

City of Duluth
Planning Commission
July 12, 2016 Meeting Minutes
Council Chambers - Duluth City Hall

I. Call to Order

President Zandra Zwiebel called to order the meeting of the city planning commission at 5:02 p.m. on Tuesday, July 12, 2016, in city hall council chambers.

Roll Call

Attending: Terry Guggenbuehl, Janet Kennedy, Garner Moffat, Mike Schraepfer, and Zandra Zwiebel

Absent: Marc Beeman, Tim Meyer and Luke Sydow

Staff Present: Keith Hamre, Nate LaCoursiere, Steven Robertson, Kyle Deming, Chris Lee, Kate Van Daele and Cindy Stafford

- Presentation of 2016 Zenith Awards for Plan Implementation to Lincoln Park Middle School (Sherman Associates) and Steve O'Neil Apartments (One Roof Housing and Center City Housing) – Director Keith Hamre presents the 2016 Zenith awards to Jeff Corey of One Roof Housing and Tina Sklors of Sherman Associates. They both thank the city and the planning commission for their support.

II. Public Hearings

- A. PL 16-041 Public Hearing to Receive Comments on Spirit Mountain Recreation Area Environmental Assessment Worksheet

Staff: Kyle Deming states next month the Planning Commission will need to make the decision on the need for an EIS. Written comments and due by tomorrow at 4:30 p.m.

Applicant: N/A

Public: No speakers.

Commissioners: N/A

MOTION/Second: No action taken.

VOTE: (N/A)

- B. PL 16-071 Concurrent Use Permit for Use of Public Easement by Waste Management at 3101 West Superior Street

Staff: Chris Lee introduces the applicant's proposal to obtain a concurrent use permit to construct an overhead truss in the airspace above the utility easement. This truss will be used to transport compressed natural gas to a fuel system which will fuel fleet vehicles. The truss will span 53 feet between supports and will be 18 feet above the ground. Staff recommends approval with the conditions listed in the staff report. Garner Moffat asks if the truss will be located over the green space or the parking lot. Lee states it will be over the paved area. Terry Guggenbuehl verifies this is on private land. Per Lee, yes. Janet Kennedy asks if the photos are a rendering. Lee states yes. Kennedy notes there is a currently a storage area in the way.

Applicant: Jim Borash, District Manager of Waste Management addresses the commission. The storage will be moved. Moffat notes the barb-wired fence and the landscape area on the corner. Director Hamre states landscaping is not being considered in this concurrent use permit. Borash states they will address landscaping in the future.

Public: N/A

Commissioners: N/A

MOTION/Second: Moffat/Schraepfer recommend approval as per staff's recommendations.

VOTE: (5-0)

- C. PL 16-045 Vacation of Public Right of Way at 101 S 54th Avenue East by Luke Schmitz

Staff: Steven Robertson introduces the applicant's proposal to vacate portions of Peabody Street and South 54th Avenue East, retaining a public utility easement over the full extent of area to be vacated. The applicant intends to use the vacated area for off-street parking, noting that structures cannot be built within a utility easement, which would preclude the applicant from constructing a garage in this location in the future.

Applicant: Luke Schmitz addresses the commission. He is looking to sell the property and the added parking will make it more desirable.

Public: Carlyle Eckart – 105 S. 54th Ave. E. – addresses the commission. He is aware of three different families having difficulty selling because of no garages or parking. He is a 36-year resident and is in support.

Commissioners: Chair Zwiebel asks if there is enough room for a small detached garage. Per Robertson, it's not allowed in the right of way or utility easement, but there is room elsewhere on the lot.

MOTION/Second: Guggenbuehl/Moffat recommend approval as per staff's recommendations.

