

City of Duluth
Planning Commission
Minutes of Tuesday, March 9, 2010
City Council Chambers

I. Call to Order: President Akervik called the meeting of the Planning Commission to order at 5:00 p.m., **Tuesday, March 9, 2010**, in the third floor Council Chambers of Duluth City Hall and explained the public hearing procedure to the audience.

II. Roll Call:

Members Present: Mike Akervik, Henry Banks, Joan Barrett, Drew Digby, Frank Holappa, Joan Morrison, Heather Rand, David Sarvela, Jim Stebe

Members Absent Excused: Mindy Appold, Katelyn Blazevec, Joan Morrison, John Vigen

Staff Present: Bob Asleson, Kyle Deming, Terri Fitzgibbons

III. Public Hearings (staff reports of matters are on file in the Planning office)

A. ***FN 10011*** - WRMO Shoreland Variance from minimum lot size on a site between Minnesota Avenue and Saint Louis Avenue at 16th Street for Park Point Properties. (KD)

Staff: Deming stated this variance is requested to build four one-family buildings and three two-family buildings on lots that do not meet the minimum lot size in a shoreland area. Deming cited the legal opinion of Attorney Lutterman that there is no provision in Chapter 51 to allow a variance and that there is no hardship.

Discussion: Holappa asked if this ordinance is applied uniformly to Park Point. Deming stated it is and that this type of variance has never come before him. He clarified this is a variance request for minimum lot size. Akervik asked about the rezoning of the property to R-2 was before the City Council the previous evening. Deming verified that R-2 zoning is not in effect at this time.

Applicant - Tom Reistad, Park Point Properties: The original proposal for this land was for a 26 unit apartment building zoned R-3 but it was not well-received by the community due to the density. Reistad stated the new design took into consideration elements from the Comprehensive Plan with R-2 zoning.

Paul Kellner, Park Point Properties: Kellner stated he spoke with Patricia Fowler who explained to him that the WRMO requirement for large lot sizes implemented in the 1980s were a response to large homes being built on small lakeshore lots. He stated, although the City is moving in the direction of removing that requirement with the UDC, it is not in place at this time. Kellner states it appears Park Point's infrastructure is able to withstand additional development, and that this traditional neighborhood project is what the community is looking for.

Discussion: Akervik asked if the UDC addresses the shoreland management issue. Deming stated the new code includes shoreland provisions which, at this time, do not include minimum lot sizes or impervious surface requirements. Deming stated the Department of Natural Resources recommends the City use the underlying zoning to determine minimum lot sizes. Rand stated the UDC language is a draft and more work needs to be done. The goal of the new language is to manage storm water on site.

Public Input – Rebecca Thompson, 1540 St. Louis Avenue: Thompson stated the 16th Street/Saint Louis Avenue intersection at this site is flooded every time there is an average rainfall as there are no storm drains. Thompson is uneasy about duplexes due to the turnover of renters as it undermines the feeling of a stable community. She would also like to see the tall pine trees taken into consideration if this land is developed.

Hamilton Smith, 1620 Minnesota Avenue: Smith is concerned about additional congestion on Park Point, rental property, and loss of parking on the bay side of the street due to the four driveways that will be constructed. Smith feels this project is too dense to conform to the surrounding neighborhood.

Jan Coen, 1602 Minnesota Avenue: Coen feels developers are building at this density for a higher return on investment. She agrees with the points of those who have spoken before her as well as Attorney Lutterman. Driveways for the proposed development would greatly reduce the number of off-street parking spaces available.

Discussion: Rand emphasized the Commission needs to focus on the legal aspects in place at this time rather than what is proposed in the UDC. Akervik stated four units could be built on this land.

<p>MOTION/Second: Barrett/Banks to Deny WRMO Shoreland Variance from minimum lot size on a site between Minnesota Avenue and Saint Louis Avenue at 16th Street for Park Point Properties Vote: Unanimous 8-0</p>
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- B. ***FN 10014*** - Special Use Permit for the construction of a 190' tall wireless communication facility at 110 Spring Street by Jim Cheshire, representing AT&T. (KD)

Staff: Deming stated the proposal is to build a 190-foot wireless communications tower which could accommodate up to four cellular carriers. The new tower would provide coverage for the areas of Morgan Park, Smithville, and Riverside, as well as correct a problem in which some emergency calls are routed to Wisconsin. Deming stated the zoning is appropriate, but it is difficult to determine how the tower will “reasonably” blend in with the St. Louis River landscape. Deming recommends approval with conditions that specific criteria are met.

Applicant - James Cheshire, Wireless Planning, LLC (agent for AT&T): Cheshire stated the mistakenly routed 911 calls have been an issue for AT&T, which has considered numerous sites and options to remedy this. The design of the tower follows guidelines to ensure the least amount of disturbance to birds.

Discussion: Barrett asked if the antennas will be higher than 200 feet, and Cheshire stated the entire tower will be under 200 feet. Barrett asked if there are sea planes in this area, and Cheshire stated as long

as the tower is below 200 feet, it is not considered a hazard by the FAA. Akervik asked how long the site has been studied. Cheshire stated it took a long time to negotiate a lease for this tower, so the site has been considered for some time. Cheshire confirmed the signal will be angled away from Wisconsin to avoid emergency calls being routed there.

