



City of Duluth
Planning Division

411 West First Street • Room 208 • Duluth, Minnesota 55802-1197
218-730-5580 • Fax: 218-730-5904 • www.duluthmn.gov

An Equal Opportunity Employer

City of Duluth
Planning Commission
Minutes of May 10, 2011
City Council Chambers, City Hall

- I. President Digby has called a Regular Meeting of the City Planning Commission for 5 p.m., Tuesday, May 10, 2011, in the City Council Chambers.

A Tax Forfeited Land Subcommittee meeting will be held before the May 10 Planning Commission meeting at 4 p.m. in City Hall Room 207. All Commissioners are invited to attend.

- II. Roll Call

Members Present: Henry Banks, Drew Digby, Rebecca Covington Terry Guggenbuehl, Frank Holappa, Heather Rand, David Sarvela, Luke Sydow and John Vigen.

Staff Present: Kyle Deming, John Judd, John Kelley, Alison Lutterman, Cindy Petkac, Steven Robertson, Nancy Spooner-Mueller and Edna Ulrich

- III. Public Hearings

- A. **FN 11-027-** Public Right of Way Vacation (Alley) and Dedication of Easement (Alley) at 1621 Kenwood Avenue by Semper Development. **SR**

Staff: Robertson stated that is a Way Vacation (alley) and dedication of an easement. There will be an application for the other part of this in June. These are zoned MUN and R1 and the applicant wishes to take the alley and vacate it. They will then rebuild it by City standards and he will have a larger area to build on. One advantage to this is that we will have one fewer access points on this road. The City likes to discourage the number of access points which makes the area safer to drive in. There was a discussion with the adjacent property owners that they wanted to see if there could be a private contract with access and an easement. We do not involve ourselves in private contracts. Staff recommends approval to City Council with two conditions that a new alley is built to city standards prior to occupancy and the existing alley be accessible by the public until a new alley is accepted by the city. If they agree upon an access easement we could have the city engineer waive the need for a new alley.

Applicant: John Kohler, Semper Development. He is an Architect of Semper Development. Vigen asked if the reconstruction cost will be the city's or theirs and Kohler stated it would be at his expense. The new alley is 24 feet in width, why such a difference? Kohler stated that the Engineers asked for this, the driving width is 20 feet with two foot easements on each side. Petkac added that they actually reduced the standard for the property for the alley. Robertson added that this will reduce the number of access points on Kenwood. The property owner's garage accesses the alley and if the alley is not rebuilt, they would need some other access.

Public: Barbara Brooks. She asked if the city will maintain the alley and Robertson stated that the City does maintain it. Semper is saying that they will build the easement and tax payers would

foot the bill for this. Robertson stated that the county is responsible for maintaining this. She is opposed to this.

Sydow asked if this would go through private land and Robertson stated it would. They would go through and exit on St. Benedict's driveway. President Digby asked for a Motion to continue the debate - Rand/Holappa with the staff conditions 1. and 2. Vigen said that the vacation is not an issue. He is concerned about the 16 foot wide gravel alley. They are going to put in 18 to 20 foot wide bituminous surface to access a single family home. Vigen stated that typically the public driveways are not that width. Petkac pointed out the requirements for platting in the UDC that alleys shall not be less than 20 feet in residential areas, and 24 feet in Mixed and Commercial areas so they have actually reduced the standard for the alley. Vigen asked if it would be plowed, would they have a loss to the parking spaces, and is there any kind of control for this? Petkac stated that the paved area would be in the center of the right of way so there would be two feet on each side.