VOTE: (5-0)

- D. PL 16-065 Interim Use Permit for a Vacation Dwelling Unit at 559 Boulder Drive by BRD6, LLC and Patrick Sheahan

Staff: Chris Lee introduces the applicant's proposal to use their three-bedroom townhome unit as a vacation rental property. A vacation dwelling unit allow for periods of occupancy of 2 to 29 days, with a minimum stay of 2 nights. Note: On May 23rd, 2016, city council approved amendments to the UDC regulating vacation dwelling units per Ordinance 16-022-O. The amendments to vacation dwelling units are effective as of June 25th, 2016. The planning commission shall review this proposal per the amended use specific standards for vacation dwelling unit. One public comment in opposition was received this afternoon. Staff recommends approval with the conditions listed in the staff report. Kennedy verifies this is an apartment building complex and asks how many units are in it. Lee states 7 (which refers to other townhome units).

Applicant: Patrick Sheahan representing Boulder Ridge addresses the commission. This is a townhouse. This is intended to be used as an amenity to the residents' family and visitors.

Public: N/A

Commissioners: N/A

MOTION/Second: Guggenbuehl/Schraepfer recommend approval as per staff's recommendations.

VOTE: (5-0)

- E. PL 16-066 Interim Use Permit for a Vacation Dwelling Unit at 601 Boulder Drive by BRD6, LLC and Patrick Sheahan

Staff: Chris Lee introduces the applicant's proposal to use their one-bedroom apartment unit as a vacation rental property. Staff recommends approval with the conditions listed in the staff report.

Applicant: Patrick Sheahan welcomes questions. There are none.

Public: N/A

Commissioners: Kennedy will vote in support, but thinks it might be an issue with saturating the building with vacation rentals. Michael Schraepfer sees a good internal use for it as an amenity and is in support. Moffat agrees with Schraepfer. Kennedy sees the benefit, but doesn't want it to become oversaturated.

MOTION/Second: Guggenbuehl/Schraepfer recommend approval as per staff's recommendations.

VOTE: (5-0)

- F. PL 16-069 Interim Use Permit for a Vacation Dwelling Unit at 1002 Martha Street by Joseph and Susan Byers

Staff: Kate Van Daele introduces the applicants' proposal to use their four bedroom, single-family home as a vacation rental property. Staff received two letters from neighbors who are concerned with maintaining the quietness of the neighborhood. Staff recommends approval with the conditions listed in the staff report.

Applicant: Jennifer Byers the daughter of owners addresses the commission. The house is now vacant. Her mother and father live in Texas and her father is on active duty. The property is surrounded by trees and vegetation.

Public: N/A

Commissioners: Guggenbuehl notes the neighbor's concerns and the site manager can be called if there are complaints.

MOTION/Second: Guggenbuehl/Moffat recommend approval as per staff's recommendations.

VOTE: (5-0)

- G. PL 16-070 Variance from Shoreland Setback to Build a Garage at 3241 Commonwealth Ave. by Jon and Patricia Langlee

Staff: Kate Van Daele introduces the applicants' request for a variance from shoreland regulations UDC 50-37.9. The applicant proposes construction of a 24' x 28' garage to store three trailers owned by the applicants' business. The closest corner of the proposed garage is 27' from the edge of the Morgan Park Creek. The required setback is 50 feet. The applicant states that the trailers are an eyesore for his neighbors. The neighbors have expressed support for the garage and the proposed variance. Staff finds the proposed variance does not meet the criteria established in UDC 50-37.9 including the application does not demonstrate a practical difficulty. Staff recommends denial. Kennedy asks if there is an alternative location for the garage. Van Daele states to the best of her knowledge yes.

Applicant: Patty Langlee addresses the commission. She was anxious to move forward with their mitigation plan. Having the garage in a different location would increase the impervious surface area. She would like to work with the city. Guggenbuehl asks if the business is conducted out of her home. Langlee states, yes. Kennedy notes the natural screening and asks if their neighbors care about the vehicles. Langlee states it bothers her having the trailers out.

