

City of Duluth
Planning Commission
Minutes of Tuesday, December 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, December 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, Henry Banks, Joan Barrett, Joan Morrison, Heather Rand, Jim Stebe, John Vigen, David Sarvela

Members Absent: Mindy Granley

Members Absent Excused: Mindy Appold, Katelyn Blazevic, Drew Digby, Frank Holappa

Staff Present: Jen Bergum, Kyle Deming, Alison Lutterman, Cindy Petkac

VIII. New Business

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

A. **FN09122** - A Water Resource Management Variance for impervious surface requirements at 300 Canal Park Drive by David Tyacke. (JM)
application withdrawn by the applicant

B. **FN09096** - Vacation request of Ensign Street between Church Place and a point 128.5 feet west of Chambersburg Avenue by ISD 709. (KD)

Staff: Deming reported the School Board has come back to request vacation of a shorter segment of the street in order to preserve the street frontage for the church and parsonage. A utility easement is requested over the entire width of the right-of-way as well as a pedestrian easement. According to the Fire Chief, the emergency response time to the site would increase by 5-40 seconds which is not significant enough to construct an extension of Leonard Street. Staff is recommending approval subject to retention of pedestrian and utility easements over the entire width.

Discussion: Morrison asked Deming about a letter saying student safety is a concern and wondered if there was, in fact, reasonable concern. Deming stated that the concerns listed in the letter are not within the bounds of what the commission should be considering with a vacation. Deming also stated the calculations for uselessness of the vacation did not rest on the position and orientation of school building.

Applicant: Kerry Leider ISD 709: Stated that this project is educationally and economically advisable by the department of education. They are continuing to work with the church to find what is best for

their needs. They will be connecting school to the green field behind the church. There has been a lot of excitement in this community and business here want this to happen.

Vigen asked if anyone has done a traffic study on that area with respect to consumer traffic specifically Viewcrest Health Center and apartments on Leonard Street and if the vacation will restrict traffic flow into these areas. Leider said the School Board has been working with engineering for a traffic study and Cindy Voight helped. He also said the inconvenience would be minor.

Public Input: Tom Ochoki: Chair of Trustees of Christ Lutheran Church said the church is still in favor of the vacation. He still questions the access and wants good pedestrian access. The church wants the school in the neighborhood. The congregation has even voted to work with the school board.

Pennie Turcott 2351 Hoover St: Is against the vacation. 18-wheelers will be coming off Piedmont Avenue and turn into the school right next to the student play area. She said it doesn't look like there's enough room for the trucks to maneuver. It is not safe to put kids on a major traffic route with limited visibility. People at the church now have multiple exits from their parking lot but after the vacation, there will be a bigger lot but only one exit.

Scott Kuiti 2502 Ensign St: Stated that safety is his main concern. He is glad the School Board wants to keep the school where it is, but with the change of traffic, there will be a large increase of traffic cutting through his property. He would like to reduce the opening onto Ensign Street down to a 12 foot residential entrance to deter traffic.

Leider stated there's a high level of concern for safety. The school board has done everything they can. The bus drop off is designed so there is enough room for busses to pull in and pull out without backing up. There is a parent drop-off in a separate area from bus traffic. Vehicles dropping off shipments are a rarity for the school and food vehicles will drop off shipments once a day. There will be an adequate separation of the trucks and schoolyard, usually fencing. Leider also stated the school board had looked at Kuiti's situation and there is a wide paved area that looks like it's already large enough for a drive through but there are things that can be done to make it look less like a cut-through area.

Akervik asked what the school district is supposed to do if someone owns the property where the cut-through is. Leider said Kuiti would like School Board to pay for the revisions of that portion of Ensign Street access to make it smaller.

Vigen questioned the direction of inbound busses. If everything is southbound, it will be a long way around for some busses to come into the school. Leider said the busses coming from the south will need to be reoriented. Eight busses will be stacked up which is not detrimental to the School Board's plan and are they are confident it will work fine.

MOTION/Second: Akervik/Barrett to **Recommend Approval** of a Vacation request of Ensign Street between Church Place and a point 128.5 feet west of Chambersburg Avenue by ISD 709.
Vote: Unanimous 8-0

- C. **FN09106** - Vacation request of 3rd Avenue West between 7th Street and the alley between 7th and 8th Street by Scott Forbort. (KD)

Staff: Deming reported on the area affected by the vacation. West and to the north of the property is land owned by the City. The applicant is petitioning for vacation to control water runoff and possibly build a garage. The staff found there are no utilities in the petitioned vacation area, so there is no reason for a utility or pedestrian easement.

