

City of Duluth
Planning Division

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City of Duluth
Planning Commission
May 14, 2013 Meeting Minutes
City Council Chambers - Duluth City Hall

I. Call to Order

President Terry Guggenbuehl called to order the meeting of the City Planning Commission at 5:00 pm on Tuesday, May 14, 2013, in the City Council Chambers.

II. Roll Call

Attending: Marc Beeman, Drew Digby (absent after item N), Terry Guggenbuehl, Tim Meyer, Garner Moffat, Patricia Mullins, David Sarvela, Luke Sydow and Zandra Zwiebel
Staff Present: Charles Froseth, Jenn Reed Moses, Steven Robertson, Kyle Deming and Cindy Stafford

III. Public Hearings

A. PL 13-048 Environmental Assessment Worksheet (EAW) Review for CN Dock 6

Staff: Steven Robertson gave a brief overview of the environmental process. The intent of the EAW is to identify and minimize environmental impacts. The Planning Commission tonight will determine if an EIS (Environmental Impact Statement) is needed. The project includes filling approximately 300,000 cubic yards of fill into St. Louis Bay to provide additional space for materials storage, stormwater collection and management for the facility and stabilization of Dock 6 all of which will increase the efficiency and capacity of the facility. CommissionerMoffat asks who is the owner of the property. Per the applicant, the original fill which was placed in the 1960's. CommissionerMoffat asks about the wetlands. Will replacement be at a 2 to 1 ratio? Per Jeff Heller, Krech & Ojard, the ratio is still being determined and states deep water/shallow areas may be different ratios.

Applicant: Jeff Heller and Renee of Krech & Ojard addressed the Commission and asked if there are further questions. CommissionerMoffat asks if there have been studies pertaining to water run off and material storage. Heller states that the expansion project will improve stormwater runoff quality by piping it to a nearby stomrwater pond for treatment just north of the site.

Public: No speakers.

Commissioners: Commissioner Moffat is concerned about the wetland swap and wants to verify ownership of the land. Commissioner Digby noted a question on page 14 of the Krech & Ojard report and would like more comment on the overall impact of the project. Commissioner Sydow notes the DNR is using softer language than usual when referring to an EIS study. Robertson stated that, due to the mitigation, stormwater treatment being improved, and zoning being sufficiently met, staff believed that an EIS is not needed. Commissioner Moffat asks about fencing around the site.

MOTION/Second: Mullins/Sydow – Per staff's recommendation, the Environmental Assessment Worksheet (EAW) is sufficient, and an Environmental Impact Statement (EIS) is not required for this project.

VOTE: (9-0)

- B. [PL 13-052](#) Environmental Assessment (EA) Review for US Army Corps of Engineers 21st Avenue West Dredged Material Placement

Staff: Robertson notes the same criteria from the last study, applies to this one.

Applicant: Steve and Allen of the US Army Corps of Engineers summarize the project.

Public: No speakers.

Commissioners: Commissioner Moffat asks about the logistics of the process. Corps responded they will be using a hydraulic system. The material will be pumped in, and sift curtains will be utilized.

MOTION/Second: Beeman/Sydow - Per staff's recommendation, the Environmental Assessment Worksheet (EAW) is sufficient, and an Environmental Impact Statement (EIS) is not required for this project.

VOTE: (9-0)

- C. [PL 13-057](#) UDC Zoning Map Amendment to Rezone from Mixed Use-Business (MU-B) to Mixed Use-Neighborhood (MU-N) at 4502 East Superior Street by Greg Klein

Staff: Robertson gives the background information. Staff recommends approval.

Applicant: N/A.

Public: No speakers.

Commissioners: Marc Beeman asks why this is being rezoned. Per Robertson, staff believe that the applicant wants to be able to have residential uses in the future which are not allowed in MU-B.

MOTION/Second: Moffat/David Sarvela recommends approval as per staff's recommendation.

