



City of Duluth  
Planning Division

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

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

II. Roll Call:

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

Members Excused: None

Staff Present: Robert Asleson, Christina Berglund, John Judd, Cindy Petkac, Steven Robertson and Edna Ulrich

III. Public Hearings

A. **FN 11-010** – Final Plat approval for TKO Subdivision (Zoned MU-C) at the Odd Side of the 500 Block of West Central Entrance. **SR**

**Staff:** Robertson presented the Final Plat which we first saw in fall of 2009. This is on Central Entrance and currently a new hotel in here. The map shows the future land use as multi-use commercial and there is a floodway to be aware of. There are two items of note, wetlands and setback concerns. Applicant is aware of this and staff and members of the Commission had raised concerns with the access from the highway. Robertson stated that future land use would most likely use this drive. The second condition was not appropriate and Robertson asks to take that condition off. We have one condition that the Planning Commission to approve the Plat as drawn by the Alta Survey Company.

**Applicant:** Daniel Maddy for Mr. Taylor. They are trying to turn this lot into two lots. Any development on lot two would be subject to the new MUC zone district.

**MOTION/Second:** Vigen/Appold to **Approve with Conditions as Amended** for the Final Plat for TKP Subdivision (Zoned MU-C) at the Odd Side of the 500 Block of West Central Entrance **with the following condition:** The project be limited to, constructed, and maintained according to the documents drawn by ALTA Survey Company received December 15, 2010 titled "TKO Addition." **Vote:** Unanimous 10-0

B. **FN 11-011** – MU-I Plan Review of New Medical Office Building for St. Luke’s at the Even Side of the 1000 Block of East 2<sup>nd</sup> Street. **SR**

**Staff:** Robertson said that this project has been seen for an alley vacation, Oxygen Tank, and Parking lot and they are now looking at constructing a multi-use building. There is a sanitary sewer line which will be vacated for that building. We have a lot of new standards that requires a review. There are two conditions for this. The screening on the roof may be moved and the applicant may have some flexibility of a canopy (small one at 10 feet). The lots are adjacent to the current building. Staff reviewed this project and they have had several meetings on this. Staff has reviewed this with Engineering and Building Safety and they are meeting sustainability requirements. Robertson requested that they approve this with three conditions. 1.The project be limited to the documents submitted by Cogdell, Spencer, Erman; 2.Engineering and Building Safety approve the storm water permits and erosion control and 3. That any alterations of approved plans cannot alter the major elements of the plans.

**MOTION/Second:** Holappa/Sarvela to **Approve** the MU-I Plan Review of a New Medical Building for St. Luke’s at the Even Side of the 1000 Block of East 2<sup>nd</sup> Street **with the following conditions:** 1.The project be limited to, constructed, and maintained according to the documents submitted by Cogdell Spencer Erdman dated 12/21/10 Titled “St. Luke’s Medical Office Building and Parking Garage” 2. Engineering and Building Official approves the storm water permit and erosion controls pursuant to Sec. 50-37.13 and 3. Any alterations to the approved plans that do not alter major elements of the plan (such as the screening for roof mounted equipment and southeast entrance canopy) 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 10-0

**Applicant:** Ron Franzen, St. Lukes Hospital. They have worked very hard on this and fitting it into the new code.

C. **FN 11-012** – Shoreland Variance for Lakehead Boat Basin, Inc. at 1000 Minnesota Ave. **CB**

**Staff:** Berglund explained that the Lakehead Boat Basin’s request for rezoning to MU-W was recommended for approval by the Planning Commission at last month’s meeting. They are now here requesting a shoreland variance from the minimum building setback, which is 200’ to the existing setback at 9 feet. They are also asking to reduce the setback for impervious surfaces from 50 feet to 0 feet. City council had adopted an ordinance to put the setback to 50 feet and this will go into effect on February 27. The DNR has given us flexibility for the setback. There is an existing non-conforming property that is located in the shoreland impact zone. Looking at the maps it shows that the applicant can meet the 50’ setback for structures. Any future development must meet all city storm water provisions and no additional impervious surfaces may be established within the 50 foot minimum setback. Patty Fowler from the DNR stated that she needed more information in order to adequately identify and comment on the applicant’s hardship.