Public: Mike Peterson – 1101 105th Ave. W.- addresses the commission. He is a friend of the applicant and notes the creek moves away from the property just past the boundary.

Commissioners: Moffat questions their alternatives. What would work better on the property? Van Daele states it would increase the impervious areas to install a roadway around to the back. Robertson doesn't think a variance would be needed to add the garage to a different party of their property. The impervious surface would increase, but

it would not be in the stream setbacks. Moffat understands where the staff is coming from. He hopes a driveway isn't extended all the way around the property, but is in support of the staff's recommendation for denial. Kennedy also support staff and is concerned about the stream. Guggenbuel also agrees with staff's recommendation and it would be setting an undesirable precedent.

MOTION/Second: Moffat/Kennedy denied as per staff's recommendations.

VOTE: (5-0)

III. Appeal Public Hearing

- PL 16-072 Appeal of Wetland Replacement Plan Denial for Pacific Education Partners/Duluth Public Schools Academy, Gary Lestico of Rinke Noonan
Staff: Director Hamre introduces the appeal to the planning commissioners. The Wetland Conservation act was reviewed as it pertains to the UDC. After reviewing the submitted wetland replacement plan and additional information provided following a May 2, 2016 TEP (Technical Evaluation Panel) meeting, the members of the Duluth WCA TEP recommended that the city of Duluth Land Use Supervisor deny the wetland replacement plan. On May 18, 2016, the Notice of Decision (denial) was issued by Land Use Supervisor Keith Hamre. Chair Zwiebel asks Director Hamre to clarify the four steps in regards to wetland consideration/sequencing: 1) Avoid wetlands on site; 2) Consider alternative sites; 3) Consider alternative project configurations on site and 4) Purchase wetland credits within the watershed.

Applicant: Attorney Gary Lestico of Rinke Noonan who represents the applicant addresses the commission. They respectfully disagree with TEP's recommendation to staff to deny the wetland replacement plan. They followed the necessary impact minimization steps and feel their preferred choice is the best fit.

First the applicant determines if there a way to build the project to avoid wetlands. If not, mitigation is needed. No net loss of wetland can occur. The Department of Education has certain best practices criteria they need to follow when building the school. Alternates are considered by which sites are available. The rule requires two alternatives be considered, and five off site alternatives were presented. The five alternates sites considered were: 1) The armory site, no wetlands, but can't be physically used for a school, including no parking and no stadium; 2) Land Next to a jail. Geographic footprint is okay, but building a school next to a jail is not acceptable. 3) Arrowhead/Arlington site– meets size requirements, but the site has a greater number of wetland impacts. 4) Arrowhead Rd. – meets size requirements but wetland impact is greater; 5) central high school – applicant tried to purchase, but were unable to do so. The most prudent location would be on the current site. He disagrees with the TEP because other alternatives were looked at but considered non-feasible and would affect more wetland area than the current choice.

Step 2 was minimization. They looked at four onsite configurations for the project. St. Louis County required a certain road configuration. Alternates that were explored would impact more wetland area than their preferred configuration. They considered the social fabric and the ski trails need to remain in place for five years (based on private contract with previous owner). The applicant would like the trails to remain in place. There is one other site possibility (disregarding the covenants), but it would have greater wetland impacts. The preferred placement of the school goes through all of the needed sequencing. There are no feasible or prudent alternatives.

The 3rd part of sequencing was mitigation. They can buy \$200,000 of credits which would be perpetually held in easement for this project. He strongly feels they have met the requirements of the wetland replacement plan. Guggenbuehl asks if the athletic field will be on the same site as the school. Lestico explains the configuration and having students walking across a street is not a desirable situation.

Chair Zwiebel asks about the demographics. Lestico noted the student body currently attending the middle school. Per Lestico the rule states an option for alternative analysis can be a non-build option. They have already surpassed the requirements of state law by providing five alternatives. The Department of Education best practices result in a 25-30 foot height which is needed for a school, and this limits the possibilities within Duluth.

