

**Town of Duluth
Planning Commission
Approved Meeting Minutes
12/2/10**

The meeting was called to order just after 7 p.m. in the cafeteria of the North Shore Community Center.

Roll call:

Present: Dave Chura, Michael Kahl, Jan Green, Yvonne Rutford, Bill Lannon, Barb Crow and Brigid Pajunen

Absent: No one

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 October 28 meeting were approved as written.

Planning Director Report

Sue said that she emailed Greg Schendel about the Sucker River land exchange between Odyssey and the City of Duluth. He said they are still working with the city attorney on language and surveys, etc. Evidently the right of way is not clear on the survey.

The Township got a letter from ISO, a company that evaluates insurance risks and issues fire ratings. The Town's fire rating was recently lowered. The lower the number the better. The letter is about building codes in the Township. They also do assessments of building codes using a classification of 1-10 where 10 is superior. They talked with John some time ago and determined that Duluth Township does not have a building code enforcement department. They have an incentive program to come up with building code and enforcement. Should the Town pursue a building code? Rice Lake Township has building codes. Not all insurance companies use the ISO rating system, so it may not actually result in reduced insurance premiums.

It would mean increased costs to P&Z. It would increase the sense of government regulation in the community, which might not be appreciated. The Commission could recommend that the Board pursue it if they thought it was a good idea. It could also be brought up at the annual town meeting as advisory item.

Jan moved that we not consider it. Barb seconded. The motion passed unanimously.

Chair Report

Dave Chura asked if Dave Mount had a chance to get clarification on the MATIT insurance item on the last Planning and Zoning budget report. Dave said he would look into that still.

The January 27 P & Z meeting will include a joint meeting with the Town Board regarding short-term rentals. That portion of the meeting will begin at 6:00.

New Business

Sue said that there are grant opportunities for brownfield properties. She talked to John Betcher of the Minnesota Pollution Control Agency (MPCA). These grants are offered by the Chicago office of the EPA through the MPCA for assessment of sites for the Brownfields Program. To qualify for the grant the property would have to be owned by the Township or planned for purchase by the Township. The grant would be just for the assessment of the site, not for remediation. The owner of the property would have to be interested and would have to grant permission to the MPCA and contractors. The MPCA intends that some public benefit result from the development of the property. One property to consider is the old Clover Valley High School which is adjacent to the tax forfeit property that the Town has asked the county to remove from the sales list.

There was inconclusive discussion about who currently owns that property and whether or not it has sold recently.

Sue said that beneficial uses could include wetland preservation, watershed rehabilitation, or maintaining the quality of the watershed. Two creeks join on the property and it's a part of the Knife River watershed.

Dave Mount said that at one point they were going to try to get funding from IRRRB for the demolition of the old school, but asbestos in the building complicates things. If there was a plan in place, it might facilitate getting some of that funding.

Sue said that there is other money available also, the Legacy program and watershed restoration funds for instance. If the Board wanted to do it, it would be a lot of work but could be done. They must have a willing seller. The property could be used for a park, trails, or interpretive center. Just because the Town owns the property doesn't mean that they would have to do something with it. It would be cleaned up and would help the watershed. On the downside, the property would be taken out of the tax base if it was owned by the Township.

Dave Chura felt that unless someone comes forward that has an interest in it and wants to pursue grant opportunities, we should not consider it for now.

Jan asked how competitive getting the money was likely to be and Sue said that it sounded as though if you had a good case, you could get it.

Jan thought that it was a good idea in concept, but not in practical terms. What about the area across Shilhon from where Sue lives? That is an old dump site and the Town owns the property.

Barb suggested the old missile site.

Yvonne suggested tabling the matter and bringing it up for discussion again at a later date, but Dave Chura said that there's nothing for the Commission to decide. Dave Mount can look into it if the Township wants to pursue it.

Old Business

Dave Chura summarized the short-term rental (STR) resolution that he brought to the Commission (see attachment). The resolution states that the Commission believes that STRs should be discontinued in the Township and if the Board does not agree, the Commission recommends that the Board establish a licensing requirement for STRs instead of managing them through a land use permit system. There will be a meeting between the Town Board and the Commission on the subject on January 27.

Jan asked if we want to give the Board more options. The motion on the resolution had been tabled at the last meeting. She said that she was uncomfortable giving them just an up or down resolution. We could be doing something more with the Ordinance we have or with conditions.

Dave Chura said that the resolution can be discussed at the meeting as one option and if other people have other ideas, they can bring them up.

Barb said that she sent out an email awhile back regarding additional conditions for short-term rentals and will have it sent around again.