**Applicant:** Bill Burns - representing the developer. There have been many obstacles in the way. The hotel had plans to demolish the business and rebuild. This is an existing marina. They continue to try to work through the issues and they are optimistic that we will grant this variance. This is an existing marina and they continue to work through the multiple issues here. They have submitted their view that a variance is not required because the plan is use the footprint of the existing building to construct a new hotel, but the City Attorney’s office has opined that would constitute an expansion of a non-conforming

structure. The applicant wants to build on the existing piers to minimize the disruption of the property and placing the hotel away from the residents.

Petkac stated that the existing structure is a non-conforming building. The applicant is asking for a variance from the shoreland setback which is currently 200 feet. She added that the DNR recently approved the City's request to reduce the shoreland setback to 50 feet for properties located below the bluff line that were previously developed with 75% or greater impervious surface area. That text amendment to the UDC was recommended for approval by the Planning Commission and approved by the City Council last month. The new shoreland setback requirement goes into effect on February 27, 2011. Vigen asked if the city could further reduce the setback for this project since there are many different ways to handle stormwater runoff. Petkac stated that the DNR has allowed a reduced setback of 0 feet within the harbor area for port related activities.

**Public:** Brian Grover – 828 Lake Ave South. They have been here for 34 years and have had a daycare. Through all the years and all the additions to their property they have always adjusted to the code. They are in opposition to this as the perceived hardships were known by the owners prior to this. Lake Head Boat basis has been here long enough to know what the rules for changing a property are.

Andrew Slade - 1026 S Lake Ave. He supports the work that the Planning Commission has done on this. The purpose of the rezoning is the use of the property. He says it seems reasonable for the 50' set backs. He appreciates the hard work they have done and supports it.

Bob Farel – 905 Lake Ave S. By granting a variance for impervious surfaces you will only facilitate the increase of flooding. This will increase the run-off and the joint property owners will have consistent flooding in their properties. He would like this issue addressed. He does support the 50' Set Back.

Holappa asked the applicant if there is a possibility to create the footprint with the 50' setback and if there is a suitable site on the property to do this?

Burns stated that there is no other plan that they have that can be built on. It will be an unfortunate situation to not grant a variance. Rand said that she does not see what the plans are for this property are and Burns stated that they would have to go back to the Commission for the final plans. Digby asked Burns if this request is a matter of hardship or convenience. Burns said that under the code it was the only way to use the existing footprint. Vigen stated that at the last meeting they said the new hotel would be resting on the footprint of the existing building and if they had been working with the DNR they should have known that the 50' setback was the new standard. Burns said that he was involved in a meeting to make a determination if they could build up on an existing footprint. The 200' set back has been part of the shoreland standards and only recently had it put back to 50 feet. This is not an automatic setback, you would need to show that it can be built on.

Asleson's understanding is that the initial discussion resulted from the discussion that the building would be on the existing footprint and that they would not need a variance because of that. The footprint was expanded which changed the rules on this and why they needed a variance. Burns stated that there never was a plan to expand it and that Lutterman had stated that they could not build up on the existing structure. Holappa said that the 50' set back is the guideline that they would have to work with. Petkac added that we can approve the variance with a 50' setback. Rand added that we have the option to table this and have the developers come back with definitive plans.

**MOTION/Second:** Digby/Banks to **Table** the Shoreland Variance for Lakehead Boat Basin, Inc. at 1000 Minnesota Ave for the Planning Commission to get more information from the applicant.

**Vote:** Unanimous 10-0

D. ***FN 11-013*** – MU-I Plan Review of Science Building Addition for College of St. Scholastica at 1200 Kenwood Avenue. **CB**

**Staff:** Berglund presented the Mixed Use-Institutional plan review for St. Scholastica. They are proposing adding an addition to their science center. Staff has reviewed their plans and they have met all the development standards. Berglund received telephone correspondence from Dan Waterhouse who wants to go on record that he supports this project. Staff recommends approval.

**Applicant:** Tom Brekke – Director of Facilities. He agrees with the staff report and supports it.

Sarvela asked if they will they keep the parking in front of the Science Center and the applicant stated that they will have some temporary parking during construction.

