



City of Duluth  
Planning Division

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City of Duluth  
Planning Commission  
Minutes of Tuesday, May 11, 2010  
Room 303, City Hall

**I. Call to Order:** President Akervik called the meeting of the Planning Commission to order at 5:00 p.m., **Tuesday, May 11, 2010**, in Room 303 of Duluth City Hall and explained the public hearing procedure to the audience.

**II. Roll Call**

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

Members Absent Excused: None

Staff Present: Kyle Deming, Terri Fitzgibbons, John Judd, Alison Lutterman, Cindy Petkac, Edna Ulrich

**III. Public Hearings**

**A. FN 10035** – Water Resource Management Ordinance Floodplain Special Use Permit for construction of a retaining wall related to the Polk Street pump station replacement and sanitary sewer overflow tank by WLSSD. (KD)

**Staff:** Deming and the Project Engineer agree that the floodway would not be impacted. They have received Certification from the Engineer. There were no comments from agencies. Moline Machinery Inc., property owner to the south, has concerns about the discharged pipe location. WLSSD has sought an easement from Moline for the discharge pipe, but they have been unable to arrive at an agreement. Staff recommends adding conditions to address this. Condition A is that they would acquire the necessary easement. Condition B is that they can relocate pipe if an easement cannot be secured.

**MOTION/Second:** Vigen/Rand to Approve with Conditions a Water Resource Management Ordinance Floodplain Special Use Permit for construction of a retaining wall related to the Polk Street pump station replacement and sanitary sewer overflow tank by WLSSD.

Vote 11-1 (Holappa Opposed)

- B. **FN 10034** - Water Resource Management Ordinance Shoreland Special Use Permit for construction of the Polk Street pump station replacement and sanitary sewer overflow tank by WLSSD. (KD)

**Staff:** Deming presented the report for a Special use Permit. Set back from water exceeds the required 50 ft.

**Discussion:** The proposal complies with Sec. 51-20 (b). and 51-29 (c) access Rd. 51-29 (e). Recommend Approve plans.

**Applicant:** The current pump station cannot keep up due to the I&I problem and they are requesting a replacement along with a sanitary sewer overflow tank. Needs to done by November, 2011 as required in the Consent Decree. WLSSD considered alternative locations, but the tank has to be at the location of the overflow. They will ensure that there will trees planted to beautify the property.

**Discussion:** Holappa had questioned about the pipe that is there now. Applicant states that it will not be an issue and it will not be seen.

**MOTION/Second:** Vigen/Rand to **Approve with Conditions** a Water Resource Management Ordinance Shoreland Special Use Permit for construction of the Polk Street pump station replacement and sanitary sewer overflow tank by WLSSD.

Vote 11-1 (Holappa Opposed)

- C. **FN 10001** - C-5 Plan Review for installation of a 49' tall wireless communications tower, ground equipment, and fence at 2520 Maple Grove Road by Steve Mangold representing AT&T Wireless. (KD)

**Staff:** Deming presented the staff report. Replacement of an existing wood pole and moving it away from the building. MN Power has concerns about equipment being located on top of an existing buried power line. AT&T and MN Power are working on an agreement to relocate the power line in a new easement. Staff recommends approval.

**Discussion:** Appold stated that there were 12 letters out to neighbors and no responses.

**Applicant:** Steve Mangold represents ATT Wireless stated that this project is due to new technology that needs a more sturdy pole.

**Discussion:** Vigen asked if they can add two to three more decks on this pole - Mangold stated that it would be possible for another carrier to add to it but it would probably be too low.

**MOTION/Second:** Akervik/Rand to **Recommend Approval with Conditions** of the C-5 Plan for installation of a 49' tall wireless communications tower, ground equipment, and fence at 2520 Maple Grove Road.

Vote: Unanimous (12/0)

- D. **FN 10032** - Water Resource Management Ordinance Special Use Permit for placement of 3,550 cubic yards of fill in the Shoreland of the Saint Louis River at 38<sup>th</sup> Avenue West and Oneota Street by Ulland Brothers Inc. (KD)

**Staff:** Deming stated that this complies with the Shoreland ordinance. The south and west sides of the property provides buffering and site plan shows proper erosion control methods and soil stabilization. Received a letter from Hallett Dock Company stating that they had no issues with this being approved.