Wind Energy Generation

Yvonne presented the new proposed language (see attachment). The last time the Commission discussed it, it was decided to separate the classes of wind generation systems into three categories for the purposed of assigning performance standards: less than 35 ft and attached to an existing structure, less than 35 ft and freestanding, and greater than 35 ft. For structures that were less than 35 ft tall and attached, the Commission had decided that there would there be no land use permit required. Less than 35 ft and freestanding would require a land use permit and units that were taller than 35 ft (presumably freestanding) would kick in the CUP process.

There is existing language in the Ordinance on pages 81 and 82 with special requirements for private and commercial utility towers greater than 50 ft. Do we want to change that to 35 ft? We need to align old language in the Ordinance with the new language.

Jan suggested just changing 50 ft to 35 ft.

Sue said that 35 ft is standard for structures and, generally speaking, is related to the maximum height for fire fighting.

John Kessler mentioned ham radio operators. He issued a permit for someone who wanted to build another ham radio tower and thought that the Town should be open to 100 ft radio towers. Ham radio has evolved a great deal.

Jan said that the Ordinance is not strong enough as it is. Communication towers are a whole other issue and the Town doesn't want to open itself up to having a utility like AT&T coming in and putting in towers wherever they want. Even if we adopt that any tower greater than 35 ft would require a CUP we need to have additional standards in the CUP process that address communication towers.

Sue said that we can also add to the list of 12 necessary findings for approval of a CUP. The Ordinance is more stringent now than it was the last time a communication tower was permitted in the Township.

Jan asked about nighttime strobe lights. Those are an FCC requirement and there is no language in our Ordinance that gives us any say in the type of lighting or the placement. If the FCC requires lights, there is nothing in the Ordinance to deny it.

Dave Chura read from the Ordinance, Section 13.C.8: "Nighttime strobe lights will not be permitted unless specifically approved during the conditional permit process, and then only to meet Federal Standards or for protection of migratory birds."

Sue said that structures that are less than 199 ft are not required to have strobe lights. In addition, based on the 12 necessary findings for a CUP, the Commission could deny the CUP because of the need for strobe lights.

Jan said that because we have the wording about strobe lights being permitted "to meet Federal Standards" our ability to make decisions about lighting may be limited.

It was decided to change 50 ft to 35 ft on pages 81 and 82 of the Ordinance.

Jan asked about guy wires. Yvonne, per the Commission's previous discussion, had included that "no guy wires are allowed unless it can be shown that such wires create no adverse impact to migratory birds" for all categories excepted the under 35 ft and attached category. Jan said that guy wires are only an issue for birds on towers that are lighted.

It was decided to delete the language pertaining to guy wires and look at language prohibiting lighting on the towers.

Brigid asked about Yvonne's section on access which involved removing means to climb the tower. Because these would be on private property, it seemed to her that it was an insurance issue and it should be between the individual and their insurance company. She said that she had an issue with the Township taking responsibility for a property owner's lack of common sense.

Barb agreed, saying that people in the Township do not want to be micromanaged.

Yvonne said that language came from the American Wind Energy Association (AWEA) model ordinance.

Dave Mount wondered if the Town could be held liable for not enforcing it if it remained in the Ordinance.

It was decided to strike Section H on access from the proposed language.

Barb suggested striking the language that limited generators to one per parcel. She said that there are some smaller turbines that you would mount in series on your rooftop to create a system. A property owner should also, for instance, be able to mount two small, quiet wind turbines on two different buildings to power them. The noise and kW standards would still apply.

One problem Jan pointed out is that we have no definition for a system.

Dave Mount asked if it would work to amend the definition to say “wind or solar power system not exceeding 30 kW.”

Yvonne pointed out that some of these things they were changing tonight Commission members had asked to be included in the draft language during the last discussion they had had on the subject.

It was suggested that the size of systems be limited by zone district and/or by number of acres, similar to how animal units are currently allotted in the Ordinance.

Brigid said that we don’t want to be too limiting because as systems improve, they will get smaller and quieter.

Barb agreed, saying that we would like to encourage people to use as much alternative energy as possible. People on the shore are using as much energy as she does. She would like to make it possible, as systems get better, for areas with denser populations to have options for alternative energy also.

Dave Mount said that if someone with a lot of acreage wanted to put in a wind farm of silent wind turbines, they would just need a CUP. That would be true of anyone who wanted to do have a system greater than 30 kW. The commission’s intent is to facilitate development as long as it doesn’t have negative impacts.

Barb said that if the Ordinance were to allow multiple towers that were less than 35’ we would need something in the Ordinance about aesthetics. Such an array may meet other parameters, but may still not be acceptable for aesthetic reasons.

It was determined that research needed to be done to find out how much energy 1 kW supplies relative to what an average household uses.