**Public:** None.

**MOTION/Second:** Akervik/Guggenbuehl to **Approve** the MU-I Plan Review of the Science Building Addition for the College of St. Scholastica at 1200 Kenwood Avenue **with the following conditions:** 1. The project be limited to, constructed, and maintained according to the documents submitted by Ellerbe Becket dated 12/28/10 titled “The College of St. Scholastica Science Center Addition.” 2. Engineering and Building official approves the storm water permit and erosion controls pursuant to Sec. 50-37.13. 3. 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 (10-0)

E. ***FN 11-015*** – Rezone from Mixed Use-Business Park (MU-B) to Residential-Traditional (R-1) that portion of Park Point, lying between Minnesota Avenue and the Lake Avenue alley, from 8th St. to 11th St. by the City of Duluth. **JJ**

**Staff:** Judd stated that city’s efforts are to bring the zoning into compliance with the Comprehensive Land Use Plan. When the UDC went into effect, the area of Park Point that was zoned M-1 became Mixed Use-Business Park (MU-B). The Comprehensive Plan – Future Land Use Map designates the area Traditional Neighborhood. The UDC zone district that most closely aligns with that designation is Residential-Traditional (R-1). The rezoning of this area would create some non-conforming uses. However, state statute allows them to continue to exist under R-1 zoning, but those businesses would not be allowed to expand. Judd indicated that a public meeting on the proposed rezoning was held on January 27, which was attended by 23 people. We have received an additional 8 letters from neighbors, the majority of whom support the rezoning to R-1. We did have a comment from the City Attorney’s office regarding the creation of non-conforming uses. The conclusion is that as long as zoning decisions are reasonably related to the public health, safety and general welfare, they are valid even if they result in the creation of non-conforming uses.

David Montgomery – CAO, City of Duluth. The current zoning of this parcel of MU-B clearly is not appropriate. Administration would like the Planning Commission consider taking a broader view of this entire area. We would like to put forward a request to table this item to consider other alternatives as a transitional buffer, from MU-B to R-2 or R-1, and to take a broader look at what is going on. We suggest imposing a developmental moratorium to take another look at this area. Rand asked about the timeline and Montgomery stated that they would have it before the Council in March. Rand asked what this would be zoned and Montgomery stated that the moratorium would be for the area currently zoned MU-B. They

would not put the moratorium on the area currently recommended to be zoned Mixed Use-Waterfront. Digby said that without zoning the MU-B area to R-1, the height limit for the pending MU-W area would be much higher and he is not comfortable not knowing what the consequences would be. Montgomery stated that it is better to look at the area first and then determine how it may be rezoned.

Akervik stated that he has a problem with this moratorium. Would this stop what Mr. Burns is proposing now? Akervik asked Judd if this is the first property to be rezoned and Judd stated that it is the third. St. Scholastica was rezoned to Mixed Use-Institutional, the Bayfront District was the second and rezoned to MU-W, and this would be our third one. We will move onto mapping the form districts next. Montgomery said the issue would not be a long lasting moratorium. It will be contingent on looking at staff resources. We want to look at our resources and at the issues. We plan on having the Planning Commission involved in the process. We haven't sorted this out yet and but will have a specific timeline for this process. Petkac added that state statute limits a moratorium to one year.

Vigen stated that the stretch of the harbor is the only place that we have as a working harbor. Vigen thinks that administration is correct to look at it with a transitional perspective. It is only appropriate and fair to those who have businesses there.

Asleson: The moratorium would have certain time limitations and has to be for the purpose of resolving Planning issues.

**Public:** Jan Karon -1112 S Lake Ave. There are two elements of this rezoning. The development of the Comprehensive Plan was community-wide process. The results of the district and city wide meetings were working with consultants. It was the best judgment that Park Point should maintain its traditional qualities. This will not please everyone but this is the will of the community.

Jeff Stuermer – 931 S Lake Ave. His back property line is shared and the impact of the value and enjoyment of his home. Under Mixed-Use Business standards a 30 foot tall building could be built 10 feet off their property line. He disagrees that those who say park point residents resent all development. He states it is not true, only opposed to improper development.

