



City of Duluth
Planning Division

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City of Duluth
Planning Commission
Minutes of Tuesday, March 8, 2011
City Council Chambers, City Hall

I. President Digby has called a meeting of the City Planning Commission for 5 p.m., March 8, 2011 in the City Council Chambers.

II. Roll Call:

Members Present: Mike Akervik, Henry Banks, Drew Digby, Terry Guggenbuehl, Frank Holappa, Heather Rand, David Sarvela and John Vigen

Members Excused: Mindy Appold and Rebecca Covington

Staff Present: John Judd, Alison Lutterman, Jenn Reed Moses, Cindy Petkac, Steven Robertson and Edna Ulrich

MOTION/Second: Banks/Guggenbuehl to Move New Business to the Top of the Agenda.

Vote: Unanimous 8-0

VIII. New Business

A. Presentation on 6th Ave East Schematic Re-Design Study by the City of Duluth Community Development.

Chuck Froseth presented the 6th Avenue Plan. This study is through the Community Development Office for the Community Block Program. They had formed a committee consisting of residents in this area. They are looking at environmental stewardship, increasing the green space, storm water runoff, mobility issues as well as trying to increase a complete street program encouraging bike riding. There was a lot of public input from citizens. They had a lot good input at the Hillside fest as well as Connect the Dots with more comments and information on what the issues are. The problem is the traffic. They hired a firm with Kim Sannes and came up with a few ideas. They are also trying to encourage the use of boulevards for some green space. This plan is conceptual and they are flexible on their plans and getting input. They want to start public interest and ideas. Digby asked Petkac why this is before the Commission and Petkac stated that we do not have a transportation commission. The City Council has approved a complete streets policy. In the future we may be bringing transportation projects to the commission. She has drafted a Resolution of Support for this. They will ask for a resolution in supporting the recommendations of the committee.

MOTION/Second: Vigen/Holappa to **Approve** a Resolution of Support for the 6th Avenue East Schematic Re-Design Study by the City of Duluth Community Development.

Vote: Unanimous 8-0

MOTION/Second: Akervik/Rand to **Move** Old Business next on the Agenda.

Vote: Unanimous 8-0

VI. Old Business

A. FN 11-012 – Shoreland Variance for 1000 Minnesota Ave. for Lakehead Boat Basin Inc.

Robertson stated that there was information from last fall for this project which shows better detail of the floor plan and structure. The Planning Commission wanted more information on what was proposed and if the applicant had a hardship by our ordinance definition. There is a hardship standard in the UDC which states if it cannot be put to a reasonable use under existing regulations and a landowner's use of the property not caused by the landowner would not alone constitute a hardship. Staff states that there is not enough information on a hardship and recommends the 50' setback for impervious and structure setback. Digby asked about the total rooms and Robertson stated that there are about 72 rooms. Digby asked about the parking requirement and Petkac stated that based on the 72 hotel rooms a rough estimate would be 80 to 100 parking spaces. Digby asked if the applicant wished to speak. Lutterman added that the applicant is also asking for a 9' setback instead of the 50' setback.

Bill Burns - Applicant. They originally wanted to use the foundation and footprint as a grandfathered location and they maintain that Lutterman's legal opinion is her opinion and there may need to be a judicial opinion whether there is a grandfathered site here. There is now a difficult hardship standard. The hotel had a better case with the overall hardship of disturbing a previously undisturbed site when they have a perfectly good foundation of existing piers.

Holappa asked if the 50' setback is going to create a situation that they cannot use the remaining property for their business. Petkac stated that they still have reasonable use of their property as a marina. Vigen sees that there is 80' remaining after accounting for the 50' setback. They may not be able to put a very large building on the site but they will still be able have a reasonable use of the site. Petkac added that they would still need to meet the development standards on this property.

MOTION/Second: Guggenbuehl/Banks to **Deny** the 50' Variance Request for 1000 Minnesota Ave. by Lakehead Boat Basin Inc.

Vote: 7-1 (Holappa)

MOTION/Second: Sarvela/Rand to **Move** File 11-015 from the table.

Vote: Unanimous (8-0)

B. FN11-015 – Rezone from mixed Use-Business (MUB) to Residential-Traditional (R-1) the portion of Park Point, lying between Minnesota Ave. and the Lake Ave. alley, from 8th St. to 11th St. by the City of Duluth. CP

Digby asked Councilor Gardner about a potential moratorium or small area plan for this area and if these are things that the Council might be able to support this year. Gardner stated that regarding a moratorium, she would have spoken against this. She does not see that it is necessary to have a development moratorium in this area as long as there is a buffer between the neighborhood and the

commercial area. The Council did pass a resolution in Fall of 2010 to authorize a small area plan from the aerial bridge to 11th Street. Because of staffing issues it would not happen until 2012. The Council would like to approve the request. They want to abide with what the Planning Commissions wants, and they also want to provide the neighborhood with some protection.