VOTE: (9-0)

- D. [PL 13-067](#) UDC Zoning Map Amendment to Rezone from Residential-Planned (R-P) to Mixed Use-Planned (MU-P) at 201 Clover Street (Woodland Middle School and Bluestone Commons) by the City of Duluth

Staff: Jenn Reed Moses gives the history of the project. Staff recommends approval as the proposal is consistent with the Comprehensive Land Use Plan and the property has an approved regulating plan. A concept map summarizes the regulating plan. A public meeting was held and some concerns were: traffic, future use unknowns (Mark Lambert currently has no tenants for the existing school buildings), and uncertainty to changes to the regulating plan. Memo from Froseth details office policy on communication with the public was distributed. Digby asks if there is more information to the regulatory plan. Moses affirms that the information provided was the concept plan. An R-P or an MU-P now both need a concept plan. Tim Meyer asks if this can be revisited due to neighbor concerns. Per Moses, this needs to be addressed outside the scope of zoning. Meyer asks when the traffic study would be done. Applicant will need to work with the city engineers. Sydow clarifies that the existing plan will stay in place. Any proposed changes would be initiated by the applicant and the land use supervisor would sign off on it. Sydow notes the height differences between Woodland School now currently 25' and can go as high as 75' high. Moses replied that the height restrictions remain the same. Digby asks what triggers a concept map approval versus a regulating plan approval. If Woodland School is torn down, which approval is needed? Moses states the concept plan moves forward with the rezoning. If applicant makes any changes it requires City Council approval. The regulating plan (i.e. where buildings are located on the site) is approved by the land use supervisor. Patricia Mullins asks about a traffic plan. Moses, the regulating plan will carry forward unless more information comes forth about having to change it. She notes the importance of having the

traffic flow off of Woodland Ave. There is one fire access to Clover Street which is required. Sarvela is concerned with more permitted uses including large grocery stores. Per Moses, it would be consistent with concept map.

Applicant: N/A.

Public: Mick Conlan - in-house council for Summit Management is in favor of the rezoning. He states a traffic study was conducted and is in the Regulating Plan itself.

Mark Poirier – resident of the area, at this point is not in favor of the rezoning. He is not comfortable with what this rezoning means to the neighborhood and noted a question from another neighbor which elaborated it could mean big box retail would now be allowed. He would like the rezoning decision to be paused.

Karen Schuder – resident of the area, is opposed to the rezoning. She is concerned with traffic and with the land use. She wants the area to maintain a sense of neighborhood.

Commissioners: Zandra Zwiebel asks if a month delay in a decision would be harmful to the developer. Per Moses, another month, no. She notes the City wants to be consistent and feels the rezoning is the right fit. She asks the Commission if they delay their decision to be specific on what information they would like to see before next month. Digby at first didn't think this would be a big change, but feels there is a tool missing. He would like limits set. The use table now includes items including large grocery and large retail store. This would change the character of the area. He feels it would be the proper zoning, if limits can be imposed. Moses, the way to limit uses is through the regulating plan. Digby would like to see regulating plan changes be brought back to the Planning Commission for approval. Sydow feels this rezoning allows too many large land uses and variations from what was originally approved. If there is no essential need now, then wait until it is needed. Mullins confirms that the regulating plan goes with the property. Conlan comments about the rezoning urgency. Nothing is in the works currently, but overall zoning for the property would be helpful. It is harmful to the developer if property stays in limbo.

MOTION/Second: Zwiebel/Meyer table until consideration given for UDC language changes and regulating plan revisions come back for approval to commissions, and would include more communication with neighbors.

VOTE: (9-0)

- E. [PL 13-063](#) Interim Use Permit for a Vacation Dwelling Unit at 1004 South Lake Avenue by Gerard and Norma Downes

Staff: Kyle Deming introduces applicants' request for an interim use permit for a vacation dwelling consisting of three bedrooms. The applicant meets all conditions and will disclose in writing to guests the Park Point rules; including, nearest legal access to beach and quiet hours. Staff recommends approval.

Applicant: Present, but did not speak.

Public: No speakers.