Paul Goosens – president of Tischer Creek Duluth Building Company addresses the commission. The owners of North Star Academy have completed a three-year process act of exploration for a new high school. They wish to have a full continuum of K-12. Their K-8 program has been successful. Parents of students desire a high school for students to continue on to graduation. They must follow MN Department of Education guidelines and best practices. In regards to charter schools there are a number of criteria needed. The facility must support the school's program. They explored the armory site but it didn't fit the programming essential for a school. There is not a lot of raw land located in central Duluth. They worked hard to reduce size and scope of school and athletic field including reducing the parking impact as much as possible. They are confident in the process they went through working with engineers and specialists.

Chair Zwiebel notes the five year contract related to impacts on the ski trails. What about beyond this time frame? Lestico states in the original plan there was a possibility of adding housing units along the school's service road (proposed Sawyer Avenue). There was a traffic study conducted. Originally projected at 400 units, it was reduced to 100 units. The owner doesn't know if this will ever be built. It wouldn't impact any wetlands and it wouldn't be used for the current layout of the school. The hope and expectation is the ski trails will remain past the five year covenant window.

Guggenbuehl notes the developers said that old Central High School was the perfect site. How can it be unavailable? Is a counter offer prudent? The cost of the building would be less than what is going into snowflake. Per Lestico, Central would need a large sum of money to bring it up to minimum standards, and then additional money would be needed to modify it. They couldn't afford to pay the school district more for financing purposes. Lestico noted the record of school vote didn't care about money. They didn't want to sell the facility to a competing school.

Chair Zwiebel asks what the size of the armory is (noting they said it would need a 20 to 30 acre site). Per Lestico, the current owners had limitations as to what they would consider. Moffat shares he attended a technical high school in St. Cloud which was based in an urban setting. He had a great high school experience. Could there be more floors added to avoid wetlands, parking under building, etc.? Could the track be a shared facility? Goossens notes requirement versus guidelines. They must convince the Department of Education that they met the criteria. He notes the current bedrock on site. They had to meet height restrictions and they could not build higher. They looked

at a parking facility off-site. And a ramp on site would not have lessened wetland impact than their current proposal.

Moffat notes sites in Irving Park, including the former U.S. Steel site which could be redeveloped. Per Goossen, the state requires the site and facility must support the educational program which the school is proposing. Program elements are different. Setting up a school in urban Minneapolis would only be approved if they had a very different educational program.

Moffat asks if by building the school wouldn't you be creating your own hardship? Lestico states they can't have a different type of school without the needed components. Components include: building, parking, athletic field. They are proposing one field with one track and simple bleachers, very conservative with the least possible impact. Kennedy asks how programming is determined. Chair Zwiebel states they are not looking at programming issues. Kennedy notes the footprint difference between a football field and a hockey rink. Goossens notes they are considering a multi-use athletic field used for recreation purposes. There will be no out buildings/concession stands which would increase their footprint. Chair Zwiebel mentions Harbor City school has no track. Goossens notes the downtown setting utilizes the YMCA for physical education classes. Moffat questions the possibility of a shared facility with UMD.

David Chmielewski addresses the commission. In response to Moffat's comment, he notes the reverse is true and other colleges have talked to them about using their facility. The developer is fully aware of the covenant and how to keep the trails intact. There will be 22 acres of development including the county road. The budget is tight. There will be MN Power pole trucks may be coming thru and they don't want facilities on the other side of county road for the safety of the students. He notes stormwater is treated underground due to wetlands which is very expensive. In worked with city engineer Tom Johnson, there will be 125% less discharge. He welcomes any technical questions commissioners may have. The TEP's are often right, but not in this case. Moving the preferred plan on the site would destroy the ski trails and destroy more wetlands. He discusses wetland watersheds and credits. Wetland credits are in the same watershed to equally offset the impacted area. Kennedy notes the site location possibility near the jail. Per Chmielewski, they did a wetland study back in 2003 on that site and there were more wetland impacts than their preferred site. They used the same building/facility footprint for each site.