Public Input - Kelly Boedigheimer, 7125 East Superior Street: Boedigheimer stated this is a high bird migration area of the St. Louis River estuary. She feels developers deliberately choose to be just under 200 feet to avoid further scrutiny and that the tower is for the purpose of advanced 3G coverage. Boedigheimer feels cell phone towers should be located on City owned land so the City may benefit from the revenue. She requests this matter be reviewed by the Environmental Advisory Council. Boedigheimer questions why the notice radius is only 350 feet.

Richard McGovern, 3780 London Road: McGovern stated the Duluth area has the highest density of bird migration in the United States, and the main concern is birds migrating during times of limited visibility and in darkness.

Discussion: Stebe asked if Duluth's antenna farm is within the migratory path; McGovern stated it is. Stebe asked what effect of the "antenna farm" has on migrating birds; McGovern was unaware. Akervik asked Cheshire how many antennas have more than one carrier on them. Cheshire stated approximately 40% are co-locations (sharing towers). Akervik asked about the visual effect, and Cheshire stated this tower is designed to be the least visually obtrusive. Sarvela asked if there was a tower further south that AT&T could co-locate with. Cheshire stated it would not solve the emergency communications issue and is not close enough for improved coverage due to elevation. Digby asked how this area is advertised for coverage. Cheshire stated cellular companies do not spend money on additional towers unless necessary. Holappa stated there is never a tower location that everyone likes and noted it conforms to zoning. Barrett stated this area is less sensitive than the North Shore for migratory birds. Rand stated it is a difficult decision due to the need versus the migration path.

<p>MOTION/Second: Holappa/Rand to Recommend Approval of Special Use Permit for the construction of a 190' tall wireless communication facility at 110 Spring Street by Jim Cheshire, representing AT&T Vote: 5-3 (Opposed: Akervik, Banks, Digby)</p>
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- C. ***FN10015*** - Vacate part of a utility easement on Outlot A, Oneota Industrial Park, 1st Addition by DBU Properties LLC. (KD)

Staff: Deming stated this proposal is for a vacation of the utility easement, which has been determined to be unnecessary. The City's water and gas utility lines will retain a utility easement on the southeast 18 feet of the outlot adjacent to I-35. Staff recommends approval.

Discussion: Barrett asked who monitors the use of this land, particularly after this temporary use.

Applicant - Cheryl Filby Williams, Barr Engineering: Filby Williams stated it is in the interest of the property owner that after this project is completed that the equipment be removed. The landowner has been generous in allowing the applicant to access the land for groundwater pollution remediation.

Discussion: Sarvela stated this contamination is from the Diamond Tool site and asked how long until the remediation works. Filby Williams stated it is a shallow radiant and the contamination is not traveling quickly. The remediation period is uncertain but could be from two to ten years.

MOTION/Second: Barrett/Rand to Recommend Approval to vacate part of a utility easement on Outlot A, Oneota Industrial Park, 1st Addition by DBU Properties LLC Vote: Unanimous 8-0

- D. **FN 10016** - Concurrent Use Permit to for an entry canopy and other facade elements that project into the rights of way abutting the YMCA building (302 West First Street) by YMCA Heritage Foundation. (KD)

Staff: Deming stated this request is for an entrance canopy and to officially permit the concrete slats which make up the building façade and project into the right-of-way. Staff finds this permit will not inconvenience the public's use of the street. Staff recommends approval.

Discussion: Akervik asked if the YMCA logo sign protrudes as well. Deming stated it is considered a projecting sign and is being treated as such through the Building Safety office. Digby asked if the Commission can approve the canopy but deny the slats. Deming agreed.

Applicant – Steve McNeil, LHB Engineers & Architects: The purpose of the canopy is to articulate the entrance and provide lighting.

MOTION/Second: Akervik/Barrett to Recommend Approval of concurrent Use Permit to for an entry canopy and other facade elements that project into the rights of way abutting the YMCA building (302 West First Street) by YMCA Heritage Foundation Vote: Unanimous 8-0

IV. Consideration of Minutes: February 16, 2010. Motion/Second by Akervik/Rand Vote: Unanimous 8-0

V. Communications

VI. Old Business

VII. Reports of Officers and Committees

- A. Zoning Advisory Committee. Rand encouraged Commissioners to check the website for updates. Meetings continue with a public meeting at some time in April.

VIII. New Business

IX. Other Business

Akervik stated there will be a special meeting on March 23, 2010.

Deming stated a tentative public meeting is scheduled for April 1 to consider the future use of Woodland Middle School. Akervik would like to make sure representatives from the school district are invited.

- X. Adjournment. Motion: Akervik/Stebe to adjourn. President Akervik adjourned the meeting at 7:03 p.m.

Respectfully,

A handwritten signature in black ink, appearing to read 'C. Petkac', written in a cursive style.

Cindy Petkac
Land Use Supervisor

CP:tmf