Commissioners: Zwiebel asks why there is no public outcry, and wonders if the community is getting used to these permits. Deming is not sure why no comments are coming forth. Zwiebel asked how many have been approved. Deming will gather the information for the next meeting.

MOTION/Second: Moffat/Mullins recommend approval as per staff's recommendations. Sydow asks about the placement of fencing across the adjacent right of way leading to the beach. Per Deming the Park Point Small Area Plan will address this issue.

VOTE: (9-0)

- F. [PL 13-064](#) Interim Use Permit for a Vacation Dwelling Unit at 10 Industrial Avenue by Nancy Nilsen (Riverside Retreat LLC)

Staff: Deming introduced the applicant's request for an interim use permit for one vacation dwelling consisting of three bedrooms. The address is located in the Riverside neighborhood. Staff recommends approval with the conditions that the alley vacation be completed and interim use permit shall not be effective until the Fire Operational Permit has been granted by the City Fire Department and the Lodging License has been granted by the State Department of Health.

Applicant: Present, but did not speak.

Public: No speakers.

Commissioners: N/A.

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

VOTE: (9-0)

- G. [PL 13-065](#) Interim Use Permit for a Vacation Dwelling Unit at 13402 West 3rd Street by Matthew Evingson

Staff: Deming introduced the applicant's request for an interim use permit for a vacation dwelling consisting of five bedrooms. This address is located in the Fond du Lac neighborhood. Staff recommends approval with the three conditions listed in the staff report.

Applicant: Present, but did not speak.

Public: No speakers.

Commissioners: Zwiebel asks why the parking spaces need to be paved and can't be gravel. Deming, it's a city-wide requirement for all properties since 2007. Compacted gravel is considered impervious. Pervious pavement systems are allowed as an alternative to standard asphalt or concrete.

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

VOTE: (9-0)

- H. [PL 13-059](#) Vacation of Street Easement for Unimproved Alley between 86th Avenue West and Industrial Avenue by Nancy Nilsen

Staff: Robertson gives the background information. Staff recommends approval. Commissioner Digby notes the house/garage on Riverside already in the alley. Robertson, the garage was built in error approximately six inches in the right of way. The garage will now be in the easement which to a degree less inappropriate.

Applicant: Present, but did not speak.

Public: No speakers.

Commissioners: N/A.

MOTION/Second: Sydow/Moffat recommends approval as per staff's recommendations.

VOTE: (9-0)

- I. [PL 13-053](#) Special Use Permit for a Clinic in an R-2 at 1730 East Superior Street by MDF Holdings, LLC

Staff: Reed-Moses introduces the applicant's request for a special use permit for a birthing center, maternity clinic and offices in an R-2 district. Applicant has other clinics in cities outside of Duluth. There is sufficient parking provided on-site. The applicant is not proposing any external changes to the property. Staff recommends approval with the three conditions listed in the staff report.

Applicant: Rebecca Gorski Chief Operations Officer for Morning Star addresses the Commission and gives an overview of the birthing center and their operations. They are licensed and accredited through the State.

Public: Gary Voght - Director of Facilities for the Human Development Center represents the seller of building. He is in favor of the special use permit. He feels it will be a good fit and will provide more tax revenue for the City.

Commissioners: N/A.

MOTION/Second: Moffat/Beeman recommend approval as per staff's two recommendations. Friendly amendment Digby/Beeman recommend approval as per staff's three recommendations.

VOTE: (9-0)

- J. [PL 13-049](#) Concurrent Use Permit for an obstruction above the Public Right of Way at 202 East Superior Street by Daniel Neff

Staff: Robertson presents the applicant's request and shares the aerial photo with the Commission. The applicant's request will allow for an exhaust fan to be three feet within the right of way. The applicant has complied with building and fire safety rules. Staff recommends approval with standard conditions as listed in the staff report. Chair Guggenbuehl asks if there are noise issues and/or concerns.

Applicant: Dan Neff addresses Commission and will answer any questions. He stresses that the fan is quiet and undetectable from the street below.

Public: No speakers.

