



City of Duluth  
Planning Division

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City of Duluth  
Planning Commission  
Minutes of Tuesday, January 11, 2011  
City Council Chambers, City Hall

I. President Rand has called a meeting of the City Planning Commission for 5 p.m., Tuesday, January 11, 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, Rebecca Covington.

Staff Present: Christina Berglund, Kyle Deming, John Judd, Alison Lutterman, Cindy Petkac, Steven Robertson and Edna Ulrich

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

**MOTION/Second:** Banks/Guggenbuehl to **Move** File 11-008 and 11-009 to the top of the Agenda. **Vote** Unanimous 8-0

A. **FN 11-008** – Use Certification for an appropriate use in an MC District at 513 E 3<sup>rd</sup> St. by the Benedictine Sisters Benevolent Association. **CB**

**Staff:** Applicant is requesting a use determination that oxygen storage tanks are a permitted use in the Medical Center District. Staff recommends approval and that this use is primarily related to or supportive of the hospital and clinic uses permitted in this zone district.

**MOTION/Second:** Guggenbeuhl/Vigen to **Approve** the Use Certification for an appropriate use in an MC District at 513 E 3<sup>rd</sup> St. by the Benedictine Sisters Benevolent Association. **Vote:** Unanimous 8-0

B. **FN 11-009** - Approval of restrictive covenant amendments at Coffee Creek Blvd by LCF Funding I. **CB**

**Staff:** Applicant is LCF Funding. They are requesting approval for minor amendments to their restrictive covenants. They are amending Sections V & VI which deal with building restrictions. The applicant proposes to amend Section V and VI to be Lot 7, Block 6 and Lot 8, Block 6, respectively, to be consistent with the final recorded plat. Staff recommends Approval.

**MOTION/Second:** Sarvela/Holappa to **Approve** the restrictive covenant amendments at Coffee Creek Blvd by LCF Fund I. **Vote:** Unanimous 8-0

A. **FN 11-001** – MC Plan Review for Replacement of existing bulk oxygen storage tanks at 513 E 3<sup>rd</sup> St. by the Benedictine Sisters Benevolent Association. **CB**

**Staff:** Berglund presented that the applicant is requesting an MC Plan Review for replacement of existing bulk oxygen storage tanks. The area will be screened. New sod will be installed with curbing around the area. Access for oxygen delivery will be through the alley. They will lose 6 parking spaces but will still continue to meet their off-street parking requirements. The oxygen tanks are 36 ft tall but due to the existing tall buildings viewsheds should not be impacted. Staff recommends approval according to the site plan submitted.

**Applicant:** Evan Aljoe, LHB and Ron Franzen, St. Luke's. Franzen stated that St. Luke's supports this project which is vital for St. Mary's to provide services to the community.

**MOTION/Second:** Holappa/Akervik to **Approve** the MC Plan Review for replacement of the existing bulk oxygen storage tanks at 513 E 3<sup>rd</sup> St. by the Benedictine Sisters Benevolent Association **with the following conditions:** 1. Curbing to define the sodded areas around the proposed storage tanks must be installed pursuant as required by Sec. 50-167(j) and 2. Any 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 8-0

B. **FN 11-002** – MU-I Plan Review to redesign and expand the parking lot and to approve the expanded areas for temporary parking at 1101-1131 E 1<sup>st</sup> St. by St. Luke's Hospital. **SR**

**Staff:** Steven stated that parking lots require a plan review. The applicant wishes to build a large 146 stall parking lot. There have been a few modifications since the packets went out. The applicant is providing landscaping as well as two islands. This meets and exceeds our 15% landscaping for parking lots. The applicant tried to maintain the existing mature trees. The applicant will come back for the land use supervisor's approval for minor modifications. They will have different fazes of this project and pending city approval, they wish to start working on a temporary situation and bring it to final standards within 1 to 1.5 years. Staff recommends approval.

Holappa asked about the requirement for fencing or is there anything more specific. Rand stated that the fencing design is not required.

