

City of Duluth
Planning Commission
September 23, 2014 Special Meeting Minutes
City Council Chambers - Duluth City Hall

I. Call to Order

President David Sarvela called to order the special meeting of the City planning commission at 5:00 pm on Tuesday, September 23, 2014, in City Hall Council Chambers.

Roll Call

Attending: Drew Digby, Terry Guggenbuehl, Garner Moffat, Tim Meyer, David Sarvela, Luke Sydow and Zandra Zwiebel

Absent: Patricia Mullins (Excused) Marc Beeman

Staff Present: Keith Hamre, Steven Robertson, Jenn Reed Moses, Alison Lutterman, Chuck Froseth and Cindy Stafford

II. Unfinished Business

MOTION/Second: Guggenbuehl/Meyer bring back item PL 14-121 Special Use Permit for new 75 Foot Tall Monopole Cell Tower at 1805 East Skyline Parkway off the table.

VOTE: (6-0, Sydow abstained)

- A. PL 14-121 Special Use Permit for new 75 Foot Tall Monopole Cell Tower at 1805 East Skyline Parkway (Chester Creek Park) by Sprint PCS (Public Hearing Held on September 9, 2014)

Staff: Keith Hamre, Director of Planning and Construction Service, addresses the commission and gives a brief overview. After the public hearing of September 9, 2014, the Planning Commission tabled the item for further consideration. Commissioners requested more information on the opinion of the parks commission on the location of the tower and how it would affect the operations of the park. Hamre reiterates the commissioners' role as it pertains to the special use permit (SUP). The applicant is required to meet the standards established in the UDC and unless the standards aren't met, the commission should be approving the SUP. A standard of the SUP is not radio frequency (RF) emissions, which is regulated by the Federal Communications Commission (FCC). The applicant is in compliance with federal regulations. If the commissioners reject the SUP on the basis of RF emissions, the city would be susceptible to litigation. He would direct the commissioners to focus on standards and conditions of the SUP including screening, location, and buffers around landscaping. The parks commission has supplied the commissioners with a written report, and Ed Hall the Chair of the Parks Commission is in attendance and would like to address the commissioners.

Ed Hall – Chair of the Parks and Recreation Commission addresses the Planning Commission and gives a short report. At their September 10, 2014 regular meeting, the Parks Commission voted to support the proposed cell tower at the existing site, which is located at the former ski jump (Big Chester) site. Because of the past and current contracts between the city and Sprint, the Parks Commission did not consider a location outside of park boundaries. The Parks Commission had recommended the tower be visually blended into the natural environment. Drew Digby questioned if there was a broader policy discussion about utilities and what non-park equipment should be in city

parks. Hall states their consideration was specific to this particular situation. A broader discussion could be held in the future, but is not currently on the agenda. Hall notes there is a public meeting to discuss a draft of a new master plan on Chester Park on September 30, 2014 at 6:00 p.m. at Myers-Wilkins Elementary School's media center.

Tim Meyer asks Hall how he personally feels about cell tower in the park. Hall states the Parks Commission made an appropriate decision and he feels this personally as well as officially.

Hamre refers the Commissioners to the information they have received which includes the landscaping and screening plan, the site plan, and photos from city staff which visually display the future structure. He notes the examples of what a mono-pine would look like. Zandra Zwiebel reiterates the Commissioners can decide if the tower should look like a tree. Hamre states yes, if it is placed as a condition to the SUP by the Commissioners. Meyer asked if a location was considered outside of the park, or on the boundary of the park with additional height added which could possibly be granted by a variance. Hamre stated those possibilities were reviewed by the Communications Committee, but land ownership questions arose as they moved closer to the perimeter of the park which prohibited the tower. This led them to the existing location as well as the previously proposed new site adjacent to the ski hill.

Meyer questioned what revenue will be realized by the city from the cell tower. Karla Culhane, City of Duluth MIS Division, responded that she oversees the lease agreement between Sprint and the city. She stated the city's revenue previously was \$10,000 annually. The new lease is approximately \$45,000 annually with a 3% inflation factor for the ten year contract. No other carriers are interested at this time. Meyer asks about potential revenue. Culhane notes it can't be determined until a specific carrier is interested. Hamre reported a consultant was hired by the city to determine the maximum revenue based on current market value. This consultant will also consider the maximum revenue potential for other city cellular infrastructures.