MOTION/Second: Rand/Holappa to **Recommend Approval** for the Public Right of Way Vacation (Alley) and Dedication of Easement (Alley) at 1621 Kenwood Avenue by Semper Development **with the following conditions:** 1.The new alley shall be constructed to city standards prior to occupancy permit being issued 2.The existing alley shall be accessible by the public until the new alley is accepted by the City.
Vote: Unanimous (9-0)

- B. **11-042-** Zoning Map Amendment from R-1, Residential-Traditional, to R-2, Residential-Urban and MU-N, Mixed Use-Neighborhood, in the Arrowhead Road/Kenwood Avenue Area by the City of Duluth. **JJ**

Staff: Judd stated that this is our part of the City's ongoing re-zoning project. This first map is from the Comprehensive Land Use Plan showing the recommended Mixed Use-Neighborhood (MU-N) area. We went through our standard process with a couple of public meetings. The majority of the people at the first meeting were not happy with the change to MU-N. The neighbors wanted a less intensive use and zoning. Another concern expressed by the neighbors at the meeting was traffic safety in this area especially at the Arrowhead /Kenwood intersection. Therefore, after that meeting the Planning staff took another look at the immediate and adjacent areas and at the second public meeting we proposed Residential-Urban (R-2) for the majority of the area. We are still proposing that the ½ parcel adjacent to the service station be rezoned to Mixed Use-Neighborhood. We are recommending that the Planning Commission have two motions for the rezoning of this area. One for the ½ parcel from Residential-Traditional (R1) to Mixed Use-Neighborhood (MU-N) and then another motion to rezone the balance of the area from Residential-Traditional (R-1) Residential Urban (R-2).

Public: Bob Witsman, 1731 W Arrowhead Road. He asked if this rezoning includes his parcel or up to it? Judd stated that it does include his parcel. Judd stated that he could have a higher level of residential density to the property in the future but it doesn't affect his current use. Witsman is concerned about what can be built around him and he is against this rezoning.

Holappa asked if there was a second notice sent out related to the revised notification. Judd stated that the initial area mailing was to 66 property owners and the revised mailing recommending the R2 zone we sent over 90 property owners as we had also expanded the rezoning area. Holappa asked about the citizens input and if this is why the recommended R2 for this area. Vigen stated that he would like to see commercial use here as well. This makes sense as it is presented now.

MOTION/Second: Vigen/Guggenbuehl to **Recommend Approval** to Rezone Parcels along Arrowhead Road from R-1 to R-2 as shown in Exhibit A.
Vote: Unanimous (9-0)

MOTION/Second: Vigen/Guggenbuehl to **Recommend Approval** to Rezone Parcel on Arrowhead Road from R-1 to MU-N as shown in Exhibit B.

Vote: Unanimous (9-0)

Staff: Deming stated that this is a variance from the lot frontage requirement in R1. R1 uses contextual means to establish standards for lot requirements which is the larger of 30 feet or the average of developed lots with similar uses on both sides of the street. They had received an email from Terry Johnson for this variance application for the lot frontage requirements in R1. In this case the block face is Snively Road from Livingston Avenue to Morgan Parkway and only one other developed lot that has 280 feet of frontage. The applicant's frontage is 100 feet and this is why they are seeking a variance.

The landowners meet the lot area requirements and general variance criteria that apply. They did not have control over their properties. Deming indicated that the site could obstruct the view of Lake Superior but property values should not be diminished. There are multiple view areas in this area. Without this variance, this lot is not buildable. Rand asked about the ownership pattern and is this unique in that prior passing the UDC it was okay to build in the old code? Deming stated that the need to have 280' of frontage is unique to this part of the city and lots that are about 100 to 150' in width have different circumstances. Digby wondered why they didn't use the frontage of Snively Road. Petkac stated that this is a platted right of way so the measurement on the block face is looking at properties with two right of ways regardless of if it was platted or not platted. They would still need a variance for this.

Applicant: Terry Zaudke. He stated that he bought this lot in 1980 and planning to live there. He had to leave the area for better employment. He needed to verify that he could build on this lot. They found that the UDC had changed which made his lot non-conforming. He had water extended across the property and installed a curb cut. He was allowed to install water. He asks for his right to build on his property.