**Applicant:** Ron Franzen, St. Luke's Hospital. This is vital to continue to move ahead and serve the public

**Public:** Rebecca Domagala, 231 E Superior St. What specifically will be done for those who are replaced with affordable housing?

Franzen stated that they went over and above in getting feedback and have not received any complaints from anyone. He stated that they had worked with the residents to make the transition and had not had any problems. Vigen looked at the parking lot exhibit B8 which depicts the surface of the parking lot. He asked what kind of absorption that is here now versus what it will be with the changes?

Brian Bocht, Bocht Engineering. This was designed to comply with the UDC and they were required to limit the runoff from the site which this plan will do. Vigen asked if the runoff is equal to what it is now and the Bach said that it will be.

Bach stated that there is a rather large section of impervious pavers and to meet the requirements they are required to limit the amount of runoff to be equal or less than the current runoff. They have drain tiles and it is caught in two separate catch basins. Digby asked about the entrance to the facility and Franzen stated that staff will be going into the building from the First street entrance and patient parking diverted to the alley.

Margerie Maghan, 9118 Gogebic Street. Will her tenants be able to continue parking in the alley? Robertson answered that it will still be open for right of way.

**MOTION/Second:** Akvervik/Holappa to **Approve** the MU-I Plan Review to redesign and expand the parking lot and to approve the expanded areas for temporary parking at 1101-1131 E 1<sup>st</sup> St. by St. Luke's Hospital **with the following conditions:** 1. The applicant submits a revised site plan showing compliance with Section 50.25.4 (C2) of the UDC ("internal landscape areas shall be dispersed on the site to break up the perception of large uninterrupted expanse of pavement") revised plan to be approved by the Land Use Supervisor. 2. The project to be limited to, constructed, and maintained in accordance with documents submitted. **Vote:** Unanimous 8-0

- C. **FN 11-003** – Rezone from I-W to MU-W to start construction of a previously approved hotel at 1000 Minnesota Ave. by Lakehead Boat Basin. **CB**

**Staff:** Berglund explained that Applicant is requesting that this property be rezoned from Industrial Waterfront (I-W) to Mixed Use Waterfront (MU-W). The Planning Commission has previously certified that a hotel is an appropriate use for this property. Future land use category for this area is Commercial Waterfront. The MU-W zone district is consistent with that future land use designation and staff is supportive of this rezoning request. Staff recommends approval.

**Applicant:** Bill Burns, Hanft Fride and Joel Johnson. They requested approval for a concept of the hotel in the old statute. This rezoning has been what the plan has always been. Rand asked to point out what kind of height standards there are for this building. Berglund stated that the maximum height for residential or mixed use is 120 feet and 45 feet for non-residential.

**Public:** Jeff Stermer, 931 S Lake Ave. The developers are in front of the Planning Commission. Rumor around park point is that the hotel would be 80 ft tall. This could be twice as tall as any other building. With the new UDC they can qualify it to go higher than what has been discussed. He sees it as a problem with the UDC. Change the maximum height of this hotel with something more reasonable. He would like to ask the developers what their intentions are for this building.

Jan Karon, 1112 S Lake Ave. The City of Duluth has an interesting dilemma. There are a number of issues. There is not just one hotel but they have already permitted another hotel in the adjacent marina. This doubles the issues. There would be more noise and light. Traffic studies probably have never been done with only one street in this area. This one street may have to accommodate more people from this and the other hotel in this area. If these two buildings go in here, there would be a horrible traffic problem. She recommends that the hotel puts in sidewalks so that they know not to go through someone's yard when going to the beach. All of these things have impacts and need to be addressed.

Andrew Slade, 1026 S Lake Ave. He thinks the rezoning is a good thing. He appreciates that the developers moved it away from their front door. This property is surrounded by residential neighborhoods and he is concerned about the potential for greater height that can be supported here. He hopes that as it moves forward to be aware of the height.

Bill Burns stated that he does see the need for economic development and to develop in the right areas.