**MOTION/Second:** Vigen/Appold to **Approve with Conditions** of the Water Resource Management Ordinance Special Use Permit for placement of 3,550 cubic yards of fill in the Flood Fringe of the Saint Louis River at 38<sup>th</sup> Avenue West and Oneota Street.

Vote: Unanimous (12/0)

- E. **FN 10045** - Water Resource Management Ordinance Special Use Permit for placement of 3,550 cubic yards of fill in the Flood Fringe of the Saint Louis River at 38<sup>th</sup> Avenue West and Oneota Street by Ulland Brothers Inc. (KD)

**Staff:** Deming presented the staff report which includes a letter from the engineer stated that it would not significantly change the flood plains. Fill delivered to site will be properly compacted. Staff recommends approval.

**MOTION/Second:** Vigen/Holappa to **Approve with Conditions** of the Water Resource Management Ordinance Special Use Permit for placement of 3,550 cubic yards of fill in the Flood Fringe of the Saint Louis River at 38<sup>th</sup> Avenue West and Oneota Street.

Vote: Unanimous (12/0)

- F. **FN 10046** - Water Resource Management Ordinance Wetland Variance for filling 398 square feet of wetland at 38<sup>th</sup> Ave. W. and Oneota St. by Ulland Brothers Inc. (KD)

**Staff:** Deming stated that the Wetland Variance is for fill related to the previous project. This is furthest away from the St. Louis River. The applicant is proposing to purchase wetland credits from the St. Louis River watershed. Staff Recommends wetland variance to be approved.

**Discussion:** Vigen questioned what the purpose is for these applications. Deming stated that it is to deposit clean fill from construction.

**Applicant:** The goal is to have an adequate recycling area. They need to approve the land before they can recycle construction materials. Appold asked how they will cover the area for long term. Applicant stated that they will be planting grass to cover the area.

**MOTION/Second:** Vigen/Holappa to **Approve with Conditions** of the Water Resource Management Ordinance Wetland Variance for Filling 398 Square Feet of wetland at 38<sup>th</sup> Ave W and Oneota St.  
Vote: Unanimous (12/0)

G. **FN 10029** - Registered Land Survey for part of Mont du Vue 1<sup>st</sup> Addition and Piedmont Park Addition by Gregg & Hiroe Anderson and Karen & Paul Anderson. (JJ)

**Staff:** John Judd stated that his is a Land Survey. He has received a letter in support of the survey.

**Applicant:** Roy Christianson- attorney for applicant, asked for questions. No questions.

**MOTION/Second:** Rand/Appold to **Recommend Approval with Conditions** of the Registered Land survey for part of Mont du Vue 1<sup>st</sup> Addition and Piedmont Park Addition by Gregg & Hiroe Anderson and Karen & Paul Anderson.  
Vote: Unanimous (12/0)

H. **FN 10012** - Rezoning from R-2 (Two-Family Residential) to C-1 (Commercial) property at the southeast corner of 21<sup>st</sup> Avenue East and Superior Street by Mardi Bagley and Sharon Kangas. (JJ)

**Staff:** Judd stated that the request is to change the Zoning from R-2 to C-1 for the purpose of opening an Art Shop. This area is identified as Traditional Neighborhood on the Comprehensive Plan - Future Land Use Map. A Letter was received in support of the rezoning. Also a couple of neighbors indicated that they were not in support.

**Discussion:** Lutterman reminded commissioners of a rezoning to C-1 in which the neighbors were supportive of a particular use proposed for the site but now that the area is zoned commercial it permits a host of commercial uses, not just the use that is proposed by the applicant.

Appold asked if there was any land zoned C-1 in the immediate area. Judd indicated no.

Vigen had a question on the eastern line. Judd stated that the line is incorrect.

Hollappa asked for confirmation that once this is rezoned to C-1 then anything commercial could be allowed in future. Petkac said that in the UDC the C-1 Zone district would convert to the new Mixed Use Neighborhood zone district but that the allowable uses would be similar to what is permitted in the current C-1 zone district.