Public: Tom Stone - 446 Kenilworth Avenue. He is opposed to this. They had a problem that the proposed building that was not compliant with the lot frontage requirement. There are no homes here except one. They did not have a written covenant but had an agreement.

Public: Pete Langer. He lives about seven houses down on Snively Road. There are lots that are 50 and 100 foot lots. They are going to determine the size of this home based on the one home that is 280 feet. He would support the rezoning on his street.

Motion/Second: Guggenbuehl/Covington to continue the debate. Guggenbuehl sees this as a hardship. Holappa asked what the height limit is to build in this zone and Deming stated 30 feet. There is approximately 25 feet or so of contour.

MOTION/Second: Guggenbuehl/Covington to **Approve** the Variance to reduce the Minimum Lot Frontage Requirement to 100' for the subject property, Residential Traditional, at the 400 Block of Snively Road by Terry and Linda Zaudtke.

Vote: 8-1 (Banks)

- D. **FN 11-047** – Variance to Front and Side Yard Setbacks for reconstructing a Garage in at 13333 West 4th Street by Gordy Johnson Construction. **KD**

Staff: Deming stated this property is in the Fond du Lac area. It is city owned land and they want to reduce the front and side yard setbacks for reconstructing a garage. The garage would be a 24 X 30 foot garage. The front yard setback is 20 feet from the front and 17 feet from the side. The garage was in the street easement but they were able to get that changed. The previous landowners were the ones who located the garage improperly. Staff to recommend to deny the variance requested and staff recommends that the following conditions apply: that the front yard setback be reduced to 8' from 20' feet and the side yard setback be reduced to 6.5' from 7'. A variance is required due to the changed rules in the UDC and the property owner purchased this under the prior zoning ordinance.

Lutterman stated that one of the property owners created this problem. The issue is whether this has resulted in practical difficulties with the new law. With the variance process on zoning, it is important to either approve or deny and lay out the reasons why.

Applicant: Sue and Gary Holt. She purchased this property in 1992. About 6-7 years ago and they saw that the garage had some cracks. They found it was not built properly. Her husband had passed away and they saw that the garage was getting worse and she contacted Gordy Construction. She understands that things weren't done properly by the previous owners. She just wants to replace and fix the garage that is there.

Vigen asked Johnson what the cost of repairs would be and he stated that it would be \$50,000. Johnson stated they would like to insulate it as her primary entry is through the garage. Digby asked if the road was built in the wrong spot? Deming stated that there was mention in the BZA that 4th Street was not open to traffic and there was no actual street here at one time. Sydow asked how old the septic is and is she planning to connect to the city sewer? Holt stated that she is saving for this and is not hooked up as of yet. Holappa asked if the sewer line is in and she stated that there is just a grinder pump. Vigen/Rand motioned to continue the debate.

Vigen to recommend that the variance applied for be approved. The specific location is confusing and is not built in the right of way. Sarvela recommended the two feet for front and six ½ for the side yard setbacks that the applicant suggested.

MOTION/Second: Vigen/Rand to **Approve** the Variance to Front and Side Yard Setbacks for reconstructing a Garage at 13333 West 4th Street by Gordy Johnson Construction **with the following condition:** That the front yard setback be reduced to 8' from 20' and the side yard setback be reduces to 6.5' from 7'.

Vote: Unanimous 9-0

E. **FN 11-040**– Quick Plat in MU-N, Mixed Use-Neighborhood, at 2170 Lester River Road by Lyman Marshall. **NM**

Staff: Spooner-Mueller has a request for a quick plat. They would like to divide this parcel into two parcels of approximately 5 and 7 acres in a mixed use neighborhood. This meets the lot frontage requirements and the lot size is consistent with the other lots. Victor Lund, St. Louis County Engineer, had some concerns about site distance in that area for the proposed lots and issues on the entrance onto Lester River Road. Mr. Marshal decided to configure the lots to preserve the view. Based on the findings, staff recommends approval of the split of the lot as shown in the final Plat.