Vigen asked about the height of the building. Berglund said that if you are within 200 feet of an R-1 district then the height is 35 feet and R-2 would be 50 feet. The MU-B would be the whole block, and the 200 feet would be 200 feet from the building footprint.

Johnson stated that the building footprint would be on the same footprint that the existing building now sits.

**MOTION/Second:** Akervik/Guggenbuehl to **Recommend Approval** to Rezone from I-W to MU-W to start construction of a previously approved hotel at 1000 Minnesota Ave by Lakehead Boat Basin.  
**Vote:** Unanimous 8-0

- D. **FN 11-005** – Rezone from R-2 to MU-I the Campus of the College of St. Scholastica at 1200 Kenwood Ave by the City of Duluth. **JJ**

**Staff:** Judd explained that the campus of St. Scholastica was an R3 and when the UDC became effective it became an R2. This is our first project into the zoning of areas of the City that are inconsistent with Comprehensive Future Land Use Plan. Judd presented the map of the area. This will include the rezoning the entire CSS campus. The Monastery has given their written support for this. 147 neighbor letters were sent out and also a public informational meeting was held at the Campus. They have not received any opposition to the rezoning and this rezoning is consistent with the Comprehensive Land Use Plan - Future Land Use Map. It also provides flexibility for the College and the Planning Commission with plan review over future development. Staff recommends approval of this rezoning.

**Applicant:** Tom Brekke, Dir. Facilities Services, College St. Scholastica and the Benedictine Monastery. They are fully supportive of the rezone and wants to move forward.

**MOTION/Second:** Vigen/Banks to **Recommend Approval** to Rezone from R-2 to MU-I the Campus of the College of St. Scholastica at 1200 Kenwood Ave by the City of Duluth.  
**Vote:** Unanimous 8-0

- E. **FN 11-006** – Rezone from I-W to MU-W the Bayfront District, lying west of Bayfront Festival Park east of the North American Salt property, from Railroad Street south to St. Louis Bay by The City of Duluth. **JJ**

**Staff:** Judd presented the Bayfront District rezoning proposal. Included with this was a letter from North American Salt in opposition if the rezoning would interfere with their continued or expanded operations. They do not want to lose more industrial property in this area. They can't put conditions on the area to be rezoning. However, the North American Salt Company property will not be rezoned. To satisfy North American Salt Company that they would be able to continue their operations, the City can provide them with a letter from our Zoning Coordinator stating their rights. Any new development locating on the rezoned area would need a planning review by the planning commission. There has been no other

opposition to this rezoning and this rezoning brings the area into conformance with the Comprehensive Future Land Use Plan.

Vigen asked about the assurances provided to North American Salt and how would this impact a future tenant coming into this adjacent area. Lutterman stated that the Cutler Magner (North American Salt) site is not being rezoned and could continue to operate because it is an allowable use under current zoning. The development of the area being rezoned would need to come before this Commission for review because it is a mixed-use district. Could the city be brought in a legal action by a future developer? Lutterman stated they would not be able to bring any action against the City because this is strictly a rezoning action to determine if the uses permitted in the proposed new zone are uses that are appropriate for this area. Staff recommends approval of this rezoning.

**Public:** Mark Laliberty, North American Salt. Thank you for reviewing their letter stating their concerns with rezoning. The company supports 30 families. They are looking for some assurances that the rezoning, which allows residential units, will not affect their industrial activities on the adjacent property. They look forward to expanding their operations. They want to insure their rights to continue to operate and also be involved in the process of what goes on next door. They are concerned about the compatibility of their operations with new businesses in this area. They are also concerned about traffic and parking. Petkac stated that the Bayfront District Small Area Plan took into account that this area would be a unique water environment and they looked at compatibility with the adjacent uses in this area and recommended the MU-W zone as the most appropriate.

John Rebrovich, United Steel workers. They agree with North American Salt's concerns especially possible adverse effects on employment at their site.

Joe Havasi, North American Salt: They look forward working with the City and adjacent property owners for the opportunity to ensure that there would be no compatibility issues with continuing or expanding their operations on their property.