Commissioners: Digby commends Neff for persevering with a new kind of business that is a benefit for the City.

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

VOTE: (9-0)

- K. [PL 13-068](#) Quick Plat on Chester Way by Jason Ross

Staff: Robertson discusses the applicant's proposal to subdivide the existing large lot into two lots, so that a duplex can be built on each lot. Staff recommends approval with the three conditions as listed in the staff report, and contingent on the City Council's approving the ordinance change allowing the lots to be conforming. Chair Guggenbuehl asks what if the City Council doesn't approve the ordinance change. Per Robertson, if not approved by August or September, then he will recommend the applicant seek a variance, or find an alternative method.

Applicant: Present, did not speak.

Public: No speakers.

Commissioners: Commissioner Sydow notes the discrepancy in the placement of the buildings. Per Robertson the handout and the visual on screen is the most current, but the placement of the buildings is not an issue. The change was made due to bedrock issues. Right now, the lots just need to conform. When the permit is obtained then the applicant will need to meet setbacks.

MOTION/Second: Zwiebel/Mullins approved as per staff's recommendations, and contingent on the City Council passing the ordinance for the UDC changes.

VOTE: (9-0)

- L. [PL 13-050](#) Variance to Expand Non-Conforming Pole Sign for Dick's Sporting Goods at 1600 Miller Trunk Highway by Imageone Industries

Staff: Reed-Moses introduces the applicant's request for a variance to the pole sign. Currently measures 382 square feet. New sign code specifies in an MU-C district the maximum size is 60 feet and allows up to 150' if it is a large lot. Multiple pole signs (up to three) are allowed, but they can't individually be larger than 150'. Applicant wants to increase the sign size 43 square feet to a total size of 425 square feet. Staff recommends denial of the variance due to findings in the staff report.

Applicant: Tom Gianni representing Dick's Sporting Goods addresses the Commission. The applicant is not altering the pylons of the existing sign. They are utilizing a space that is already there. He notes that the Verizon logo is linear in nature. Dick's logo is rectangular and needs the additional blank space (located under the Verizon space) to be legible. Zwiebel asks if alternatives were considered, and if you can see the store from Highway 53. Gianni notes the store location as compared to the sign location. The pylon sign is part of their lease agreement. Chair Guggenbuehl asks staff about the nonconformity of the sign. Reed-Moses reiterates the overall square footage can't be increased, because it's increasing the nonconformity. Digby asks if the existing blank space could be interpreted as being part of the sign.

Public: No speakers.

Commissioners: Moffat notes the sign is already way bigger than it should be. Sarvela agrees. Digby notes the next logical step would to put up an additional pole sign somewhere else on the property, which would be much worse. He would vote against the variance. Per Moffat, they could put up an additional sign anyway and shouldn't be a factor in this decision. Meyer feels since it's in the parameter of the existing pylons it should be allowed. Chair Guggenbuehl notes there needs to be a hardship. Zwiebel feels the property is unique and states the hardship as an exceptional practical difficulty. She is in support of the variance. Sydow is concerned about setting a precedent.

MOTION/Second: Moffat/Sarvela deny as per staff's recommendation.

VOTE: (4-5 Beeman, Digby, Meyers, Mullins & Zwiebel opposed)

MOTION/Second: Digby/Meyer approve based on exceptional practical difficulties based on the uniqueness of the site.

VOTE: (5-4 Guggenbuehl, Moffat, Sarvela & Sydow opposed)

- M. [PL 13-051](#) Variance for Large Banner Sign for Dick's Sporting Good's at 1600 Miller Trunk Highway by Imageone Industries

Staff: Reed-Moses introduces the applicant's proposal for a temporary banner in front of their store. New sign code allows temporary banners, but the size has a maximum size of 32 square feet and 30 days. The applicant wishes to increase the size from 32 sq ft to 125 sq ft and increase the time displayed from 30 days to 60 days. Staff recommends denial based on findings in the staff report.

