

City of Duluth
Planning Commission
Minutes of Tuesday, October 13, 2009
City Council Chambers

I. Call to Order: President Akervik called the meeting of the Planning Commission to order at 5:00 p.m., **Tuesday, October 13, 2009**, in the third floor Council Chambers of Duluth City Hall and explained the public hearing procedure to the audience.

II. Roll Call:

Members Present: Mike Akervik, Henry Banks, Joan Barrett, Katelyn Blazevic, Drew Digby, Frank Holappa, Joan Morrison, Jim Stebe, John Vigen, David Sarvela

Members Absent Excused: Mindy Appold, Heather Rand, Mindy Granley

Staff Present: Jen Bergum, Kyle Deming, Terri Fitzgibbons, John Judd, Alison Lutterman, Cindy Petkac

Motion to items - Motion by President Akervik to hear New Business prior to public hearings seconded by Vigen. Vote: Unanimous (10-0)

VIII. New Business

A. **FN09100** - Reclassification of tax forfeited land near the Airpark for sale to Minnesota Power to construct a power substation. (KD)

Staff: Kyle Deming reported the reason for the reclassification of this property is due to allow Minnesota Power to purchase it for an electrical substation. The reclassification affects two parcels: one, five acres and the other, 12.3 acres. Staff is recommending approval of the sale.

Discussion: Barrett questioned where the substation is going, and Deming pointed it out on the map.

Applicant: Rick Nelson, Minnesota Power: spoke on why this substation is important: There will be new growth in that area, there is no longer firm capacity from existing facilities, and much of central Duluth now uses the 15th Avenue West substation. A single event could damage any of the substations leaving that area without a connection. This new electric substation will provide voltage support to be distributed via new power lines to the airpark and to the central areas of the city. Hollapa asked what purpose the Swan Lake Rd substation serves and Nelson answered the property along the junction would be used for distribution but in order to serve the area they would need a substation located here near the Airpark. Stebe asked if there will be a need to put in a road to access the substation, and Nelson answered yes.

<p>MOTION/Second: Vigen/Barrett to Recommend Approval of Reclassification of tax forfeited land near the Airpark for sale to Minnesota Power to construct a power substation.</p> <p style="text-align:right">Vote: Unanimous (10-0)</p>

B. **FN09110** - Bayfront District Small Area Plan (JJ/JM)

Staff: John Judd reported that the Planning office was doing a small area plan for the area west of Bayfront Park, the majority of which is owned by DEDA. The 2006 Comprehensive Plan had identified this area for further study. Currently, the Comprehensive Plan designates the area as industrial waterfront. There is increased interest in the area now with the LaFarge property on the market and the Department of Natural Resources looking to identify an area for a recreational boat marina. The purpose of the Bayfront District Small Area Plan is to make recommendations to guide the type of development that fits with the area, encourage economic growth, and protect and enhance the natural environment. There will be a public meeting sometime in late November/early December.

Discussion: Barrett asked if there will be information in the paper, to which Judd answered, yes. The basis of this small area plan is to open doors to developments that people want to see in that area. Sarvela asked who would be involved in the plans for Bayfront, and Judd said there is a stakeholder committee but everyone in the community will have an opportunity for input.

There was no vote needed as this was a staff presentation

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

A. **FN09097** - Special Use Permit for construction of a communications equipment building at the Highland water towers (1701 North Arlington Avenue) by Eric Shaffer, City of Duluth Engineering Division. (KD)

Staff: Deming identified the site as the location of the two water towers near Arlington Ave. The city of Duluth, engineering division would like to build a 24' x 24' communications equipment building that will have a garage type of look to it so it will blend into the neighborhood.

Discussion: Barrett asked where the access to the building will be. Eric Shaffer, Engineering, said there will be access on the south side of the property in a driveway. Barrett asked if the road would be extended and Shaffer said, no there will be very little need to access the building. Next year, both water towers will be torn down and a single tower will be put up in their place.

MOTION/Second: Barrett/Morrison to Recommend Approval for Special Use Permit for construction of a communications equipment building at the Highland water towers (1701 North Arlington Avenue) by Eric Shaffer, City of Duluth Engineering Division	Vote: Unanimous (10-0)
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B. **FN09034** - Vacation request for Bayview Avenue between 422 and 510 Maryland Street by Jeffrey Jackson (JM)

Staff: Deming reported on the vacation for a section of Bayview Avenue. There is a request for a 20 foot easement. It is in the shoreland zone of Tischer Creek. Staff recommends that the road being vacated be subject to a 20 foot utility easement down the middle of the right of way. This proposal meets the criteria for uselessness.

