

City of Duluth
Planning Commission
Minutes of Tuesday, September 8, 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, September 8, 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, Mindy Appold, Henry Banks, Joan Barrett, Katelyn Blazevic, Frank Holappa, Joan Morrison, Heather Rand, Jim Stebe, John Vigen, David Sarvela

Members Absent Excused: Drew Digby, Mindy Granley

Staff Present: Jen Bergum, Kyle Deming, Terri Fitzgibbons, Bob Asleson, Jenn Moses, Cindy Petkac

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

A. **FN09086** - Water Resource Management Ordinance Variance for impervious surface to construct hotel at 1100 Minnesota Avenue by Globe Enterprises (JM)

Staff: This variance is requested to build a hotel in a shoreland area. The impervious surface area would be reduced from 82% to 60%. The site will be graded to allow runoff to flow towards pervious pavers, and any runoff beyond that will be directed to a landscaped area for infiltration. The proposed improvements would be beneficial to the existing site. The applicants would not be able to make any improvements to this site without the variance, thus causing a hardship.

Discussion: Sarvela asked how high the building will be, and Gary Anderson stated it will be 35 feet high. Appold asked about impervious surfaces for patios and walkways. Wayne Dahlberg, bdp Architects, stated those could be pervious if necessary, but parking areas were focused upon for impervious surface. Dahlberg estimates the percentage would decrease by 1 to 2 if this were done. Dahlberg feels the hardship is the 82% impervious surface of the existing site. Akervik asked if the amount will be 60% exactly or approximately. Moses stated it would be 60%. Barrett asked if roof gardens were considered. Dahlberg stated a ponding area will be implemented as well as a filtration pond which will be used for a rain garden. Dahlberg stated there is potential for a rooftop garden but it was not included in the calculations.

Public Input - Kevin Kelleher, 939 South Lake Avenue: Kelleher stated the mixed use is what makes the neighborhood great. He is concerned with the scale of the project. He built a new

garage because he was told his chance of receiving a variance due to hardship was not likely. He is also concerned about traffic volumes due to a 200-room hotel on Park Point. He requests the scope of the plan be downscaled. Banks stated he believes the hotel is 116 rooms. This was confirmed.

Jan Karon, 1112 Lake Avenue South: Karon's concern is balancing the outdated zoning code with sustainable development. The location of this development, zoned waterfront and manufacturing, is unique and deserves special consideration. This project could set a precedent and be a model for future development. Karon requested Commissioners require the developer to decrease the impervious surface area. Karon stated the developer indicated their desire do whatever has least impact to the site, so Karon requested the variance not be granted at this time.

Warren Howe, 1112 South Lake Avenue: Howe is displeased with the opportunities for public input. This area is physically sensitive and the proposed impervious surface is still double the acceptable amount. Howe requests the Commission deny the variance until they are much closer to 30%.

Lyn Clark Pegg, 1335 Minnesota Avenue: Pegg stated Park Point is very fragile, and not only impervious surface should be considered but also sewer issues and water pressure issues. She feels the standards should be held.

Keith Brakke, 1116 Lake Avenue South: Brakke cited the Sola hotel which he also spoke out against, yet it was built. He feels the Planning Division should develop a plan to determine how commercial property on Park Point will be developed. His concern is that people cannot get to the commercial area without going through his residential neighborhood.

Andrew Slade, 1026 South Lake Avenue: Slade is frustrated with short-term vacation rentals in his neighborhood. He does not want a hotel in his backyard. Slade proposes the hotel be built at Slips 2 and 3 at Bayfront instead using, for example, development transfer rights.

Discussion: Rand requested confirmation that the Planning Commission does not have authority to stipulate site plans. Moses confirmed this and that the two issues are hardship and impervious surface. Rand asked about our action deadline. Moses stated the deadline is November 26, 2009, and the Planning Commission is the final authority on this matter. Rand asked about imposing conditions. Asleson stated the issue is the variance and is the only issue that can be considered in making a decision. The question is whether or not the developer has shown hardship.

Barrett asked about the hotel being built in phases. Kerry Anderson stated the project is planned in two phases, and the proposal with impervious surface data is for the completed project. Anderson stated he does not have calculations broken down for the two phases.

Morrison stated she heard that the project is not imminent and feels the Planning Commission needs to be careful about setting a precedent. She also believes there must be more ways to reduce impervious surface.

Sarvela asked if the retention pond was included in the pervious surface calculations and if it will be lined to use as a skating rink. Dahlberg stated the pond is designed to retain water and will only have a sand base.