**Applicant:** Mardi Bagly/Sharon Kangas. Requested to be able to restore the house and have it be an Art Store. They have not had any adverse comments from their neighbors. This is already a very busy corner so traffic should not be impacted.

**Discussion:** Jim Halquist- neighbor next door. Thinks this is an opportunity to start combining certain kinds of businesses. He is concerned about the building being in foreclosure as he is very interested in their project.

Banks asked what the square footage was. It is 3289 sq ft. They may also want to rent the 3<sup>rd</sup> floor to another business.

Sarvela questioned if there is parking available. Applicants stated that there is parking at the house. Alley access is vacated Branch Street.

Vigen says that this property has a history. It had been a bed and breakfast. Then fell into disrepair.

**Public Input:** Ray Klecker. Does not want the property rezoned. Nine out of ten businesses fail. Does not want another empty house. Akervik explained how the rezoning works, we are not the final say - it will go the City Council.

Kangas said that they talked to their neighbors and they were supportive.

Rand knows the house and would love to have it renovated, but rezoning means it will continue to be commercial should the business fail

**Stebe:** What is the rezoning to a bed and breakfast if not commercial? **Lutterman:** Rezoning for Bed and Breakfast would use a special use permit. They can have a home office under home occupation.

<b>MOTION/Second:</b> Rand/Blzevik to Recommend Denial of rezoning from R-2 (Two-Family Residential) to C-1 (Commercial) property at the southeast corner of 21 <sup>st</sup> Avenue East and Superior Street by Mardi Bagley and Sharon Kangas.	Vote: Unanimous (11/0)
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- I. **FN 10033** – Sidewalk Obstruction Permit for a sidewalk café at Amazing Grace Bakery and Café at 394 South Lake Avenue by Marcie Stoyke. (JJ)

**Staff:** Judd stated that this is a request for a Sidewalk Obstruction Permit. They are proposing to have chairs and tables on the sidewalk. There already is a fence that is around part of the planter.

**Applicant:** Community Police Officer stated that he gets calls from people with unwanted individuals. They look at how to solve these problems. Before the fence was up they were called 113 times for this area. With fence the calls dropped in half.

Banks asked how they will deal with people who come into area and are disruptive. This is a public space and people can go into it.

Vigen had concerns that there is a perception that this space is dedicated solely to the establishment using it. Fencing is not user friendly when trying to get through. This is a unique area. It does protect the business aspect but would like to have wider gateway.

Akervik said that his fence looks like it is fencing off everyone from the business and that it is not a public space. Officer: People can sit if not eating at the restaurant as it is public. They would only ask someone to leave if they are disruptive.

**Discussion:** Vigen stated that when the area was designed, it was to be used by the public. He thinks it may be overly restricted and may hinder the public.

Lutterman stated that the tables and chairs need to be removed at night. They also need to remove the fencing as well. It is not intended that the fencing stay out - that needs to be stated.

Holappa asked if the fencing had always been there. The applicant states that it had been there for about a year. Holappa asked if the fence is really necessary as he has concerns that it prohibits public access. Can they have just table and chairs and not the fence? They added the fence as this has solved the problems with undesirables.

Vigen said the issue is not the fence but when they come to the area that they know they can go there as it is a public place.

<p><b>MOTION/Second:</b> Vigan/Sarvela to Recommend Approval with Conditions. For a Sidewalk Obstruction Permit for a sidewalk café at Amazing Bakery and Café at 394 South Lake Avenue by Marcie Stoyke.</p> <p style="text-align: right;">Vote: Unanimous (11-0)</p>
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- J. **FN 10036** – Vacation of West Griggs Place and associated alleys near Woodland Avenue by the University of Minnesota Duluth. (JJ)

**Staff:** Judd presented the UMD requested vacation. They own the land abutting the area and the area is designated Institutional on the Comprehensive Plan - Future Land Use Map. Person on Lot 4 & 5 says that she was in favor. He asks that the Commission recommend petition for vacation is approved.

**MOTION/Second:** Rand/Guggenbuehl to **Recommend Approval** for Vacation of West Griggs Place and associated alleys near Woodland Avenue by the University of Minnesota Duluth.