Discussion: Morrisson asked how close it is to Tischer Creek. Deming answered, he was not sure but the set backs would be 75 feet from the creek. The only question is the vacation of the street not the proximity to the creek. Vigen noted on the first page of the report it said the purpose of the vacation is so the party can build garages and asked if someone will have to come in the future to apply for a WRMO variance to build a garage and Kyle answered, yes. Alison Lutterman interjected, if they want to build garages that meet code they would not need special permission unless there was a variance. The vote should just be on the vacation of the street. Vigen said it does not say who is asking for the vacation and therefore, there is no tie to an applicant. Lutterman answered, in order to vacate the abutting property, the owners must know about it. Vigen wanted to know if Jackson is an abutting property owner.

Applicant: Jeff Jackson 516 South 65th Avenue West: stated that he and Ms. Webber have no plans as of yet to build a garage and may think about it in the future but they are aware they will need to come back if they do. Vigen asked Mr. Jackson if he owned one of the properties and Jackson answered, yes Ms. Webber owns the other property.

Discussion: Holappa asked if the area between Maryland and Arrowhead was also being vacated. Deming said no. Blazevic said if you look at the response from Minnesota Power, their request says they would like to retain it for utility purposes she and asked if that classifies it as useless. Lutterman answered when we receive a request for vacation, not always is every need useless. It is being recommended for vacation for travel purposes, not utility purposes. There would be a 20 foot utility easement and that would give property owners more width to work with on their lot for use. Vigen asked if the 20 foot easement would permit pedestrian traffic. Lutterman answered if they would like to preserve pedestrian access, then that should be put into the recommendation. Vigen suggested a pedestrian easement be left.

Motioned by Vigen and seconded by Morrison to amend the motion to include a 20 foot easement down the middle for a pedestrian access trail and for utilities access. Vote: Unanimous (10-0)

Barrett asked who had received notice. Deming answered 18 surrounding property owners received notice. Holappa asked if the University own the property abutting the south of this. Deming did not know for sure.

<p>MOTION/Second: Barrett/Vigen to Recommend Approval for Vacation request for Bayview Avenue between 422 and 510 Maryland Street by Jeffrey Jackson as amended</p> <p style="text-align: right;">Vote: Unanimous (10-0)</p>
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- C. **FN09085** - C-5 Review to replace a 49-foot monopole and antennas at 218 East Central Entrance for AT&T Mobility (JJ).

Staff: Judd reported that a prefabricated equipment building with fencing and landscape screening would accompany the 49-foot monopole behind the sub sandwich shop. AT&T has agreed that in order to achieve a softer appearance the barbed wire will be removed and the fence will have a vinyl or powder coating and there will be additional plantings. There were 11 neighbors notified and staff is recommending approval with the modifications.

Discussion: Vigen asked since the goal is to soften the appearance, please be specific on the species of plants. Judd said he could not answer that but the 9, 8-10 inch plantings, originally in the plan has been changed. Barrett asked how the 8-10 inch plants will grow on the north side of the building. Nash said they would seek direction for whatever planting types will work from a local landscaping firm. Morrison said, deer eat cedars and that junipers are better. Nash indicated they would plant whatever species and size the staff and the commission felt would work.

Discussion: Vigen asked Judd to work with the applicant and on selecting plant species.

MOTION/Second: Morrison/Barrett to Recommend Approval for C-5 Review to replace a 49-foot monopole and antennas at 218 East Central Entrance for AT&T Mobility
Vote: Unanimous (10-0)

- D. **FN09099** - Special Use Permit for a telecommunications equipment building at the Woodland water tower (801 Minneapolis Avenue) by James Ries, Buell Consulting/AT&T Mobility (KD).

Staff: Deming reported the proposal is to house new cellular equipment in an 11 ½ x 20 foot building on the north side of the site just off of Mankato Street. The applicant is also putting in nine/six-foot plantings and making the new building match the existing building on the site. There were 46 notices sent to neighboring properties and there was only one comment of someone who was very opposed; however, they did not attend the meeting.