Chair Zwiebel notes the Army Corps of Engineer application. How is it going? Lestico states it is going through the process and there has been no ruling yet.

Public: N/A

Commissioners: Chair Zwiebel states they need to consider the TEP's suggestions due to it being a very technical issue. Lestico states the LGU can rule differently than the TEP. Their process and analysis went above and beyond the minimum requirements. Moffat feels they didn't minimize the impacts as well as they could have.

Director Hamre refers the commissioners to page 135 and 138 in their packet which is the TEP's minutes summary clarifies how they came to their analysis. The minutes note that Steven Robertson asks for an alternative design considerations including a parking ramp. The developers' answer was the budget is tight. Robertson also asked about

increasing the building's height to reduce wetland impact. The developer stated there was difficulty with a 3-level design that a 2-story design wouldn't have. Another question asked was what about the rest of the site? Could there be other site locations considered. Those were the three primary reasons why they made their decision.

Chmielewski stated when you build a parking ramp you can't gain a smaller footprint without building it higher. Chmielewski noted Director Hamre stated in the past that they were not asking the applicant to change the site plan. Chmielewski is unsure what other information they can provide. What is the basis for this denial?

Moffat feels they have created their own challenges with the 5 year agreement. Lestico states the proposed plan is prudent and feasible. A parking ramp footprint would be larger in its effect on wetlands. They have avoided all possible wetland impacts and feel they have met the criteria.

Guggenbuehl supports staff's denial and his reason is feels this site is generally bad for development and the wetland impacts could be reduced. The only reason it's good is its proximity to the current K-8 school. There is ample room at jail site and that is just one example. He feels there are options to use other athletic fields in the city. Chair Zwiebel states they have created their own hardship. Schraepfer supports the applicant and feels they have gone through the necessary steps.

Chair Zwiebel asks about the army corp's decision. Director Hamre notes the Army Corp has six months to make their decision which is expected in October/November. Both permits are required to move forward with the site.

Schraepfer asks the other commissioners and staff to give the applicant some direction on what more is needed. Robertson notes there is an appeal process beyond the city's decision, with the Board of Water and Soil Resources. He refers commissioners to their packets and notes comments from earlier TEP meetings with the applicants. The TEP members stressed and several meetings how site minimization is important to WCA rules. He noted a draft plan from December that included potential housing and a ball field in areas that could be developed for the proposed school with little or no wetland impact, which seems to indicate that there are additional site designs that would have less impact than the applicants preferred plan. Robertson also noted that the applicant's delineation does not cover the entire subject property. What Robertson heard the TEP members ask at various meetings is can you move the parking to a different location on the site, or can you reduce parking, or can you do a parking ramp, etc? The applicant's answer was for financial reasons or business decisions that they didn't want to do change their preferred plan, which frankly may make good sense from a business perspective, but it doesn't work well for wetland impact minimization.

MOTION/Second: Moffat/Guggenbuehl affirm the Land Use Supervisor's Denial of the Wetland Replacement Plan.

VOTE: (4-1, Schraepfer Opposed)

IV. Communications

- A. Manager's Report – Director Hamre announces the need for a special planning commission meeting which will be held on July 26, 2016. Items will include the rezoning of Rice Lake Road from RR-1 to MU-B and a planning review for St. Luke's Hospital. If

appointed next Monday, there will be a new planning commission member - Ruth Wright Wendel.

- B. Consideration of Minutes – June 14, 2016
MOTION/Second: Moffat/Guggenbuehl approve minutes.

VOTE: (5-0)

- C. Reports of Officers and Committees
-Heritage Preservation Commission Representative – N/A

- D. Meeting adjourned at 8:44 p.m.

Respectfully,



Keith Hamre - Director
Planning and Construction Services