Applicant: Tom Gianni representing Dick's Sporting Goods addresses the Commission. He explains their two-phase banner system and feels it is important for people to know when the store is open and when it is still under construction, which means the public should stay away. Beeman asks how long the signs will stay up. Gianni is requesting 30 days before and 30 days after. Sydow doesn't see a hardship. Digby questions the difference between

banner exhibition and temporary banner. Per Robertson, an exhibition banner is for museums and specific exhibits. Sydow asks the applicant if they would consider a compromise to allow for a standard size sign, but extend the time frame to 60 days. Gianni states yes, but he reiterates that the sign needs to be seen in split second and they place high importance on their identification to the public.

Public: No speakers.

Commissioners: Moffat notes that the previous variance was approved because the sign couldn't be seen from Highway 53. He notes the discrepancy that the applicant is requesting a bigger sign to be seen from Highway 53. Sydow cautions about setting a precedent for other stores in the future.

MOTION/Second: Moffat/Sydow deny as per staff's recommendation.

VOTE: (4-5 Beeman, Digby, Meyer, Mullins & Zwiebel opposed)

MOTION/Second: Beeman/Meyer approve based on exceptional practical difficulties based on the uniqueness of the site.

VOTE: (5-4 Guggenbuehl, Moffat, Sarvela & Sydow opposed)

N. [PL 13-061](#) Variance from Shoreland Requirements at 10701 Becks Road by WLSSD

Staff: Reed-Moses introduces the applicant's request. The sewer line was damaged by the flood and needs to be repaired. Staff recommends approval based on findings and conditions listed in the staff report.

Applicant: Representative from WLSSD addresses the Commission. She notes that this is a FEMA approved project, and there are no alternatives.

Public: No speakers.

Commissioners: N/A.

MOTION/Second: Moffat/Beeman approve per staff's recommendations.

VOTE: (9-0)

O. [PL 13-054](#) Variance from Front Yard Setback from 25 feet to 18 feet in a Residential-Traditional (R-1) zone at 1213 East 8th Street by David and Lorie Croke

Staff: Robertson stresses his right for equal time to present his variance. The applicant has a narrow lot and would like to add a modest addition. Due to site constraints a variance is needed. Staff recommends approval.

Applicant: Present, but did not speak.

Public: No speakers.

Commissioners: N/A.

MOTION/Second: Moffat/Meyer approve as per staff's recommendation.

VOTE: (8-0)

P. [PL 13-066](#) Variance from Rear Setbacks in a Residential-Traditional (R-1) zone at 1302 Minnesota Avenue, by Steven and Heather Pitschka

Staff: Robertson introduces applicant's request for a variance to build either an attached garage (option 1), or a detached garage (option 2). They need to meet parking requirements for their interim use permit. Staff recommends approval of option 2 based on findings and conditions listed in the staff report.

Applicant: Present, but did not speak.

Public: No speakers.

Commissioners: N/A.

MOTION/Second: Moffat/Meyer approve as per staff's recommendation.

VOTE: (8-0)

IV. Consideration of Minutes - April 9, 2013

MOTION/Second: Sarvela/Mullins approve.

VOTE: (8-0)

V. Communications

Discuss at next meeting.

VI. Old Business

No update on Central High School. The school district focus is on Rock Ridge.

VII. Reports of Officers and Committees

Mullins - HPC working on a list for landmark designations.

VIII. New Business

Froseth mentions the handout. Multi-modal center progress continues.

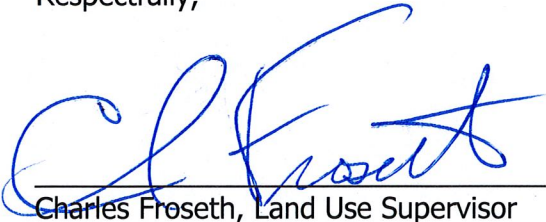
IX. Other Business

Robertson noted that the City Council voted to table the UDC changes. They passed the sign amendment and included the landscaping requirements for pole signs.

X. Adjournment

Meeting adjourned at 8:17 p.m.

Respectfully,



Charles Froseth, Land Use Supervisor