Discussion: Vigen asked if there is going to be an architectural standard in the Unified Development Code (UDC) that is more compatible with neighborhoods than a brick block building. Deming answered that is more a development standard which will come with Module 3 in a few months. Banks asked if the person in opposition was at the meeting. He then asked Deming if he could address any of the concerns that were sent in by the person in opposition. Deming said the concern was about business use in a residential area as well as traffic.

Applicant: James Ries with Buhl & AT&T: said currently AT&T's equipment is in the city's pump house and they will be happy to relocate to a new structure and not inconvenience the city to access their equipment in the pump house. Once per month is the average visit for these types of structures.

MOTION/Second: Barrett/Morrison to Recommend Approval for Special Use Permit for a telecommunications equipment building at the Woodland water tower (801 Minneapolis Avenue) by James Ries, Buell Consulting/AT&T Mobility
Vote: Unanimous (10-0)

- E. **FN09098** - Special Use Permit for construction of a 75-foot wireless telecommunication monopole at 2101 Trinity Rd (Lake Superior College) by Peter Campbell and Buell Consulting Inc for AT&T Mobility (JM).

Staff: Judd reported on the placement of the tower currently at Lake Superior College (LSC) and how it is very insufficient for additional antenna. Buell is proposing to put up a new 75-foot tower and equipment shelter located on campus. There were 152 neighbors notified with one comment saying the lights (on the tower) would be disturbing to the neighborhood. Staff recommends approval.

Discussion: Morrison asked if LSC could do what they want with the existing towers. Judd answered yes. Morrison asked how close they are to each other and Judd said approximately 50 feet apart. Akervik asked what LSC will do with an old tower. Judd said that was unknown at this time but it would be their prerogative.

Applicant: Peter Campbell with Buell: stated the current tower is failing by 182 percent. LSC owns the old tower and will own the new one. Barrett asked what a monopole is and how it is anchored. Campbell answered it's like a flag pole, anchored by a foundation in the ground depending on the type of soil and how tall the tower is. He was not sure if this tower is tapered or if there is a need for guide wires. Vigen asked if the tower will be designed to accommodate additional users and if a deconstruction of the former tower could be added along with the construction of a new tower. Campbell said the college is currently using the tower for other reasons and they have some of their own equipment on it for multiple experiments.

Discussion: Barrett said of the discussion about lights going on towers, lights only need to go on towers at 200 feet or more.

MOTION/Second: Morrison/Sarvela to **Recommend Approval** for Special Use Permit for construction of a 75-foot wireless telecommunication monopole at 2101 Trinity Road (Lake Superior College) by Peter Campbell and Buell Consulting Inc for AT&T Mobility

Vote: Unanimous (10-0)

- F. **FN09092** - Special Use Permit for construction of 180-foot telecommunication monopole at 25 North 78th Avenue East by Begley Wireless/AT&T Mobility (KD).

Staff: Deming indicated the proposal is for a multi-tenant tower that will accommodate 4 tenants. The construction of a 180-foot tall monopole and 60'x60' gravel compound would be located at 78th Avenue East Land owners are looking at leasing the property for 85 years. It is close to the stream set back but it is approximately 200 feet away from the stream. The purpose is to improve coverage in the area. There are no comments from neighbors.

Discussion: Barrett said two of the proposed building are closer than the 150 foot setback from the stream. Are all four buildings on this application out of the 150 foot setback. Deming said the regulation of streams is based on the official maps that are approved by the City Council showing a stream that is farther away from the equipment buildings even if the lot survey shows the streams in a different location. The maps that were approved were less than perfect when they were approved in 1980. GPS is more accurate but we have to use the approved maps. Barrett asked if this can be approved with the buildings being shown within 150 feet of the shoreland with these approved maps. Deming said the buildings are all outside of the 150 foot setback area. Morrison asked what would happen if the tower were to collapse and fold over on itself. Deming answered the structural engineer said it would buckle under severe wind, collapsing into itself but it is very unlikely to happen. Holappa asked if there was an issue with the shoreland. Deming said, this is for a special use permit from the zoning code. Some of the Special Use Permit review criteria are as follows: There are no commercial manufacturing areas in the area in which to locate the tower and the code language recommends to try to have the tower blend into the area as much as possible. Holappa said he is worried about pictures not showing the visibility of the tower and the approval of a pole on the lake side of the freeway. There is commercial property up Highway 61 outside city limits. Putting the tower on the upper side would be more acceptable for viewing purposes and less intrusive. Deming said in part of the application there were lines on the map of where they were considering putting the tower. Vigen

said on page F14 there is a profile of the monopole with future opportunities. White Pine development is 600 feet from this. East of that is a dump site for soil rehabilitation. White Pine owners will be affected since they didn't know about this tower when they bought the property. Deming said White Pine was notified as an adjacent property owner. There were no comments from anyone. Other owners are beyond the 350 foot radius.