President Rand had received a letter from North American Salt and will have staff bring the letter to Brian Hanson's (DEDA Executive Director) attention.

<p><b>MOTION/Second:</b> Digby/Akervik to <b>Recommend Approval</b> to Rezone from I-W to MU-W for the Bayfront District, lying west of Bayfront Festival Park east of the North American Salt property, from Railroad Street south to St. Louis Bay by the City of Duluth. <b>Vote:</b> Unanimous 8-0</p>
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- F. **FN 11-007** – MU-C Plan Review for additional access off of Palm Street at 308 East Central Entrance by Amigos Duluth LLC. **SR**

**Staff:** Robertson stated that the UDC requires a plan review on redevelopments in MUC. The applicant proposes an access off of east Palm Street. This parcel would normally be a right of way but it is owned by the city. Robertson showed the revised site map with the applicant adding a screening fence and bushes. Staff Recommends approval with the conditions attached.

**Applicant:** Phil Reese, Amigos Duluth LLC. They are looking for access to the back of property. They will have a semi coming in about once a week which will make it easier for deliveries.

**Public:** Gordon Grant. He is the owner of Dairy Queen and looking at the drawing, he is wondering if this is the Taco John property or the Goodyear property.



Grant stated that they are not associated with the Taco Johns.

**MOTION/Second:** Sarvela/Vigen to **Approve** the Plan Review for additional access off of Palm Street at 308 East Central Entrance by Amigos Duluth LLC **with the following conditions:** 1.The applicant submit a revised site drawing indicating the type and location of screening, to be approved by the Land Use Supervisor and 2.The project be limited to, constructed, and maintained in accordance with documents submitted. **Vote:** Unanimous 8-0

G. **FN 10-114** – UDC text amendments related to the Shoreland Standards. **CP**

**Staff:** This is a text amendment to the UDC amending several sections relating to the shoreland standards, including Table 50-18.1D-1. The planning office worked closely with the DNR to incorporate their new shoreland standards into the UDC. The city was concerned with the substantial structure setbacks of 200 feet for all buildings other than residential structures would limit redevelopment potential. The DNR agreed and subsequently approved the city’s flexibility request to reduce the setback standard below the bluff line when a site has 75% or greater impervious surface. Staff recommends that the Planning Commission recommend to City Council that Sections 50-18.1.D, 50-36.6 and 50-41.269 of the UDC be amended as provided in the staff report.

**MOTION/Second:** Holappa/Digby to **Recommend Approval** of the UDC text amendments related to the Shoreland Standards. **Vote:** Unanimous 8-0

- IV. Consideration of minutes – December 14, 2010. MOTION/Second Akervic/Guggenbuehl to approve the Minutes. Unanimous.
- V. Communications: Lutterman stated that the Duluth Women’s Club received a use variance from the city in the 1930’s. It is right to operate this club at this property. It was made clear with the women’s club what the parameters are of their use here. They understand what is allowed and obtained the permits and are complying with the city code. The City has no right to take away the rights of the Women’s club. Based on past work with this, they are complying with the zoning and liquor regulations.
- VI. Old Business
  - A. **FN 10-113** – MU-I plan review for oxygen and electrical facilities at the northwest corner of 10<sup>th</sup> Ave. E. and 2<sup>nd</sup> St, by St. Luke’s Hospital. **KD**

**MOTION/Second:** Sarvela/Digby to **Move** FN 10-113 off the Table. **Vote:** Unanimous 8-0

**Staff:** Deming stated that this was tabled from last month’s meeting due to needing more information on the required separation distances and their effect on the neighboring property owner as well investigation into whether or not the tank could be shorter or laid on its side. The NFPA 55 separation distances do apply to the neighboring structure. St. Luke’s has committed in writing to bringing their site into compliance with all applicable fire codes, including possibly relocating the oxygen facilities, should the adjoining property wish to use their property in a manner that would be affected by the separation distances in NFPA55. The City would also put a “flag” on the neighboring parcel so that the tank’s location is not missed on any future building permit reviews. Vigen stated that this has been tabled and

answers were not given. Butler stated that they done all that is necessary to comply with what they are requesting tonight.