Applicant: N/A

Public: N/A (Public hearing was held on September 9, 2014)

Commissioners: Garner Moffat appreciates the feedback from the Parks Commission and the landscaping plan. Zwiebel was not happy with the previously proposed new location next to the chair lift. She mentions "grandfathering in" existing towers, but revisiting the topic in regards to newly installed towers being restricted in parks in the future. She is in support of camouflaging the pole to look like a tree if it is done in a realistic way. She notes the new photo examples look much better.

Chair Sarvela recommends adding the additional landscaping screening plan to the motion language. Digby is undecided as he would have liked more input before it was brought before the Commission. Digby recommends adding a statement about not setting a precedent for any future cell towers in parks. Also noting some mono-pines are very artificial looking. He is unsure if a mono-pine would be better than just a pole. He urges his fellow commissioners to sway him to a correct decision. Terry Guggenbuehl cannot support the tower from a land-use planning standpoint. The Commissioners have to look at recreational uses in city parks and does not feel a cell tower is appropriate at this site. If they were starting with a clean slate (it wasn't already in existence at the site) there would be no way it would be approved. There is nothing recreational about a

cell tower. Meyer states he has been vocal in his opposition, but he appreciates Sprint's efforts to improve their coverage. He agrees with Hamre that it is allowed by code, but feels it is a bad standard. He would like to see other location options outside of the park with a possible height variance approval. He is opposed.

Chair Sarvela sees this as a utility. He notes the existence of a high voltage power line which runs through the Enger Park golf course. Digby asks staff to clarify the zoning and the SUP criteria in regards to how it is consistent with the comprehensive land use plan. Hamre reported the park is zoned R-1, and cell towers are allowed with a special use permit. The land use is recreation. The policy for the siting of cell towers is public property first, which does include parkland. If Commissioners would like the policy to be re-discussed, it could be considered on a future agenda as a UDC text amendment to revisit with the Parks Commission. As it stands now, the criteria allows for the tower.

Robertson notes the priority list for telecommunication facilities in the UDC, and added that Planning Staff believe that this replacement project meets the siting requirements. He added that when the city changed their sign code in 2012, it passed a 6 month moratorium for new pole signs. The city would not accept new pole sign applications, but reviewed all the sign applications they had currently received up to that moment. He added that city council passed a moratorium and change the zoning code and the siting requirements, but the City has an obligation to review all current applications, such as this one, with the rules that were on the books when the application was submitted.

Hamre is hearing from commissioners they may think "city property" is too broad. But regardless, the commissioners need to base their decision in accordance to the rules of when the application was submitted. Zwiebel questioned the applicant on what the mono-pine camouflaging would specifically look like. The applicant states they can modify it to the Commissioners' liking.

MOTION/Second: Moffat/Zwiebel approved as per staff and Parks Commission's recommendation to construct the tower at the old Chester Park ski jump with the inclusion of the proposed landscape/screening plan with the addition of a stealth mono-pine and the applicant comply to post-construction testing do verify compliance with FCC requirements.

VOTE: (3-3, Guggenbuehl, Digby, Meyer opposed - Sydow abstained)

Hamre asked the Commissioners who voted in opposition to specify which standard the applicant did not meet. Digby notes UDC section 50-37 – criteria for special use permits. He doesn't think the application is consistent with the Comprehensive Land Use Plan. Future land use for parks doesn't include cell tower and he feels the rules conflict. It does not comply with the SUP criteria in regards to the comprehensive land use plan.

Alison Lutterman, city assistant attorney, comments under Minnesota land use law various appellate court decisions have ruled that when there is a conflict between the comprehensive land use plan and the requirements under the zoning code the zoning code prevails. Lutterman adds that wireless telecommunications requirements are part of the UDC under the use-specific standards Section 50-20.4 E. Moffat clarifies if a cell tower would be considered a utility and if that would be the associated use. Lutterman

responded the correct term is a telecommunication facility because that term complies with federal regulations commenting further that the Telecommunications Act of 1996 preempts state and local government regulations.

MOTION/Second: Meyer/Guggenbuehl Tabled until October 14, 2014 meeting.