Applicant: Lyman Marshal, 2170 Lester River Road. He has lived at this property since 1972. There is a big difference in elevation. They had SALO Engineering plot this out. The present plot

has 297 feet of frontage with 5.2 acres of land. The second plot has 250.1 feet of frontage on Lester River Road and 6.87 acres of land.

Motion/Second: Rand/Sarvela to **Approve** the Quick Plat in MU-N, Mixed Use-Neighborhood, at 2170 Lester River Road by Lyman Marshall **with the following condition:** That the project be limited to, constructed, and maintained according to the documents drawn by SALO Engineering, Inc. received March 28, 2011.
VOTE: Unanimous (9-0)

F. **FN 11-041**– Variance from Natural Resources Overlay Setback (Coldwater Creek) in R-1, Residential-Traditional, at 3901 Trinity Road by Bruce Peterson. **NM**

Staff: Spooner-Mueller stated that the applicant is requesting a variance from the 200 foot cold water creek setback at Miller Creek to a 125 foot setback. The lot was platted and purchased before the change in the UDC. Staff believes that there is a hardship and asked that the commission approve the variance and that the buffer which is 50 feet be increased to 75 feet. Vigen asked about the vegetative buffer, which Spooner-Mueller stated is shrubbery, trees, and vegetation that is there now. Because of the unusual change in the lot, staff believes that there is a hardship and to have the variance approved.

Applicant: Bruce Peterson, 3901 Trinity Road. He just bought the property and wants to build a house here.

Public: Brian Spehar. He is an adjacent property owner. He is not opposed to this plan. His concern is that there is a pretty extensive floodway and could they find out how the house would sit on this property? He looks out the back window and without any leaves on the trees he can see a sign outside his window. He would like to leave the floodway intact as it is a dedicated trout stream.

Petkac stated that we adopted the new proposed shoreland standards which have not been signed into law and may not be anytime soon. We are proposing to go back to WRMO standards. The setback was 150 feet in a sewered area and 200 feet in an un-sewered area. Holappa motioned to approve the variance to city council as recommended by staff that the variance is required due to the rules changing in the UDC and are now using a prior ordinance

Vigen stated that Miller Creek is a sensitive flowage in Duluth and under much stress. We need to ensure that there are protections on the stream. Vigen wants the vegetative buffer to be comprised of species and left up to the discretion of the staff.

Lutterman stated that if this is a friendly amendment and if Holappa accepts it as a friendly amendment then they would vote on it one time. If not accepted they would need two votes on it.

MOTION/Second: Holappa/Guggenbuehl to **Approve** the Variance from Natural Resources Overlay Setback (Coldwater Creek) in R-1, Residential-Traditional, at 3901 Trinity Road by Bruce Peterson **with the following condition:** That the vegetative buffer be increased to 75 feet to offset any compromise to the creek.
Vote: Unanimous (9-0)

- G. **FN 11-049**– Special Use Permit for Temporary Parking Lot and Construction Office in a MU-I, Mixed Use-Institutional, at 1001 to 1025 East Second Street by St. Luke’s Hospital. **SR**

Staff: Robertson stated that the applicant is in a process of a significant construction project. They are requesting a lay down area for construction materials and temporary employee parking for their employees and temporary parking for construction workers. Temporary means 90 days. This process will take approximately a year and a half and it may be extended with a special use process. A citizen was concerned about possible problems with parking in the alley. The project is to be constructed as to the plan and will sunset by December 31st, 2012, and the Land Use Supervisor may approve changes.

Applicant: Ron Franzen - St. Lukes Hospital. They appreciate the continued support of the Planning Commission and City Council. He presented the plans of the new construction. They are looking at going across 2nd Street with a skywalk. They are not there yet and they are doing this as a developing model. Sarvela wanted to know if this is an opportunity to put on a condition. Lutterman stated that they would be able to condition this.