**Applicant:** Ronald Franzen, St. Luke's Hospital. Appreciates the questions and the work the staff has done. They are looking to continue moving forward.

Ken Butler, Attorney for St. Luke's Hospital. Butler asked that the motion to approve contain language allowing St. Luke's Hospital to build a shorter tank. Vigen was disappointed that St. Luke's didn't contact the neighboring property owner and the day care center about possible impacts to their property and business. He is not opposed to the St. Luke's project. He wants St. Luke's to do their due diligence on this project.

Butler stated that St. Luke's did send letters to the area residents prior to petitioning to rezone the property and got no response from the property owner to the west. Additionally, City staff sent notices to neighbors with no responses.

Deming had communication from St. Luke's Hospital documenting multiple attempts to contact the neighbor, George Sherman, but had not received any response.

Lutterman stated that this is a plan review which requires notification of property owners within a certain distance and the owners had received due notice of the public hearing and also were advised of the nature of the request. Lutterman is confident that they had complied with the city code.

**MOTION/Second:** Holappa/Banks to **Approve** the MU-I plan review for oxygen and electrical facilities at the northwest corner of 10<sup>th</sup> Ave. E. and 2<sup>nd</sup> St, by St. Luke's Hospital **with the following conditions:**

1. The project be limited to, constructed, and maintained according to the documents submitted by DSGW Architects titles "St. Luke's Hospital Utilities Services Relocation," dated 12/10/2010, Sheets T.1, C1.0, C2.0, L1.0, A2.0, A3.0, E1.1
2. Land Use Supervisor approves adjustment of the 2<sup>nd</sup> street and 10<sup>th</sup> Avenue East frontage landscaping, per Sec. 50-25.2.J.
3. Building official approves variation in the screening height for tanks, as allowed by Sec. 50-26.4.D.
4. Building official approves the sign permit, per Sec. 50-27.13.
5. Engineering and Building official approves the storm water permit and erosion controls, per Sec. 50-37.13.
6. Any 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.
7. That the oxygen tanks be allowed to be shorter than what is shown on the plans.

**Vote:** 7-1 (Akervik)

B. **FN 10-111** – Vacate alley between East 1<sup>st</sup> St and East 2<sup>nd</sup> St, and North 10<sup>th</sup> Ave East and North 11<sup>th</sup> Ave East, by St. Luke's Hospital **SR**

**Motion/Second:** Digby/Akervik to **Move** FN 10-111 off the Table.

**Vote:** Unanimous 8-0

**Staff:** Robertson stated that this is a vacation request from St. Luke's. It was tabled from last month as engineering was not satisfied with the plans and easements. Robertson recommended approval with the condition that upon relocation of utilities impacted by the vacation be approved by city engineering and dedication of the access easement and all utility easements necessary. There may also be trenches that are needed for the utilities. Staff recommends approval.

**MOTION/Second:** Digby/Banks to **Approve** to vacate the alley between East 1<sup>st</sup> St and East 2<sup>nd</sup> St, and North 10<sup>th</sup> Ave East and North 11<sup>th</sup> Ave East, by St. Luke's Hospital **with the following condition:** That the petitioned alley be vacated conditioned upon the relocation of utilities impacted by the vacation in a manner approved by the City Engineer and dedication of the access easement and all utility easements necessary to the relocated utilities. **Vote:** Unanimous 8-0

VIII. New Business

IX. Other Business

February 24, 2011, will be the Annual Meeting of the Planning Commission. There will be an election of Officers at this meeting. Petkac stated that there are three Commissioners whose terms are expiring - Sarvela, Appold and Akervik. Sarvela and Akervik will come up with officers for consideration. We will still have the regular Planning Commission meeting on February 8.

X. Adjournment. MOTION/Second: Akervik/Guggenbuehl to adjourn. President Rand adjourned the meeting at 6:48.

Respectfully,



Cindy Petkac, AICP  
Land Use Supervisor  
CP:eu