Applicant: Shane Begley for AT&T: The radio frequency engineer is always consulted before getting to this point. To move the pole a mile or a few miles, the plan would need to be sent back to the radio frequency engineer. To provide coverage on Highway 61 it was placed closest to the area that needs the additional coverage. They are at the maximum of where they can move it to. The monopole would be outside the search area on the other side of the road, and there is constant movement in the area of the gravel pit so that is not a good option for the monopole. The objective is to improve in-car reception on all of Highway 61 along the shore and the highway and to not cross with other carriers and the ability to contact local emergency response. Sites are placed in key spots to make connections with other towers. Akervik asked if Begley would be pursuing more carriers for this tower and Begley answered they would not pursue other carriers, but if there were carriers wanting to co-locate here, they can. Hollapa asked if there was anything that would prohibit building it on the north side of the expressway. Begley said there is a development going up there and they can't just build on someone's property. Hollapa asked if they had talked to Northland Constructors. Begley said no and they tried to put the tower in the best possible spot affecting the smallest area using the smallest possible tower to make the network better. Hollapa asked if this gets turned down perhaps Northland Constructors site will be more attractive. Begley could not say for sure. Barrett asked if access to electrical power was another consideration. Begley said yes, and it is there. Vigen asked if there are any special environmental issues like migratory birds. Begley said the Department of Natural Resources (DNR) says to stay away from strobe lights and guy towers. Reports show no endangerment to endangered species or fauna.

Discussion: Sarvela said he was worried about the height and worried that we're setting a precedent with that tall of a structure. Vigen said if a tower is needed in that area, he is concerned that people on the north side were not contacted. The north side of the highway would be the first choice in order to save the lake view. It's unfortunate the notice may not have gone to people that bought property. Begley said it was published in the paper. All steps were met and it is in the best suitable spot now. If it were moved 1/4 mile across the highway then someone else would be affected. Akervik said we need to look at notification. Nobody reads legal notices in the newspaper. It is our duty to expand the notice radius.

<p>MOTION/Second: Akervik/Blazevic to Recommend Approval for Special Use Permit for construction of 180-foot telecommunication monopole at 25 N. 78th Ave. East by Begley Wireless/AT&T Mobility Vote:5-5 (Nays: Holappa Sarvela, Vigen, Digby, Stebe)</p>
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- G. **FN09026** - Vacation request for Lester Park School at North 53rd Avenue East from Oneida to Glenwood Streets and associated alleys by Kerry Leider for Independent School District 709 (CP).

Staff: Petkac reported on ISD 709's plans to construct a new elementary school at Glenwood and North 54th Avenue East which requires vacating a portion of North 53rd Avenue East and an alley. In exchange, ISD 709 proposes to dedicate a new alley and a utility easement between Glenwood and Oneida. Minnesota Power and the city engineer's office had no objections so long as there was a utility

easement was maintained and the alley was constructed with a minimum width of 20 feet. Staff recommends approval.

Discussion: Akervik asked if the new alley would be one way. Petkac answered that it will allow movement in both directions. Busses will enter the alley from Oneida Street.

Applicant: Kerry Leider with ISD 709: said neighbors indicated they would prefer the alley to be a one way. It will primarily be used as a student drop-off. Vigen said that two property owners who used to be mid block property owners will now be faced with looking at an alleyway. He asked about the distance from the alley to those houses. Leider said there will be 5 feet added to the side yard at one residence. There will be 20 feet of the district's property before the roadway will be constructed plus the side yard which is five feet. There will also be landscaping and fencing. Morrison asked if the public will be free to use the alley and who will maintain it. Leider said it will be maintained as it is now, by the city. Barrett asked if there was room for snow storage. Leider said yes, the 15 foot area between the new fence and the alley will provide for snow location. Morrison asked why the Rockridge Elementary School was not being redeveloped for the new school. Leider responded that the school district did a feasibility study looking at both sites accessibility, streets serving them, the ability to add on, etc, and Lester Park was the better choice. The size of Rockridge did not outweigh the benefits of the Lester Park site. There are also no sidewalks at the Rockridge site.