MOTION/Second: Rand/Guggenbuehl to **Approve** the special Use Permit for Temporary parking Lot and Construction Office in a MU-I, Mixed Use-Institutional, at 1001 to 1025 East Second Street by St. Luke’s Hospital **with the following conditions:** 1. The project be limited to, constructed, and maintained according to the site map submitted by the applicant, stamped May 3, 2011. 2. This Special Use Permit is to expire one month after construction is completed on the five story office building, as approved under FN 11-011, or on December 31, 2012, whichever occurs first. 3. Applicant is to submit an application for Plan Review of a parking lot/structure on this site for the September 2012 Planning Commission Meeting. 4. Any other alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50. **Vote:** Unanimous (9-0)

- IV. Consideration of minutes – April 12, 2011. Motion/Second Rand/Vigen to approve the April 12, 2011, minutes.
- V. Communications
- VI. Old Business
- VII. Reports of Officers and Committees
 - A. Duluth Historic Preservation Commission

Digby stated that the city has been granted a Certified Local Government Grant from SHPO for a Survey of part of the east end area. This will be going on this summer and they will also be able to do more Historical work.

Rand said that there is a Brown Bag Meeting on May 20. The committee would like to get some additional ideas for future Brown bags.

- VIII. New Business
 - A. **FN 11-046** – Appeal to Planning Commission of Land Use Supervisor Decision of 50-20.4 Industrial Uses (E. Major Utility or Wireless Telecommunications Facility). **Article 50-20.4**

Staff: Robertson stated that when an antenna is the same make and model it would not be a modification. If it is nearly identical or similar, it would be a modification and a Special Use Permit is required for the upgrade of the antennae.

Applicant: Peter Boyle. Boyle stated that this is nothing more or less than improving their facilities and technology to improve their service. They understand that new towers need to have a SUP but additional antennae's or changes to the antennae's should not need this. They view this as just swapping one antennae to another antenna. They are doing site maintenance and most cities allow them to do this. He requests that they grant their project and use common sense.

Sydow asked the applicant how long it takes with the planning process, how often do they have to do replacements and what is the length of time they have to make these changes? Digby added that one of the issues may be the deposit and of the escrow account. Boyle stated that 1. Code does allow for repair and maintenance 2. Allows for approval without a SUP and 3. This request is appropriate without the need for a SUP. By state law they need to be able to repair and maintain their facilities.

Staff indicated that the technical consultant made the determination. CMS is our consultant for cell towers. CMS reviews the plans according to our particular plan. This requires a Special Use Permit for any new location, relocation or modification. Lutterman stated that the decision goes to the City Council. It would be an amending of a SUP that is already there. It was very intentional to provide strict requirements so that it would improve the area. She added that this ordinance is not regulating the technology they use.

Rand would recommend objecting to this. A motion to recommend rejecting the CMS decision that would require a SUP for TMobile because we as a commission do not agree with the definition of modification that staff has put forth. The Planning Commission cannot change the law or amend the law. Sarvela stated that these modifications are reasonably identical. RAND/Covington moved to continue the debate. Guggenbuehl asked about the parts and if they are reasonably identical which may or may not be discernable. Vigen stated that when we talk modification, it is a replacement that is not visibly different.

MOTION/Second: Rand/Covington to **Approve** the Appeal to Planning Commission of Land Use Supervisor Decision of 50-20.4 Industrial Uses.
Vote: 4-5 **FAILED** (Banks, Digby, Guggenbuehl, Sarvela, Sydow)

MOTION/Second: Guggenbuehl/Sydow to **Uphold** the Land Use Supervisor Decision of 50-20.4 Industrial Uses.
Vote: 5-4 **PASSED** (Covington, Holappa, Rand, Vigen)

B. FN 11-054 – Expansion Project at Spirit Mountain for Zip Line, Miniature Golf Course, Tubing Run, and Parking Lot Expansion. SR

Staff: This item requires park, planning and City Council approval prior to any changes in the facilities. They are planning on adding to this area a zip line, miniature golf course, tubing hill run and a proposed parking lot. The intent is that they have all these in one area minimizing impact on the natural vegetation. The Parks and Recreation Board voted for approval and so did their Board. We recommended approval with one condition which is to amend the parking lot to reduce it to 61 parking spaces.

