

**Town of Duluth  
Planning Commission  
Meeting Minutes  
1/26/12**

The meeting was called to order by Chair Dave Chura at 7:00.

Roll call:

**Present:** Dave Chura, Jan Green, Jo Thompson, John Schifsky, and Wayne Dahlberg

**Absent:** Brigid Pajunen and Paul Voge

Also present: Sue Lawson, Planning Director, and Barb Crow, Town Board Representative to the Commission

Dave welcomed Wayne Dahlberg to the Commission. Wayne has extensive experience with Planning and Zoning, and served as Planning Director for the Township. Dave also introduced Don Sitter who was in the audience and has been appointed to the Commission starting in April.

The agenda was approved as written.

The minutes from November 17 were approved with the following changes: Under Planning Report, paragraph 4 regarding driveways, Jan said that it should be "Sundstrom's *property*." On page 5, in the paragraph beginning "Sue said that the Commission should consider..." "should" should be changed to "might want to." In the following paragraph there is an extra "you" that needs to be deleted. And on the last page, the sentence "Jo pointed out that you cannot get a variance for something that is not already allowed by the Ordinance." "something" should be changed to "a use" and "already" should be deleted.

### **Directors Report**

Sue said that there was no meeting in December.

She reported that the Town Board appointed three new members to the Commission, Wayne Dahlberg, whose term begins now, and Don Sitter and Lynn Hollatz, who will come on board in April.

### **Chair Report**

Dave said that we will be putting together a list and prioritizing what we would like to accomplish in 2012. He asked that Commission members think about goals for the coming year. He said he will send out a summary of the list that was put together for 2011.

Sue said that at the last Town Board meeting, they discussed the Comprehensive Plan and they felt that it should be a priority for the Commission.

Dave said that in April we will need to elect a new Chair and Vice Chair as well.

### **New business**

Dave said that we need to put together a budget recommendation for 2013. In members' notebooks there is a summary of receipts and expenses for 2011. P&Z was slightly under budget for 2011.

John asked if we have an average for permit income for the past five years.

Sue said that permit income has been going down over the past few years. She also pointed out that one of the fees in 2011 is \$1,000 for an appeal to the Town Board that may not remain in Planning and Zoning's budget.

Dave said that the proposed budget that Sue put together is similar to what we had for 2012.

Wayne asked what the carry-over from the previous year is.

Dave said that the ending balance for P&Z in 2011 is \$13,442.70.

Jan moved to approve the budget as presented for 2013. John seconded. The budget for 2013 was approved unanimously. It will be recommended to the Town Board.

### **Concerns from the audience**

None.

The meeting adjourned at 7:14 and the open house for the proposed changes to the Zoning Ordinance commenced.

### **Open House**

Dave introduced the open house. He said that the goal of the open house is to introduce proposed changes to the Ordinance to Township residents. The Planning Commission has put together the proposed changes and they will be forwarded to the Town Board for approval following the open house and a public hearing. He said the draft Ordinance is also available on the Town's website if people want to look at it there.

Sue said that we are fortunate to have the Commission and people in the Township willing to do the work on the Ordinance. Many communities have to hire someone to do this. This open house is to explain what the changes are and some of the reasoning for the changes. If there are comments, she asked that they be put in writing and sent or emailed to the Commission by February 16. A public hearing on the proposed changes will be held on February 16 at 7 pm and people will be able give oral testimony at that time. Testimony can also be written and read aloud at the public hearing or submitted ahead of time. On March 1 the Town Board will convene and begin their decision-making process on accepting the proposed changes. Written comments and testimony given at the public hearing will be compiled and given to the Town Board.

Introductions were made around the room. Audience members included John Bowen, John Abrahms, Don Sitter, Val Brady, Bill Weckman, and John Fischer. Town Board Supervisors Barry Lobbestael and Barb Crow were also in attendance.

Dave reiterated what Sue said – tonight's meeting is to learn what the changes are. The public hearing is where residents can advocate for or against changes.

Sue passed around summaries of the two major areas of change being proposed (see attached). The first summarizes changes in variances and the second summarizes the addition of interim use. The changes in variance language are a result of changes in Minnesota State statutes made earlier in the year. The first change is in Article II, Definitions, where a definition for Practical Difficulty has been added. Most of

the changes regarding variances are in Article X. One of the biggest changes is Section 3.E.3. Here the criteria has been changed from “the property cannot be put to a reasonable use under the conditions allowed by the Ordinance” to “the property owner proposes to use the property in a reasonable manner.” The new language reflects the new State statutes and there is no case law associated with it yet. There will probably be discussions in case law in the future about what is a reasonable manner to use your property. There is still ambiguity, but there probably always will be.