Public Input - Kirk Nauman; 5219 Oneida Street: spoke on how he found out six months after he and his wife bought their house that everyone was selling their houses to the school district. It's not an ideal situation they are in having a new alley/driveway being constructed next to their house, but the improvements the school district will be making including landscaping and the fencing is good. They would like to keep it a one way and want to make sure it's going to be used for its intended purpose. They would like to encourage the Council to build the new school.

<p>MOTION/Second: Barrett/Stebe to Recommend Approval for Vacation request for Lester Park School at North 53rd Avenue East from Oneida to Glenwood Streets and associated alleys by Kerry Leider for Independent School District 709</p>
<p>Vote: Unanimous (10-0)</p>

Files 09075, 09076, 09077, and 09078 were heard and voted on together.

- H. **FN09075** - Water Resource Management Ordinance Special Use Permit for fill greater than 10 cubic yards in a floodway at 5300 Glenwood Street by Kerry Leider for Independent School District 709 (CP).

Staff: Petkac presented the four Water Resource Management Ordinance (WRMO) actions required for the construction of the new Lester Park School. The proposed school is located an floodway and shoreland area of the 58th Avenue East creek which runs through a pipe under the existing school. ISD 709 hired a consultant to conduct a floodway study which was submitted and approved by FEMA and showed that grading on the site will not have a negative affect. Petkac reported that the impervious surface area within the shoreland area will be reduced with the new school. Staff recommends approval.

Discussion: Barrett asked if the creek goes under the building or the playground. Leider answered under the playground. Barrett asked what had happened to the building when there were the recent 100 year floods. Leider answered that there was no damage that he is aware of from the flooding.

MOTION/Second: Morrison/Barrett **Approve** Water Resource Management Ordinance Special Use Permit for fill greater than 10 cubic yards in a floodway at 5300 Glenwood Street by Kerry Leider for Independent School District 709 Vote: Unanimous (10-0)

- I. **FN09076** - Water Resource Management Ordinance Special Use Permit for fill greater than 50 cubic yards in a shoreland at 5300 Glenwood Street by Kerry Leider for Independent School District 709 (CP).

MOTION/Second: Morrison/Barrett **Approve** Water Resource Management Ordinance Special Use Permit for fill greater than 50 cubic yards in a shoreland at 5300 Glenwood Street by Kerry Leider for Independent School District 709 Vote: Unanimous (10-0)

- J. **FN09077** - Water Resource Management Ordinance Variance for impervious surface greater than 30% at 5300 Glenwood Street by Kerry Leider for Independent School District 709 (CP).

MOTION/Second: Morrison/Barrett to **Approve** Water Resource Management Ordinance Variance for impervious surface greater than 30% at 5300 Glenwood Street by Kerry Leider for Independent School District 709 Vote: Unanimous (10-0)

- K. **FN09078** - Water Resource Management Ordinance Variance for placement of impervious surface within 50-feet of the ordinary high water mark at 5300 Glenwood Street by Kerry Leider for Independent School District 709 (CP).

MOTION/Second: Morrison/Barrett to **Approve** Water Resource Management Ordinance Variance for placement of impervious surface within 50-feet of the ordinary high water mark at 5300 Glenwood Street by Kerry Leider for Independent School District 709 Vote: Unanimous (10-0)

IV. Consideration of Minutes: September 8, 2009. Motion by Vigen/Akervik - approved with one minor change.

V. Communications

VI. Old Business

VII. Reports of Officers and Committees

- A. Downtown Waterfront Mixed Use District: Morrison reported on signs in the downtown and Canal Park areas. Judd would like to make it easier to allow outdoor sidewalk cafes.

- B. Zoning Advisory Committee: Petkac reported on working group for University Housing Overlay public meeting on October 28th. Don Elliot and she have been exchanging emails and they are working on Module 3.

IX. Other Business

- X. Adjournment. Motion Akervik/Barrett to adjourn. President Akervik adjourned the meeting at 7:46 p.m.

Respectfully



Cindy Petkac
Land Use Supervisor

CP:jb