Vigen stated this is difficult as the requirements will be different once the new zoning code is in place. Vigen stated this area used to be heavy industrial, but it is now focusing on our growing economy which is tourism. The majority of requests for impervious surface variances on Park Point have been residential, not commercial. This is an opportunity for Duluth to have an attractive use for visitors. Limiting access to the Point is unrealistic, and Vigen believes traffic cannot be an issue.

Akervik is concerned about residents who have adhered to the impervious surface requirements. He wonders how close the developer could get to the acceptable percentage by using suggestions brought up such as a grass roof and pervious pavers.

Ryan Arola, bdp Architects: Arola stated 3 or 4 percent could be reduced with a green roof and sidewalks. Even if everything other than the structure were pervious, it still wouldn't reach 30%.

Rand does not feel tabling the issues will be beneficial. Past practice has been that variances are granted by the Planning Commission if the applicant is "moving in the right direction." The difference in this case is that it is in a residential neighborhood.

Sarvela cited the Hartman Building as an example which recently came before the Planning Commission and approved it though it was only a small reduction in impervious surface. Sarvela is concerned about the size of this hotel but is pleased with the design of the site with such elements as retention ponds and native grasses.

Vigen cautioned about comparing residential and commercial variances. The primary view from the development will be of the harbor. The homes in this area have existed since the time of heavy industrial use. Vigen feels a 22% reduction is a fair decrease.

MOTION/Second: Vigen/Barrett to Approve of Water Resource Management Ordinance Variance for impervious surface to construct hotel at 1100 Minnesota Avenue by Globe Enterprises Vote: 9-1-1 (Akervik Opposed/Holappa Abstained)

- B. *FN09072* - Special Use Permit to construct a wireless communication facility, including a monopole tower and equipment shelter, at 8505 Knowlton Creek Boulevard by T-Mobile Central LLC and City of Cloquet (JJ)

Staff: Deming stated this land is owned by the City of Cloquet and is leased to T Mobile. The proposal is for a tower and equipment shelter. The Environmental Advisory Council is concerned because this is in a preservation district due to its proximity to Spirit Mountain. Staff recommends approval with conditions that removal of foliage be kept to a minimum and that appropriate measures be taken to protect the unnamed stream adjacent to the site.

Discussion: Appold asked why we are voting on this if it is in the City of Cloquet. Deming clarified the land is within the City of Duluth but Cloquet owns the land. Akervik asked how many property owners were notified, specifically Norton Park residents, and Deming believes only one property owner was affected. Residents of Norton Park were outside of the 350 foot notification threshold.

Applicant - Ron Gunderson, T-Mobile: Gunderson stated this area is a newer market for T-Mobile which attempts to utilize existing towers whenever possible. This location is a keystone to setting up sites for downtown Duluth. The tower is proposed to be 150 feet high for adequate coverage, and the City of Cloquet supports this height for their water facility.

Discussion: Stebe asked if T-Mobile pays money to the City of Cloquet, and Gunderson stated it does. Stebe asked if Duluth-owned sites were considered so Duluth could get the revenue instead of Cloquet. Gunderson stated they considered property near the Zoo as well as privately owned industrial property, but they found no interest by property owners. Stebe is troubled that the City of Cloquet would get this revenue on land that was probably granted to them inexpensively. Gunderson stated the amount of revenue is proprietary data.

Barrett stated a concern of the EAC is the preservation designation of this area. The tower would be significantly visible on this hillside.

Holappa asked what the Comprehensive Plan indicates. Deming stated it is for low intensity public or private uses. The use should be considered from a neighborhood perspective. Rand acknowledged Stebe's concerns of use. Barrett cited the Comprehensive Plan indicates restricted use of this area with minimal impact. Petkac stated within the existing code there is not a mechanism for them to implement a preservation status to this land.

Vigen is amazed City staff would not have an inventory of sites for proposed projects such as this. However, he states this will not be a lift tower, but is a pumping station which is down in a hollow area. It is not in a residential neighborhood and is visually protected.

<p>MOTION/Second: Rand/Sarvela to Recommend Approval of Special Use Permit to construct a wireless communication facility, including a monopole tower and equipment shelter, at 8505 Knowleton Creek Boulevard by T-Mobile Central LLC and City of Cloquet</p> <p style="text-align: right;">Vote: 8-3 (Banks, Barrett, Stebe)</p>

- C. **FN09079** - Vacation of Wyoming Street between 60th Avenue East and Occidental Boulevard by Richard Hoeg (JJ)

Staff: Petkac stated Hoeg proposes building a house at this site, and this vacation would allow him to meet minimum lot standards and setback distances. Qwest is concerned about a utility easement here, and a portion of Wyoming Street is used for pedestrian access. Staff recommends approval with the condition that utility and pedestrian easements be included.