Vote Unanimous 10-0

- K. **FN 10037** – Vacation of a portion of Clover Street and associated alleys near the former Chester Park Elementary School by the University of Minnesota Duluth. (JJ)

**Staff:** Judd states that there were no objections from neighbors. This is a dead end and property is owned by UMD. Access to the building is College Street. They are planning on keeping it open to the parking lot.

**Discussion:** Digby asked how this will go with their a larger plan? They are a Land Grant institution and don't have to share that information.

**MOTION/Second:** Digby/Banks to **Deny Approval** for Vacation of a portion of Clover Street and associated alleys near the former Chester Park Elementary School by the University of Minnesota Duluth.

Vote: 6/4 Failed.

**MOTION/Second:** Rand/Vigen to **Recommend Approval** For Vacation of a portion of Clover Street and associated alleys near the former Chester Park Elementary School by the University of Minnesota Duluth.

Vote: 6/4 Passed. (Akervik, Digby, Banks, Blazevic

Opposed)

- L. **FN 10038** – Amend the Comprehensive Land Use Plan – Future Land Use Map for the Woodland Middle School Site at 201 E. Clover Street and along the E. 4<sup>th</sup> Street Corridor from 14<sup>th</sup> Avenue East to 19<sup>th</sup> Avenue East. (CP)

**Staff:** Petkac presented an amendment to the Comprehensive Plan – Future Land Use Map. She stated that as part of the UDC process, there have been a lot of conversations on how zoning can assist in the development of new student housing developments. In addition, with the closing of Woodland Middle School, there exists an opportunity for mixed use development in a prime location near UMD. The City hosted a public meeting on the matter and received numerous comments from the public. City Planning is proposing that the area along 4<sup>th</sup> St be designated to mixed use

neighborhood along with the majority of the Woodland Middle School site with the exception of an area along 8<sup>th</sup> St which would be designated as preservation.

**Discussion:** Akervik stated that the Comprehensive Plan needs to be amended for the School District to be able to sell Woodland for development. Digby questioned if changing this will impact any future uses.

Vigen said that the preservation designation does not create a zoning standard but may have the perception that this piece of land will never be developed.

Petkac stated that she received comments from neighbors who indicated that they wanted the preservation designation for the area where there are significant stands of white pine trees.

**Applicant:** Sandy Hoff thinks that we need to see how developers see how they would like to see for this site. He would like to see it staying as residential.

Vigen indicated this was institutional and needs to stay as an institutional use. R3 and R1 are the current zoning designations. The School district could parcel this out in the current zoning.

Luterman: Since we have a Comprehensive Plan, the plan states that it is institutional. The Municipal Planning Act states that public entities must dispose of land that is consistent with the Comprehensive Plan.

**Discussion:** Akervik said if a portion of the property is designated preservation, the public perception is that it cannot be developed.

Digby had a question on the preservation designation. Petkac explained that the purpose of the preservation designation is to recognize the high value nature resources on the land. The preservation designation is not a zoning designation. Preservation designation would not prohibit the land from being developed.

**MOTION/Second:** Vigen/Akervik **Recommend Approval** To Amend the Comprehensive Land Use Plan – Future Land Use Map along the E. 4<sup>th</sup> Street Corridor from 14<sup>th</sup> Avenue East to 19<sup>th</sup> Avenue East from Traditional Neighborhood and Urban Residential to Neighborhood Mixed Use.

Vote: Unanimous

**MOTION/Second:** Digby/Guggenbuehl **Recommend Approval** To Amend the Comprehensive Land Use Plan – Future Land Use Map for the Woodland Middle Site at 201 E. Clover Street from Institutional to Neighborhood Mixed Use and Preservation.

Vote: 6/4 (Akervik, Covington, Stebe, Vigen Opposed)



- IV. Consideration of minutes - April 13, 2010. Motion/Second by Akervik/Vigen
- V. Communications
- VI. Old Business
- VII. Reports of Officers and Committees
  - A. Downtown Waterfront Mixed Use District
  - B. Zoning Advisory Committee
- VIII. New Business
- IX. Other Business
- X. Adjournment. Motion: Akervik/Vigen to adjourn. President Akervik adjourned the meeting at 8:23 p.m.

Respectfully,



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Cindy Petkac, AICP  
Land Use Supervisor

CP:eu