Petkac had a meeting with CAO Dave Montgomery and he reiterates councilor Gardner's position that this is a priority of the City for a small area plan. The top priority is the Higher Education Small Area Plan. The Park Point Small area plan will be in 2012.

Bill Burns stated that he talked to Montgomery and he was still supporting a moratorium. Keep in mind what we are doing, rezoning someone's property – involuntarily, commercially zoned and commercially used to create a buffer because somebody might build something that somebody doesn't like. Petkac stated that this was the staff recommendation to rezone this property from MUB to R1 and this is a part of bringing it into compliance with our comprehensive plan. Petkac stated that Montgomery emphasized the need for a small area plan and he also recognized that the decision making authority is the Council and he is okay with the Commission making a recommendation to the Council. Akervik understands some of the rationale behind this. We already had the first reading of the Council and the other rezoning has been tabled. We acknowledged that there will be a small area plan, but we are to approve this when it is not happening until 2012.

Rand explained that there will be many re-zonings coming to them. She thinks that we need to be prepared when there is up-zoning and down-zoning. She is still supportive of the rezoning change. Holappa stated that if this is zoned R1 many of the property owners won't be able to use their properties. Many of their rights would be removed if this happens. The Comp plan states it has limitations. Land use descriptions are the preferred land uses. He doesn't think that we should be doing this. Lutterman stated that a land owner is not entitled to a permanent zone on the property. The law does not recognize permanent zoning. Zoning that is adopted in a comprehensive plan is presumed reasonable. Vigen participated in most of the meeting regarding the Comp Plan. Last month he was not sure if he was for or against this. This is a unique location. We now have a presentation for a hotel. He is hearing from letters from citizens and there is a theme of stopping a hotel being built on this site.

MOTION/Second: Rand/Guggenbuehl to **Recommend Approval** for the Rezone from Mixed Use-Business (MU-B) to Residential-Traditional (R-1) the portion of Park Point, lying between Minnesota Ave. and Lake Ave. alley, from 8th St to 11th St. by the City of Duluth.
Vote: (5-3) Akervik, Holappa, Vigen

III. Public Hearings

- A. FN 11-020 – Rezone from Mixed Use-Neighborhood (MU-N) to Form Districts, Mid-Rise Community Shopping (F3) & Mid-Rise Community Mix (F-4) that portion of West Duluth/Spirit Valley between North 53rd and 59th Avenues West and Roosevelt Street to the upper side of Grand Avenue.

John Judd presented the rezoning of West Duluth/Spirit Valley to a Form Based District. They had two previous meetings on this, one at St. Scholastica and one at Mr. D's at their business meeting. This is a proposal that came out of the Comprehensive Plan. Each of the districts allow a variety of uses. Moses pointed out that there are 9 districts in the city. They are looking at F-3 mid-rise community shopping and F-4 for mid-rise community mix. There is a variety of building types here. Moses pointed out that the range in height of the buildings and the rezoning from Mixed Use Neighborhoods to form districts.

Judd pointed out that we are more concerned about the look and style of buildings. They are doing presentations in West Duluth/Spirit Valley and at the Duluth City Hall.

Applicant: Chris Ridgewell. The basic concerns of residents were that they would need to remodel their buildings. Her biggest concern is that the public gets their right for input. They support this project. Digby asked about drive through restaurants will not be allowed in one of these districts and not the other. They will be allowed in where they are now. Sarvela asked about the F4 designation and asked why F4 not a F3? Judd concurs that this is more of the main street building rather than a cottage. Ridgewell stated that they will have more options as houses become vacant.

MOTION/Second: Rand/Sarvela to **Recommend Approval** for the Rezone from Mixed Use-Neighborhood (MU-N) to Form Districts, Mid Rise Community Shopping (F-3) & Mid-Rise Community Mix (F-4) that portion of West Duluth/Spirit Valley between North 53rd and 59th Avenues West and Roosevelt Street to the upper side of Grand Ave.

Vote: Unanimous 8-0

B: 11-021- Special Use Permit (60 Foot Telecommunications Tower) for AT&T and new Cingular Wireless at 3456 Haines Road.