Jan said that we have followed the course of the courts and legislature in amending our ordinance.

Val Brady said that she was confused by items 3.E.3.a and 3.E.5. It seemed to her that the two items contradicted each other.

Sue said that the first sense of the word “use” is related to the variance, and a variance is generally a variance from a dimensional standard set by the Ordinance. The second use of the word “use” is in the sense of a use such as a single family dwelling or any of the uses listed in Article V. She said the language came from the Town’s attorney.

Val said then that it is essentially two different uses of the word “use,” and it is confusing.

Sue suggested that Val submit the concern as a comment so the Board could look at it.

The next major change is the introduction of interim use. In Article V, Section 4 there are basically three types of uses: permitted with an over-the-counter permit, permitted with performance standards, and conditional use. A conditional use is a use that does not normally occur in a zone district. Conditional uses must be applied for and are granted through a public hearing process. Interim uses, as proposed by the Commission, will be a subset of conditional use. Interim uses will apply when

- a. There is a time certain when the use will terminate; the type of use is one that is inherently temporary.
- b. The type of use creates a heightened concern for public health and safety requiring a closer monitoring of the use after the permit is issued.
- c. There will be a known change in zoning in the near future or there is a belief that future development patterns in the area will conflict with the conditional use being requested.

Based on this criteria, the Commission will determine, when someone applies for a conditional use, whether the use will be conditional or interim. In other words, the Commission will decide if there is a reason the use should be time-limited.

Dave said that a time limit cannot be put on a conditional use. If a conditional use is granted the use continues even if the property is sold. Interim uses provide more flexibility by allowing a use to be granted for just a certain period of time.

Jan said that an attorney for the Minnesota Association of Townships wrote a document for MAT saying that interim use is allowed in the State statutes and can be a useful tool for towns. He said that gravel pits and airstrips are good candidates for interim use. Based on this document, many communities have adopted an interim use category. She said that you can limit an activity with conditions other than time. For instance, for a private airstrip, a condition could be that the interim use will expire when the property owner no longer owns an airplane.

John Bowen asked if the Commission would be able to put conditions on conditional and interim uses. He also said that when he was on the Commission, they would put time limits on conditional uses.

Sometimes, they would set a time to evaluate the use, such as evaluating the conditional use in three years.

Dave said that the Commission would still be able to put conditions on these uses. But putting a time limit on a conditional use is not legal. You can review it, but the conditional use can only be rescinded if one or more of the conditions of the permit have not been met. It cannot be rescinded based just on a time limitation.

Val asked if more than one condition can be imposed on a use. The Commission responded that yes, multiple conditions can be put on a permit.

Sue said that another significant proposed change is to disallow short-term rentals (STRs). The Commission did extensive research on the issue and has had two open houses for community input on the issue. They have twice recommended to the Town Board that STRs not be allowed in the Township.

Dave said that the proposed removal of STRs as a use from the Ordinance will not prevent people from renting their home out, but will prevent them from using their home as a motel.

Jan said that one of the main reasons for removing STRs is that it is too difficult to police them.

John Bowen said that policing had been a concern from the beginning. He asked if the Ordinance is going to just not mention STRs or if it is going to actively disallow the use.

Jan said that the definition for STR was removed from Article II, Definitions, but the definition for long-term rental was left in.

STRs were also removed from Table 5.3. Sue quoted Article V, Section 4.E: "Uses not listed in this Ordinance will be determined by the Town of Duluth Planning Commission."

Dave said that bed and breakfasts and motels are still allowed uses.

Barry Lobbestael asked if he was going to be gone and wanted to rent his house out to Grandma's marathoners, could he do that?

Dave said that use might fit under the bed & breakfast definition because they are still occupying their home.

John Bowen noted that the Town has spent thousands of dollars over just a few words in the Ordinance on STRs.

Sue said that a review of commercial proposals by the Commission has been added for zone district SCO-8B. In the current Ordinance, these design reviews are required only in zone districts COM-3 and SCO-8A. A design review entails coming before the Commission to talk about your proposed project. She said that the Commission had one for the Lighthouse restaurant before it was built.

Wayne said that it is not an approval process. It is meant to consider and preserve the vision for the shore.

Another proposed change is that any zoning text or map amendment will require a community participation report. The purpose of a community participation report is to talk to neighbors within the area of impact to inform them of the proposed change and elicit comments and/or concerns from them.

The comments and concerns are then compiled into a report and presented to the Commission. The community participation report is already required for conditional use permits.

Wayne asked if zoning map changes were discussed for this Ordinance update. For example, since the current map was created, he has become aware of a lack of access to different zones. The expressway and railroad tracks along the shore, especially, are a barrier to those areas.