VOTE: (5-1, Zwiebel opposed- Sydow abstained)

III. Public Hearings

- A. PL 14-060 MU-I Plan Review for Backup Generator at 2nd St and 10th Ave E by St. Luke's Hospital

Staff: Jenn Moses introduces the proposal to build a 42' x 84' enclosure on a concrete slab that would have one generator, with the option to add a second generator in the future. The lot is currently used as a parking lot. They originally proposed an enclosed building, but ran into cost restraints. They have amended their design. Staff recommends approval with the conditions listed in the staff report and noted that based on applicant's presentation, a condition regarding noise attenuation may be appropriate as well.

Applicant: Bill Scalzo of Scalzo Architects addressed the Commission by giving a brief overview. Digby asked the applicant if they plan on meeting MPCA (Minnesota Pollution Control Agency) noise standards. Applicant states this is a preliminary report and they are close, but will meet all standards. Luke Sydow confirms both generators will be in the same site. Applicant states yes. Moffat liked the previous design which was completely enclosed. Is there anything to do to make it look like a building? Scalzo answers that per building code this is a fence. They are trying to replicate what was done across the street and are using the same materials. The site will be adjacent to the future ramp.

Public: N/A

Commissioners: Digby asks staff is there should be language added to address sound levels. Moses is in agreement.

MOTION/Second: Digby/Meyer approved as per staff's recommendation with the condition added to confirm it meets MPCA noise standards.

VOTE: (6-1, Moffat opposed)

- B. PL 14-133 Special Use Permit for Credit Union at 4121 Grand Avenue by Superior Choice Credit Union

Staff: Steven Robertson introduces the applicant's request for a special use permit. The applicant is proposing to demolish the existing structures (restaurant and home) and construct a new credit union on the same general footprint. A bank/credit union is a special use in the MU-N district. They are proposing two drive-thru lanes and one ATM lane along with parking. The landscaping plan is included in the Commissioners packet. Staff recommends approval with the conditions listed in the staff report.

Applicant: Henry Chessney addresses the commission and thanks them for their time and consideration.

Public: Dan Williams – owner of 4127 Grand Avenue addresses the Commission and is in support. Gloria Waters - 4115 Grand Avenue is adjacent to the project. She has lived in her home for 40 years and has concerns, but appreciates the 15 foot buffer with landscaping. She would appreciate a wood fence included in the buffer. Her concerns include: lights, exhaust, and car doors slamming.

Commissioners: Meyer asks staff what the buffer requirement includes. Robertson states the UDC standard is 15 feet buffer and vegetation, or a fence noting the Commissioners could add additional conditions, including a fence. Lutterman reiterates this is a special use permit and agrees fencing and landscaping specifics can be made as a condition. The applicant thinks a fence is an eyesore.

Digby agrees the landscaping plan presented would look better in the long run. Sydow questions the maintenance of the fence and notes the landscaping upkeep. How will it be maintained? Will there be an irrigation system? Applicant stated yes and the landscaping will be professionally maintained. Guggenbuehl asked the applicant or Sydow to explain the vegetative plantings. If deciduous, will it lose foliage in the winter? Sydow responded they are deciduous, but they are quite dense. Moffat verifies his language and notes it doesn't specify a fence. Lutterman notes the UDC Maintenance and Operating Standards code 50-34 states the fence must be maintained or vegetation is replaced if needed. If it isn't maintained, a corrective zoning action can be taken.

MOTION/Second: Moffat/Guggenbuehl approved as per staff's recommendation and the addition of an opaque wall berm fence or a dense vegetative screen of at least six feet.

VOTE: (7-0)

- C. PL 14-134 Special Use Permit for Mini-Storage Facility in RR-1 Zone at 4514 Rice Lake Road by Steve Paulson

Staff: Steven Robertson introduced the request for a special use permit to expand the current mini-storage facility by constructing a new structure. The new structure will be approximately 21,000 square feet and used primarily for storage, with some space for the operations office. Staff recommends approval with the conditions listed in the staff report.

Applicant: Stevie Paulson addresses the commission and asks if there are any questions. Zwiebel asks about the property lines. Robertson notes GIS may be wrong and staff is recommending a survey. Applicant states they did have a survey in 2001. The applicant will comply with a survey. Digby refers to the photos and notes the truck rental. Is this an allowed use? Robertson questions use, but it may be grand-fathered in. Robertson, we are just focusing on this mini-storage facility, but at any rate this SUP would not expand any truck rental use, just the storage as requested in the application. Guggenbuehl questioned landscaping requirements. The applicant noted snow plowing concerns, and wanted to make sure that new trees wouldn't be removed or harmed by the snow clearing process. Lutterman stated the SUP can include conditions of landscaping and snow storage. Froseth asks the applicant if he got his email. Applicant stated yes the building has to be pulled back from Rice Lake Road.