Robertson showed the current site. The applicant wishes to make some minor modifications to the site. The city has updated it's telecommunication standards. This is zoned RR1. Robertson showed the proposed area and the screen fence. Staff has reviewed this with a telecommunications consultant. Staff recommends approval of the Special Use Permit with conditions based on the schematics.

Debbie and Dave Ortman – 3547 Haines Rd. Debbie showed the area of the current tower. The original wooden pole was built in 2000. This is directly in front of their house. They were not notified of it when it was built. They had made changes to the tower and it is much more visible. In addition, ATT has a car parked in this site last summer with an additional third antenna. There are now 3 poles there. They have been in violation of their current permit before getting a new one, and should not allow any more antennas. There are no privacy fences. She has talked to Deming and Montgomery. They stated that ATT had a stop work order due to violations. They ask to deny the SPU and that ATT comply with their previous permit. Digby asked the applicant to speak.

Applicant: James Reece – Singular Wireless. Reece explained that the trucks with the pole are temporary sites. This project is part of a larger project. ATT is trying to improve their coverage. They are in the process of the replacement of the wood poles as they are not sufficient. They requested a change from 42' to 57' and it would not exceed the height of the tower. Banks asked if they were in violation of their agreement. The applicant was not aware of the stop order and he will look into this. Vigen stated that once the permits are in place, will it be consolidated on one tower. The Applicant stated that there may be a second temporary site and is not certain if it would be with ATT. Vigen said that there was a concern regarding the screening of the site. The new right of way may be too close to some of the existing towers. Robertson said that the plans here are identical to those plans. Akervik looked at the path of the right of way and set back. His concern was where the path is and how big the path will be.

Ortman stated that they received a letter from St. Louis County that it would be delayed for quite some time. She added that Montgomery and Deming stated that they issued a stop work order because of violations. Lutterman explained that the stop work order is a side issue and before they can move forward they would need a SUP. This is a separate function and does not deal with the enforcement function. They had 90 days for a temporary structure. Lutterman does not believe that the SPU they are

operating on gives them the right to operate on a temporary truck. Applicant said that the upgrades they are looking to do is to swap out the antennae type. He believes it is because of the change of the height of the antennae's.

MOTION/Second: Akervik/Banks to **Approve** the Special Use Permit (60 foot telecommunications Tower) for AT&T and New Cingular Wireless at 3456 Haines Road **with the following conditions:** 1. That the project be constructed and maintained according to the documents titled "DLTHMNU2085, 40TH & Haines Road, AT&T UMTS Wood Pole Replacement" prepared by Black & Veatch, dated 10/5/10. 2. Applicant submit a copy of the structural analysis indicating capacity for the existing and future antennas, including a geotechnical report and calculations for the foundation capacity. 3. Applicant sign the site in accordance with UDC 50-20.4 E 4(r). 4. Applicant submit a bond as per UDC 50-20.4 E 4(t) 5. Applicant submit proof of general liability insurance as per UDC 50-20.4 E 4(u) 6. That the applicant secure all permits required by Federal, State, County or City laws and regulations (including, but not limited to, building permits). **Vote:** Unanimous 7-0

C. 11-022 – Special Use Permit for Building (Religious Assembly) Expansion for the Church of Latter Day Saints at 521 East Upham Road.

This is a Special Use permit and it is zoned R1. The applicant is wishing to expand their current structure by adding about 2000 sq. feet on property. Staff recommends approval of the Special Use Permit with Conditions. Any alterations will need to be approved by the Planning Manager. One condition we had was doing a little more with the screening which they have added to it with additional trees and shrubs. Staff Recommends approval built with the conditions and plans submitted.

Applicant: John Brandel - Kodet Architectural Group. Their client is experiencing rapid growth and the addition will help them grow with the community. They ask that you approve this request.

MOTION/Second: Akervik/Vigen to **Approve** the Special Use Permit for the expansion for the church of Latter Day Saints at 521 Upham Road **with the following conditions:** 1. The project be limited to, constructed, and maintained according to the documents drawn by Kodet Architectural Group received January 24, 2011. 2. Engineering and Building Official approvals of the sign permit, storm water permit and erosion controls pursuant to Sec. 50-37.13. 3. Applicant submit a revised landscape plan that meets the standard of "dense urban screen" as approved by the Planning Manager 4. Any other alterations to the approved plans that do not alter major elements of the plan may be approved by the Planning Manager without further Planning Commission; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50. **Vote:** Unanimous 7-0

D. FN 11-023 – UDC Map amendment (Remove Grey's Creek from Natural Resources Overlay) for ISD 709 at US Grant Elementary School.