Andrew Slade – 1026 S Lake Ave. He supports the rezoning of this area. This allows property owners to make use of their land. The businesses will also be able to continue operating. The general trend in Park

Point is much more residential than commercial. The City is providing for new business to operate here. Neighbors would be eager to cooperate. The neighborhood does want to rezone to residential.

Bill Burns - Applicant. He lives on Park Point and it is not hard to see that people who live next to the property would not like to have it be commercial. He was unaware of the Administration's proposal. It is a logical proposal to attempt to see if there is an accommodation that can work for everyone. The owner of a significant part of this property has objected for this property to become rezoned. The commercial property was there before there were residents.

Justin Medlin - 2239 Minnesota Ave and 1106 Minnesota Ave which his dad lives on. They have a business at 1028 Minnesota Avenue. This is one of the affected parcels. They have an interest in this property. Every neighborhood has residential and commercial areas. Zoning is created on how the land can be used. Let us not forget that there are many people who live on park point. They are not discussing the hotel, just changing the zoning from MU-B to R1. He is opposed to this.

Akervik stated that there is a timeline in place that the city has to actively pursue. Can Residential and Commercial properties coexist? He is concerned that a moratorium on any expansions on that land will have an impact. He thinks that we could table this and take another look at this area.

Vigen said that we took a blanket look at some of these areas and we need to re-examine what can be done here in allowing residential and businesses. Digby is not comfortable in tabling this unless they can be assured that it won't allow development on the adjacent property to be much bigger than they would like. Rand stated that if they want to table this rezoning request she would like it to have the residential buffer. We should move forward at the will of the people, or to go back to what we did in the last month's Agenda.

Vigen said that by taking a step back we should look if there are any more viable ways to move forward. We now have a guideline which is the UDC and if we have an opportunity to re-look at this area and see if we can do something better with this.

Asleson went over the process should the Planning Commission wish to re-visit the MU-W rezoning which is currently before the City Council. It may be re-visited at the next meeting if one of the commissioners who voted would move to re-consider. Petkac stated that it is going for a second reading with the council on February 14.

**MOTION:Second:** Digby/Rand to **Reconsider** Tabling the Rezone from Mixed Use-Business Park (MUB) to Residential Traditional (R-1) that portion of Park Point, lying between Minnesota Avenue alley, from 8<sup>th</sup> St. to 11<sup>th</sup> S. by the City of Duluth.

**Vote:** 3-7 **Failed** (Akervik, Appold, Covington, Guggenbuehl, Holappa, Sarvela, Vigen)

Vigen to recommend that file 11-015 be tabled and have a complete in-depth study on this area. Vigen to recommend that both of these properties be put in a moratorium. Rand asked where the dividing line is with Residential and Mixed Use.

**MOTION:Second:** Vigen/Holappa to **Table** the Rezone from Mixed Use-Business (MU-B) to Residential-Traditional (R-1) that portion of Park Point, lying between Minnesota Avenue alley, from 8<sup>th</sup> St. to 11<sup>th</sup> St. by the City of Duluth so that a complete in-depth study of the area can be completed.

**Vote:** 7-3 (Banks, Digby, Rand)

- IV. Consideration of minutes – MOTION/second Akervik/Appold to approve the minutes. Unanimous.
- V. Communications
- VI. Old Business

Judd said that the next item is rezoning for form based Spirit Valley. There will be a meeting at City Center West which will be followed up with an evening meeting on February 23<sup>rd</sup>.

- VII. Reports of Officers and Committees
  - A. Duluth Historic Preservation Commission

Digby stated that the HPC issued statements of supports the YWCA building and Historic Armory for nominations. This application was well done. There was also a discussion on how the UDC will have an effect on HPC issues.

VIII. New Business

IX. Other Business: This is Appold's last meeting. We thank her for her service. We have all appreciated her comments and benefited because of her service with us.

X. Adjournment. Meeting adjourned by President Rand at 7:06.

Respectfully,

A handwritten signature in black ink, appearing to read "C. Petkac", written over a horizontal line.

Cindy Petkac, AICP  
Planning Manager

CP:eu