Mattson stated that the mini golf course is very unique. The footprint is 120 feet end to end. It is handicapped accessible. This will be built with recyclable products. The Zip line is also a unique product and it will be a remarkable ride as it will also return you to the top and over trees in places. There is a lot of business in the summer months with different venues. The tubing run is also a popular ride and they did find a good area that would work.

Holappa asked if the tubing run requires a structure and the Mattson stated that there will be some grading required and expanding the existing grading. Rand asked about the parking spaces and applicant stated that the site would accommodate 61 spaces. They looked at the maximum that they could accommodate and with the additional overflow parking it will be important to them. Petkac added that she had looked at other communities that had similar activities and the standards that Steven had researched are the parking standards that they have. Sydow asked about the pedestrian walkways and how to get to the rides. There is a pathway for pedestrians. They want to make sure to have adequate access. They are hopefully going to have a cross walk installed. Steven would require one condition that the proposed overflow parking lot be amended to conform with the UDC requirements and be reduced to no more than 61 parking places.

There is a plan to create a series of three different trails as well as a campground, but the next phase will be a chalet on Grand Avenue.

MOTION/Second: Vigen/Rand to **Approve** the 700' zip line, nine-hole miniature golf course, snow tubing park, and overflow parking lot to the City Council **with the following condition:** That the proposed overflow parking lot be amended to conform with UDC requirements (including, but not limited to interior landscaping), and be reduced to no more than 61 parking spaces.

Vote: Unanimous (9-0)

C. **FN 11-053** – Classification of State Tax Forfeited Lands (42 Parcels).

Robertson stated that they met with the Tax Forfeited Land Subcommittee with Commissioners Covington, Sydow and Digby. They reviewed the classification and reclassification and identified the appropriate land uses. They had 6 parcels under reclassification and 42 under classification. Of all these 42 parcels the task force recommended only one parcel be held over. It is near Miller Trunk Highway. It is significant that this is a wetland and holds a lot of water and has a function for that creek. Vigen stated that this is covered by a permanent conservation easement. Robertson said that this is something to discuss to hold over from the County sale.

MOTION/Second: Sydow/Vigen to **Approve** the Classification of State Tax Forfeited Lands (42 Parcels) withholding one parcel for conservation easement.

VOTE: Unanimous (9-0)

D. **FN 11-052** – Reclassification of State Tax Forfeited Lands (6 Parcels).

Staff: This property is by Skyline and a trail. This may be a site that we want to preserve because of the public trail. Petkac asked if we could have a re-convey? Robertson stated that the director thought this would be a good use but with the current standards we decided to put it aside for a 6 month period to see if we would want to purchase it. Robertson stated the parcel is on city land and there is access to it. There is a platted street and vacated alley. It is on West Skyline by Riverside.

MOTION/Second: Sydow/Sarvela to **Approve** the Reclassification of State Tax Forfeited Lands (6 Parcels) withholding one parcel (Skyline).

VOTE: Unanimous (9-0)

IX. Other Business

Digby wanted to remind everyone about a Brown Bag on May 20th. Petkac stated that staff has been reviewing the UDC and looking at some revisions. Because these are text amendments it requires a Legal notice and review and a public hearing before the Planning Commission. We would like to have a brown bag before this. On Thursday, June 2nd there will be a public meeting on the UDC text Amendments at 5 p.m. The brown bag will be on June 17th at noon. We are proposing a Special meeting on June 21st just to discuss the UDC. It is at the discretion of the President to call a special meeting.

Vigen asked about the Minnesota Session Law change. Lutterman stated they are both pretty much the same, it was reversed by legislative action. Property owners can come back and reapply.

X. Adjournment

Respectfully,



Cindy Petkac, AICP
Planning Manager

CP:eu