Agent - Cheryl Fosdick, CF Design: Fosdick stated the site fronts Occidental Boulevard and the issue arose of driveway placement. The garage must be located behind the shoreland zone, which is very steep. The vacation would allow them to build the garage in the low slope area resulting in a lower impact. The vacation would also make the two adjacent property owners compliant.

Discussion: Vigen asked if the adjoining property owners agree with the pedestrian access, and Fosdick stated they do. Barrett asked if a variance for Water Resource Management Ordinance variance will be needed, and Fosdick stated the vacation will bring them into compliance and a variance would not be necessary.

MOTION/Second: Vigen/Morrison to **Recommend Approval** of Vacation of Wyoming Street between 60th Avenue East and Occidental Boulevard by Richard Hoeg Vote: Unanimous (11-0)

- D. **FN09091** - Special Use Permit to replace a wireless communications facility, including a monopole tower and equipment platform, at Boundary Storage, Boundary Avenue and U.S. Highway 2 by AT & T (JJ)

Staff: Moses stated the proposal is for the replacement of a monopole, which is only one foot higher than the existing one, as well as improvements to the facility itself. The upgrade will have a minimum effect on the area, and staff recommends approval.

MOTION/Second: Morrison/Barrett to **Recommend Approval** of Special Use Permit to replace a wireless communications facility, including a monopole tower and equipment platform, at Boundary Storage, Boundary Avenue and U.S. Highway 2 by AT & T Vote: Unanimous (11-0)

- E. **FN09035** - Vacation of alley north of Woodlawn Street between 51st and 52nd Avenues East by Sarah Seidelmann (KD)

Staff: Deming stated other segments of this alley have already been vacated for the Hawk Ridge development. The applicant proposes the vacation for increased enjoyment of the land. Garages are not likely to need access by this alley as garages are facing the street; therefore, this vacation meets the uselessness standard.

Discussion: Barrett stated much of this land has already been developed.

MOTION/Second: Barrett/Appold to Recommend Approval of Vacation of alley north of Woodlawn Street between 51st and 52nd Avenues East by Sarah Seidelmann

Vote: Unanimous (11-0)

- F. **FN09044** - Water Resource Management Ordinance Special Use Permit for grading, filling and/or excavating of more than 50 cubic yards of fill in a shoreland area at 301 North 40th Avenue East by Independent School District 709 - Eastern High School (CP)

Commissioner Appold abstained on this matter and FN09045.

Staff: Petkac stated shoreland volumes have been revised since the original application was submitted. Also, after the staff report was completed a number of comments were received. The total amount of fill excavated on site is proposed to be just over 35,000 cubic yards. Of that only a portion will be taken off the site while 12,000 cubic yards will be used on-site. Just over 9,000 cubic yards of fill will be brought onto the site, which is pervious material used for the track and field. The standard for approval is that the applicant demonstrates they are using the minimum amount of fill necessary. Staff recommends approval with the condition that the permit go into effect once the map amendment is in force. Citizen comments were primarily concerned with the amount of fill on site.

Applicant - Kerry Leider, ISD 709: Leider stated there was extensive engineering and planning relative to the development of this site. Multiple accesses were found to be desired which led to a design with less impact but incorporating these designs. Grading that exceeds allowable limits is necessary. Regarding FN09045, Leider stated these two matters are both required for the success of this project. The site has unique topography which creates a hardship. The existing facilities will be greatly improved with underground filtration systems on-site and a retaining wall.

Discussion: Vigen asked about the retaining wall and the grade around it. Petkac clarified the matters before the Commission.

Public Input - Brian Ronstrom, 3860 East Superior Street: Ronstrom criticized the grading plan and is mainly concerned that neighbors do not support a new public school stadium. He believes the hardship is because the site is too small. Residents in the area do not need or want a new stadium. He feels the best use of this site is not a stadium.

Mimi Larson, 3121 Greysolon Road: Larson is in support of the permit because the school district has taken careful consideration for the development of this site. There are people who are excited that the school will offer these amenities for students.

Michelle Benson, 4021 Gilliat Street: Benson feels this project will devastate their neighborhood and environment. Benson criticizes the lack of information the public has received and wonders how close to the creek the backfill will be as she is concerned about the

impact to the creek. She is concerned about how close the retaining wall will be to sidewalks and roadways. She questioned who defines hardship.

