unanimously.

Sue suggested that we have the meeting at 6 pm on December 2nd, immediately preceding the regular P&Z meeting. She would distribute the original resolution and the notes from the discussion from the last time, April 2009 (?), that the Commission dealt with it.

Old Business

Dave Chura said that since Yvonne is not here, we won't be looking at the wind generator language.

Jan said that she thought that the undue hardship/practical difficulty issue should be put off until the legislature deals with it and she has not yet looked at language for interim use permitting.

Concerns from the Audience

Don McTavish updated the Commission on the progress on the skating rink and warming house project at the Community Center. He said that most of the grading is done and the walls on the warming house are done. The parking lot is progressing also. The whole project is advancing quickly.

Jan said that the funding had been approved for the Two Harbors/Lake County rural internet project.

Dave Mount said that one of the people involved in getting that came to the last Board meeting. He said that fiber optic cable will go to every household that has electrical service and a driveway. It will not just be Lake County Cooperative customers; it will be everyone in Duluth Township. It will include phone, HDTV, and internet service. Any television content that is served for free will continue to be offered for free. There will be a minimum dollar amount of services you have to subscribe to. The lowest end service they will offer is 10 megabytes per second, which will be for both download and upload. You can pay for and get additional megabytes. It will be put in in a loop so if it is cut somewhere, no one will be cut off. Construction is expected to be completed by fall of 2013. He did not know how it will progress – who will get it first, etc. He said that \$60 was the estimated cost for base service.

Sue said that it will be public infrastructure. No one internet service provider will own it.

Dave Chura asked if a new home is put in, will the owner have to pay to put the service in?

Dave Mount said that the initial installation is everywhere electricity runs, so the service would be at the road and the \$60 per month service would be to bring it from the road to the box on your house.

Jan asked if the group was a nonprofit and if it will be set up for ongoing installation and service.

Dave Mount said that was the way it was described. They are not just building it, they are also operating it.

Dave Chura asked how it will impact the Coop – have they broken even? Will members of the Coop have to absorb a loss?

The meeting adjourned at 8:55.

Attachments:

- 1) Budget from Sue Lawson
- 2) Bieraugel Resolution
- 3) Short-term rental resolution from Dave Chura