Jan said that whatever we come up with should be incorporated into the definition up front. We can use setbacks to control them in areas like Greenwood Road. The current standard for setback for a tower is 1.1 times the total extended height of the tower or the zone setback requirement, whichever is greater.

It was decided that anything that exceeds 35 ft or 30 kW would be covered by the commercial utility tower section. But instead of defining systems as commercial vs non-commercial, they

should be defined by scale. This needs to be clear in the definitions for small-scale and large-scale. In addition, although the original intent of calling a system non-commercial was because it is energy generated for personal, residential use, the bottom line is that it doesn't matter if someone is selling back to the power company. It is that much more alternatively generated power in the system.

Jan said that performance standards for large-scale systems should be strengthened. She volunteered to work on that section.

There was a brief discussion about the abandonment standard for systems greater than 35 ft. Yvonne said that it came from the model wind energy ordinance and is both an aesthetics issue and a safety issue. She thought that it should be left in.

Barb, Jan and Yvonne will get together to incorporate the changes and put it together. Barb will also do research on reasonable limits for kW generation.

Regarding the next agenda item, undue hardship vs. practical difficulty, Jan said that there is no point in the Commission working on it until the legislature makes a decision.

Dave Mount said that currently our Ordinance does not say the same thing that the court case does. The language pertaining to this in our Ordinance is language from the statutes governing the counties and should be changed to the language governing townships to eliminate at least that bit of confusion. When the legislature makes a decision, we can then change the Ordinance to match that.

Sue said that it would be useful to align the language if we hear any more conditional uses or variances.

Jan asked if we can't just take out the reference to practical difficulty.

Dave Mount said that it might be just as simple as that and he will look at it for the January meeting.

Dave Chura asked if anyone had additional conditions for STRs that they wanted to bring forward.

Jan said that Dave Mount had put together some good ones.

Barb said that she had added to those and sent them to Commission members.

Dave Chura said that it seems as though we have plenty of conditions and it still didn't help when we had problems. But if anyone has additional conditions they would like the Commission to look at, they should bring them to the January meeting.

Regarding interim use language for the Ordinance, Jan said that interim use is a can of worms.

Dave Mount said that interim use is not a carte blanche to put time limits on things. His interpretation is that it is intended for things that will sunset, or other things that are by their nature time-dependent like circuses or fairs.

Dave Chura said that the Lighthouse got the go ahead for their sign.

Concerns from the Audience

Don McTavish invited input for the January newsletter.

Dave Mount said that we need to recruit for Mike Kahl's position. His term is up in April.

Sue said that John got an inquiry regarding the Bieraugel site – are they confined to the footprint in the variance? It was agreed that they were.

Dave Mount said that the Worden public hearing with the Board was on November 10. Their brief had many complaints about due process and an assertion that there was an unrecognized conflict of interest (Bill Lannon's motel). At Tim Strom's urging, the direction the Board took was to continue the hearing and allow additional input from the Wordens (instead of just focusing on the Planning Commission's decision). It doesn't change anything, but if the revocation is upheld and it goes to court, it takes away the Worden's argument that they didn't get a chance to make their case.

Barb asked that if the Board is basically rehearing it, is the Commission's decision then just a suggestion?

Dave said that no, they are just hearing additional arguments that the Worden's are bringing up. They claim that they were not aware that revocation was a possible outcome of the Commission's review. Hopefully that will keep the judge from saying it should be reheard by the Commission. It will be on next Wednesday, the 8th at 6:30 in the library at the North Shore Community Center. Because it is an extension of the original Board review hearing, it will not be readvertised.

On the subject of STRs, Brigid asked what would happen if the Township decided to discontinue STRs and some people had them anyway.

Dave Chura said that it is clearer and gives neighboring land owners opportunity to point out that it's not allowed. It also makes it clear for people purchasing property in the Town that it is not allowed.

Dave Mount said that some of the core problems with enforcement will not change if someone chooses to not follow the rules. The Town will just have to prove somebody is renting.

Sue said it would be easier to enforce than she and John having to go down to a rental and count people.

Dave Mount said that licensing STRs would not make it any easier to determine quiet hours violations or the number of people.

Sue said that case law is the burden that makes it harder to have as land use. We never catch up with case law in the Ordinance.

Dave Mount said that there is language in one part of the Ordinance that gives time to correct a violation and then CUP language in another part of the Ordinance that says the permit will be revoked if there are violations. That should be cleaned up.

Barb noted that she has been on the Commission for one year and is amazed at how much time is spent hearing CUPs and variances instead of working on the Ordinance. She has many concerns with the Ordinance.

The meeting adjourned at 9:02.

Attachments:

- STR resolution
- Proposed Zoning Ordinance Language to Address Small-Scale, Non-Commercial Renewable Energy Systems