Discussion: Akervik asked what additional grading will be done at the baseball field. Leider stated the existing baseball field will not be graded. A turf facility is being considered at a later time. Earl Thedens stated the elevation of the new multi-purpose field and track will be at the same elevation of the existing one.

Morrison stated she is concerned that changes are coming before them, forcing residents to react at the last minute.

Sarvela stated a map showing topography of the future site would have been helpful.

MOTION/Second: Rand/Banks to Approve Water Resource Management Ordinance Special Use Permit for grading, filling and/or excavating of more than 50 cubic yards of fill in a shoreland area at 301 North 40th Avenue East by Independent School District 709 - Eastern High School
Vote: 10-0-1 (Appold Abstained)

- G. *FN09045* - Water Resource Management Ordinance Variance to construct a retaining wall within 150 feet of 40th Avenue East Creek at 301 North 40th Avenue East by Independent School District 709 - Eastern High School (CP)

Staff: Petkac stated the retaining wall is necessary for the school district to construct the multi-purpose stadium due to steep grades. The wall is 233 feet in length, 1.5 feet wide, and ranges from 6 to 14 feet in height. Petkac read the definition of a hardship, which in this case is the unique topography of this site. Staff recommends approval with the condition that the variance not go into effect until the map amendment becomes effective.

Applicant - Kerry Leider, ISD 709: Leider stated a site plan did include contours but it had too many lines as it included the new and old facility overlaid. The plans and drawings presented are the same as when they were submitted with the Environmental Assessment Worksheet.

Discussion: Morrison asked what the retaining wall will be constructed of, and Thedens stated it will be poured-in-place concrete. Barrett confirmed backfill will be on the oval track side of the wall, and Thedens confirmed. This plan will result in no impact on the old growth forest. The wall will be 65 feet from the sidewalk, and the entire field will be enclosed with a wire mesh fence as well as 42-inch height guard rail as required by building code.

Vigen stated the current topography is meaningless, and he would like to see a site plan of the proposed contours. Vigen confirmed the vegetation will not be disturbed. Thedens stated the multi-purpose field, at its maximum, is 23 feet above the baseball field.

Akervik asked if the retaining wall will project above the grass line. Thedens stated the wall will be one foot above the existing grade and topped with a guard rail. Akervik asked if the

elevation is similar to Public School Stadium, and Leider stated the new field will be similar. The existing soccer field closest to Superior Street is the grade of the new multi-purpose facility. Akervik asked about the purpose of the wall, and Leider stated the wall reduces the amount of grading required of the hill towards the creek.

Public Input - Brian Ronstrom, 3860 East Superior Street: Ronstrom questions the calculations used to construct the retaining wall, stating more fill will need to be taken away than proposed causing the destruction of vegetation. He is also concerned with safety on Superior Street.

Scott Lyons, 4425 Sunshine Lake Road, Duluth: Lyons stated this site is used heavily each day from mid-August until it snows. He feels the site cannot be used any less than it's being used now as it is so busy, so he feels the impact to the neighborhood is not going to be that different. Lyons supports the use of artificial turf and feels another stadium is very much needed to host events.

John Rudolph, Duluth East Baseball Coach, 4020 Pinewood Lane: Rudolph is extremely excited about the proposed fields. He stated there is a great need for this facility.

Discussion: Holappa asked Thedens about Ronstrom's comments about the retaining wall. Thedens stated no trees near the creek are being impacted. Thedens stated the wall will be enclosed on the creek side during construction so that area will not be affected. The wall will be shored and they will not be using a 1:1 ratio as Ronstrom stated.

MOTION/Second: Rand/Banks to Approve Water Resource Management Ordinance Variance to construct a retaining wall within 150 feet of 40th Avenue East Creek at 301 North 40th Avenue East by Independent School District 709 - Eastern High School

Vote: 10-0-1 (Appold Abstained)

IV. Consideration of Minutes: August 11, 2009. Motion by Vigen/Morrison - approved unanimously with one minor change.

V. Communications

VI. Old Business

- A. **FN09065** - Special Use Permit for Low Density Planned Development at 9320 Grand Avenue (Westwood Heights) by Steve Kuepers, Kuepers Architects & Builders (Matt Bolf, SEH) (Tabled at July 14, 2009 and August 11, 2009 Planning Commission meetings) (CP)

Akervik made motion seconded by Vigen to remove FN 09065 from the Table. Passed unanimously.