Public: N/A

Commissioners: Zwiebel asks if they should address snow storage and the vegetative plan. Per Sydow it will be part of the plan.

MOTION/Second: Digby/Meyer approved as per staff's recommendation.

VOTE: (7-0)

- D. PL 14-117 UDC Text Amendments (Public Hearing Held on September 9, 2014)

Staff: Steven Robertson introduces the proposed UDC text amendments. Staff recommends approval.

Applicant: N/A

Public: Gentlemen from the audience (did not state name) asks about the parking requirements as they pertain to multi-family dwellings. Is it specific to a particular multi-family dwelling? Robertson states this refers to multi-family apartment dwellings, but not two family dwellings or townhomes as they are not considered multi-family in the zoning code use table. Robertson reported the code does not have parking maximums for single family, two-family and townhomes, but apartments do have a parking maximum and increasing the parking minimum would help with future multi-family housing projects.

Commissioners: N/A

-Section 50-18 Related to Stormwater Controls

MOTION/Second: Guggenbuehl/Moffat table stormwater controls until the next meeting.

VOTE: (7-0)

-Section 50-14 Related to Setbacks

-Sections 50-24 and 50-47 Related to Required Off-Street Parking and Variances,

-Section 50-27 Related to Signs, and

-Section 50-41 Related to Definitions

MOTION/Second: Guggenbuehl/Meyer recommend approval as per staff's recommendations.

VOTE: (7-0)

IV. Other Business

- A. PL 14-099 Special Use Permit for Townhouses at Mississippi and Lyons Street by Green Capital LLC (Public Hearing Held on August 12, 2014). Item Will Be Discussed at the Monday, November 10, 2014, Planning Commission Meeting.
- B. PL 14-101 Quick Plat at Mississippi and Lyons Street by Green Capital LLC (Public Hearing Held on August 12, 2014). Item Will Be Discussed at the Monday, November 10, 2014, Planning Commission Meeting.

Hamre stated new information can be submitted to staff by October 29th and then the information can be provided to the community. Chair Sarvela asks if they are planning on having any additional community meetings. Hamre, they have made not any indication, but he encourages them to do so. There has been an extension granted until mid-December.

- C. Note, November Regular Planning Commission Meeting Moved to Monday, November 10th at 5:00 PM in Room 303 Due To The Veterans' Day Holiday

Hamre thanks commissioners for tabling the stormwater controls UDC text amendment. The city wants to do an analysis of how it effects development in the community. Developers have noted the challenge to developing in Duluth. We don't want to be in a competitive disadvantage with surrounding communities.

Commissioners will be receiving an email invite for November 3, 2014 10 a.m. with location to be determined for a two hour workshop on Navigating Your New Community's Competitive Future. Staff will be invited to attend along with groups involved with development in the community including, HRA, DEDA, City Council and the Planning Commission. Five developers will be in attendance. Sydow asks about the developers; are they local, or from out of town? Hamre states two are originally from Duluth, and the rest are from the Twin Cities. We need to attract developers to want to invest here. Moffat would like to attend, but notes the fine balance and does not want to be too lenient either. Hamre wants to make sure we have excellent development.

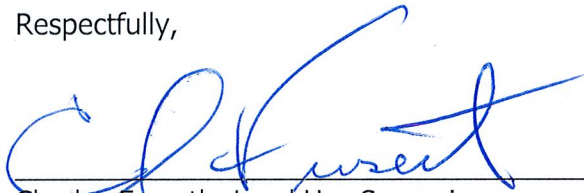
Hamre notes the cell tower agenda item and asks if commissioners would consider revisiting the item and even voting it down. Chair Sarvela is not comfortable discussing a tabled issue and noting the interested parties have left. Hamre would like commissioners to think long and hard about a "no" decision. Commissioners need to be diligent and clear as to why and which standard they are not meeting. He states Lutterman has made it clear that the UDC trumps the comprehensive plan. Hamre emphasized a decision needs to be made.

Digby notes the higher education small area plan and the proposed Kwik Trip on 4th Street. He recommends a brown bag lunch.

D. Adjournment

Meeting adjourned at 6:50 p.m.

Respectfully,



Charles Froseth, Land Use Supervisor