Sue said that the Commission will look at the Comprehensive Land Use Plan (CLUP) first. She said that she will talk with Clint Little to get some GIS information and see how density patterns in the Township may have changed. The first CLUP was written in 1976. The Town did not look at it again until about 2001, 25 years later.

Wayne said that in 1991 they did revisit the shore area of the CLUP because of the North Shore Management Plan.

Jan said that Maine has a good CLUP that we could look at as an example.

Continuing with proposed changes to the Ordinance, Sue said that a number of definitions in Article II were clarified. Homestay was removed from Article II because the difference between homestay and bed & breakfast did not seem significant.

Barb Crow presented the changes in language for terms for Planning Commission members. The current Ordinance refers to the calendar year when in fact, the Board interviews and hires Planning Commission members year around, especially in April. The Board also wanted to stagger terms. So in the amended Ordinance, terms are redefined and any references to calendar year have been removed. Terms will be from April to March. The Board will fill empty positions as they come up. If someone is appointed to fill out someone else's remaining term, if the remaining term is less than two years, that person is still eligible to serve two full terms.

Sue said that numerous editorial changes were also made by Beth, John and Jo, mostly clarifications, typographical corrections, and formatting.

Sue said that after talking to the Township attorney, it was decided that instead of amending the current Ordinance, the Board will rescind Ordinance Number 3 in its entirety and then adopt the new Ordinance once all of the changes have been approved.

John Bowen was concerned about the proposed deletion of Article IV Section 4.A.5 concerning lots of record. He said this could be a big change for property owners close to the shore. He said that paragraph was put in when the North Shore Management Board came into being. That provision had to be in place before the Township would join the NSMB because the Township was concerned that minimum lot size along the shore would be raised and would zone out property owners in that area.

Sue said that this change came about from statutory changes.

John asked what statute had changed.

Sue said she said she didn't know. Paul Voge followed these changes.

Jan said that Section 4.A.1.b still allows for lots of record.

Wayne said that 4.B.2.a says that the lot must be at least 66% of the dimensional standard for width. He was previously of the understanding that a lot of record, no matter the size, and even if you have adjoining property, remained an individual lot of record and did not have to be combined with adjoining property. The new language indicates that a lot that does not meet that requirement “must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.”

Sue said that he should submit his concern as a comment so the Board and the Town attorney would look at it.

John Bowen said that the North Shore Management Board took the place of the State Shoreline Management Program for the North Shore, so anything in the statutes regarding the Shoreline Management Program would not apply to the Town’s shoreland area because they are under the North Shore Management Board.

Dave said that statute 394.6 contains identical language regarding existing non-conforming lots in shoreland areas and similar language regarding single lots of record. He said that 462.357 may also be pertinent.

Sue said that there may be a question in that the Town’s Shoreland Overlay may not be the same as the State’s Shoreland Overlay, and in addition, there’s the question of the NSMB taking place of the Shoreland Management rules.

John Bowen said that because we are under the NSMB and that took the place of the Shoreland Management Program, we shouldn’t come under statutes applying to the Shoreland Management Program.

Jan said that she thought the NSMB did not necessarily take the place of the Shoreland Management Program, but is the implementing agent.

Barry read from Article IV Section 4.B.2:

In a group of two or more contiguous lots of record under a common ownership, an individual lot will be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements...

He asked what does the individual lot have to do with the group of two or more?

Sue said that on the shore there are a number of lots that are very small that would not meet the lot width requirements. Often owners own two or three of those small lots together. She thinks that what this is saying is that if you have multiple lots you could look at them as separate and buildable if you could meet the conditions listed.

John Bowen said that the requirement that the lot must be at least 66% of the dimensional standards was left out specifically for the lots along the shore because they would not be able to meet that requirement.

Jan said that Minnesota Rules chapter 6120 might clarify it.

Dave said that he would ask Paul to put together a summary to clarify these changes.

John Bowen said that the Town needs to think about how some of these lots will be affected if you get into these requirements. This area was platted in 1923. He also noted that that area has only seen .82% growth since the sewer went in, so there has not been a lot of development.

Don Sitter said that in the Article III, General Provisions, Section 4.B.3 it says that subsections a and b or subsections a and c must be met, but there are also subsections d and e, which are not referred to. When do subsections d and e come into play?

Sue said that that should be reformatted to include d and e. It should say subsections a, b, d, and e, or subsections a, c, d, and e must be met. She said that we should note this and submit it to the Board.

Don also noted that in Table 5.3, the blanks should be filled in with 0s to be consistent with the rest of the table.