Staff: Petkac stated the applicant met with the Morgan Park community to find solutions to some issues that arose. Petkac stated parking was a concern as well as space for children to play. One building was eliminated, making nine buildings total with eight units each. The road has been widened to 28 feet to allow for on-street parking. A playground area at the end of the cul-de-sac was added.

Councilor Jay Fosle: Fosle attended two meetings at Morgan Park Community Club, and he stated there were a lot of questions but no opposition to this project. Fosle supports the project because no funding is requested from the City and it increases the tax base.

Discussion: Barrett asked about the proximity of the playground to the stormwater pond. Matt Bolf of SEH stated a barrier fence will be installed as this is a concern. Akervik asked if the name will continue to be Zimmerly Avenue, and Bolf stated the road will be private and has not yet been named.

Vigen stated the Planning Commission supports development at this site. He applauded the changes to the site compared with the original proposal. Vigen proposed an alternative location for the playground in order to be more convenient.

Public Input - Debbie Isabell-Nelson: Isabell-Nelson stated the community was very happy to have an opportunity for input and were pleased about the changes.

MOTION/Second: Vigen/Barrett to Recommend Approval of Special Use Permit for Low Density Planned Development at 9320 Grand Avenue (Westwood Heights) by Steve Kuepers, Kuepers Architects & Builders	Vote: Unanimous (11-0)
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Commissioner Sarvela left the meeting at 7:50 p.m.

VII. Reports of Officers and Committees

- A. **Zoning Advisory Committee:** Rand stated the next public meeting is Thursday, September 17, at 6 p.m., at the Depot in which the first module will be presented.

VIII. New Business

- A. **FN09082 - Reconveyance at 63rd Avenue West and Natchez by St. Louis County Land Department (KD)**

Staff: Deming stated this is a request to reconvey land that was originally acquired through free-conveyance for the purpose of the Western Waterfront Trail. St. Louis County requested the City make this land available for sale. The subcommittee determined this land is no longer needed for the trail and provides an adequate buffer between the trail and other land.

Discussion: Holappa asked if parking is available for users of the trail. Deming stated this topic arose at the subcommittee meeting. Deming recalls there is parking 1.5 blocks away at the railroad crossing as well as closer to the trail head. The street also has on-street parking. The official parking area is closer to the zoo. Appold stated this proposal is for two parcels. Deming stated the site is big enough for two homes to be constructed on it within guidelines for setbacks.

MOTION/Second: Appold/Barrett to **Recommend Approval** of Reconveyance at 63rd Avenue West and Natchez by St. Louis County Land Department Vote: Unanimous (10-0)

- B. **FN09083** - Request for City-owned land, Sale of Park Land, at 6420 Fremont Street by John Ibriks (KD)

Staff: Deming stated this land may not be owned fee simple by the City as there may be issues with the title to the property. Deming is presenting this as the land is no longer needed for park purposes and he recommends we relinquish interest in the property. This will better define park boundaries and make it easier to maintain the park. Deming stated the Parks Commission supports the recommendation.

Discussion: Barrett asked how we can vote on this property if we don't know the origins of how the property was acquired. Deming stated we do know the land came to the City from DEDA. Deming stated we do not know how DEDA obtained the land. Regardless of the ultimate disposition of the property, the matter before the Planning Commission is whether or not it is needed for a park. Appold stated, according to Tim Howard, the Planning Commission must table the matter until the park land status is determined. Deming stated Howard requested it be tabled only because quorum issues were anticipated. Vigen asked if it is an active park, and Deming stated the City does not actively maintain the park but the neighbors mow the lawn. It is an open space. Barrett asked about public access to the park from the alleyway, and Deming stated there are a number of other access points.

MOTION/Second: Akervik/Rand to **Recommend Approval** of Request for City-owned land, Sale of Park Land, at 6420 Fremont Street by John Ibriks Vote: Unanimous (10-0)

IX. Other Business

Akervik wants to discuss the 350 foot notification rule. This is a result of no neighbors being notified of some projects. Petkac stated this can be addressed in the new code. Petkac also proposed signage during the public comment period.

Stebe stated he is concerned about the revenues which will be generated by T-Mobile to Cloquet and wants this known for the record.

Barrett stated again there was no quorum for the Environmental Advisory Council meeting.

X. **Adjournment.** Motion Vigen/Akervik to adjourn. President Akervik adjourned the meeting at 8:09 p.m.

Respectfully,

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

Cindy Petkac
Land Use Supervisor

CP:tf