Robertson has two items, the first is a UDC Map Amendment. This is the site for Grey's Creek. Applicant wished to put this underground. They have piped this by Friday and it is no longer an above ground active creek and they request to have Planning have it as a protective waterway and remove from our map. Staff recommends approval to the Council with no conditions.

Applicant: Kerry Leider. Digby asked if this was going to be a science area for the school? Leider stated that when all the issues required to complete the school, it was not feasible to be able to preserve the area. They also had concerns on liability.

MOTION/Second: Vigen/Akervik to **Recommend Approval** for the UDC Map Amendment (Ramsey Grey’s Creek from Natural Resources Overlay) for ISD 709 at US Grant Elementary School. **Vote:** Unanimous 7-0

E. FN 11-025 – Vacate Slope Easements for St. Luke’s Hospital at East 2nd Street between North 10th and 11th Avenues East.

Robertson stated that this application is related to St. Luke’s Hospital expansion. Upon further research, the client noticed the existence of Slope Easements on the property which they want eliminated. These were called temporary construction easements. We already vacated the alley and the proposed building is to the lot line. Staff recommends approval to the City Council for vacation of easement without conditions.

MOTION/Second: Sarvela/Guggenbuehl to **Recommend Approval** to Vacate Slope Easements for St. Luke’s Hospital at East 2nd Street between North 10th and 11th Avenues East without conditions. **Vote:** Unanimous 7-0

F. FN 10-068 – Special Use Permit (345 foot telecommunications Tower) for Cellcom at approximately 1500 East Orange Street.

This is the other cell tower facility which goes under the old code. This is at the Tower Hill site. The tower will not have guide wires. The applicant went through a wetland determination to gain access to the property. They are proposing current antenas and additional ones in the future. Recommendation to city council to approve the Special Use Permit based on the plans submitted, secure the required permits and the owner signs an “Agreement to Petition for Street Improvement” to allow the City to assess in the event of future public improvements.

Applicant: Jim Cheshire, Nsigttel Wireless, LLC d/b/a Cellcom. Cheshire stated that this is their first site and the most important. This is crucial in providing another option for the area. They began this process in 2008. This is on a 4.5 acre property to construct a self supporting tower.

Applicant: Bob, Director of Engineering. This is 101 year old company. The owners are committed to ownership and to the community. They look forward to the opportunities in this area.

MOTION/Second: Holappa/Akervik to Approve the Special Use Permit (345 foot telecommunications tower) for Cellcom at approximately 1500 East Orange Street **with the following conditions:** 1. That the project be constructed and maintained according to the document titled “Tower Hill BTAC 119-02-08 Construction Drawings 345 Self Support October 2010” prepared by Edge Consulting Engineers, received October 25, 2010. Any future co-location or modification of the facility will require compliance with all current applicable rules. 2. That the applicant secure all permits required by Federal, State, County or City laws and regulation (including, but not limited to, building permits 3. Applicant submit a copy of the structural analysis indicating capacity for the existing and future antennas, including a geotechnical report and calculations for the foundation capacity. 4. The owner signs an “Agreement to Petition for Street Improvement” to allow the City to assess in the event of future public improvements. **Vote:** Unanimous 7-0

IV. Consideration of Minutes: Akervik/Guggenbuehl to Approve the February 8 and February 24 Minutes. Unanimous.

V. Communications

Vigen expressed concern that Amazing Grace hadn't made the necessary changes to the outdoor café per their approved permit. Specifically, they need to change the locations of the two entrance ways. Vigen said the city needs to enforce them and would like to ask the Chair to make a formal complaint to the zoning coordinator and he would like to see it done before the summer season.

Vigen stated that he was not able to attend the annual meeting and that the by law amendments that were approved were sent to the commissioners three days before the meeting. The by law notice for the meeting should be 10 days before the meeting. Was there some kind of action to waive the time limit? Lutterman stated this is a point of order on an item that is on the agenda and that it would have to be brought up at that meeting.

President Digby stated that Cindy Petkac has received recognition for her work and has a new title of Planning Manager.

This is Akervik's last meeting. Akervik stated that he thinks that we should be some time constraints to get projects done and to let the applicants know of the time limits.

VII. Reports of Officers

A. Duluth Historic Preservation Commission

Digby stated that there is a new plan for the Tiffany Windows. The City has an RFP out to turn the windows over to The Historic Duluth Depot. There is also a plan to significantly re-do the windows and tuck pointing in the ARCH institute.

X. Adjournment. Meeting was adjourned by President Digby at 7:45.

Respectfully,



Cindy Petkac, AICP
Planning Manager

CP:eu