There is a stairway that does not connect to anything. It is in good condition in the lower half but dilapidates as it rises. There is an elevation change of 50 feet so use of the right of way for a street is not likely. Staff recommends approval.

Discussion: Vigen asked if the applicant only gains 33 feet of space with this project and Deming said yes.

MOTION/Second: Vigen/Rand to Recommend Approval of a Vacation request of 3rd Avenue West between 7th Street and the alley between 7th and 8th Street by Scott Forbort.

Vote: Unanimous 8-0

- D. **FN09118** - Vacation request of 43rd Avenue East and Peabody Street by Ronald Anderson. (KD)

Staff: Deming reported the applicant would like the right-of-way for possible building of a garage. Staff recommending approval with the exception of an area retained for utility easement.

Discussion: Vigen: part of vacation area is in a floodway. Can we vacate this up to the edge of the floodway and retain that part w/o vacating it? Anything that prohibits that? Deming: doing this would create an island of street right of way, so there would be a 20 ft segment separated from the rest of it.

Applicant: State of MN will get other half of the "street." He understands that his building will have to stay 75 feet away from water. Talked to neighbors and nobody was against it. Needs area because the new garage has to be 10 feet away from his house.

MOTION/Second: Vigen/Barrett to Recommend Approval of a Vacation request of 43rd Avenue East and Peabody Street by Ronald Anderson.

Vote: Unanimous 8-0

- E. **FN09119** - Special Use Permit for an electrical substation at Swan Lake Road and Kruger Junction by Minnesota Power. (KD)

Staff: Deming reported the land is in the process of being acquired by Minnesota Power which was approved by the Planning Commission and City Council. A large part of the site is shoreland, but the applicant is proposing the substation for the upland area outside the shoreland. They will impact a small amount of wetlands with a 24' wide road to access the site. They have already received wetland permits. They will plant a double row of spruce trees along the west property line to screen the site, natural screening exists to the other sides of the site. The lighting will be downcast to reduce glare. Neighbors are concerned about tree loss, traffic conditions, and property values. Staff recommends approval with conditions in the staff report.

Applicant: Blake Francis Environmental services with Minnesota Power: Said it is important to have this facility to keep electric reliability. Minnesota Power looked at a site out east but there would be significant impact on wetlands. The project is set to begin spring 2010 and will be done in 2012.

Public Input: Kyle Claus, 4304 Kruger Road: Opposes this saying his lot would be affected by taking away some of his trees. He is worried about pine trees being cut down without his consent. He would like more information and more time.

Tom Gustafson, 4414 Kruger Road: Requested the commission table the issue. He said there are lots of walkers, bikers and joggers. He voiced many concerns about noise of the substation, the lights, the building being a visual eyesore, loss of green space, higher voltage power lines being put in, property values going down, if it's a health concern, traffic for access, and the wetlands being affected.

Robin Mertz, 4215 Kruger Rd: Would also like the issue tabled and to get more information. She is worried about wetlands, trees and animals.

Gill Peterson, 2902 Swan Lake Road: Is worried about the wetlands and wants the water level looked into before they go ahead with anything.

Dennis, Jenson 4219 W Arrowhead Rd: Said this is a residential area and to put substation here is an atrocity. Power lines are ugly and this is not correct location for this. He thinks Minnesota Power doesn't want to pay to relocate this.

Discussion: Barrett asked if the power line running east of Kruger Junction Rd. was new or existing. Deming said it was not existing. Morrison asked why other areas were rejected for construction. Rick Nelson of Minnesota Power said they are not proposing any tree clearing. Barrett said there was a lot of upset in the neighborhood and asked Nelson if there were any pictures of the type of power line that was being proposed. Nelson said he did not have pictures but it would be a 40 foot tall pole with an eight foot cross arm. He said they are found everywhere in the city. Kyle asked Nelson to answer Morrison's question as to why other sites weren't chosen. Nelson said they could not come to terms on the airpark location. They negotiated with the YMCA and they didn't want to sell the property. And east of Rice Lake Road they couldn't come to terms again. On another site out west there were way too many wetlands. This is by far the best site. Vigen asked if the trees will need to be sheared on one side. Nelson said they could move the line to other side of the road or go underground to avoid this. Sarvela asked if the size of the substation was common for Duluth. Blake Francis said it is standard size for a substation. A similar one is across from Dairy Queen west of the mall area and on Howard Gnesen Road. Rand suggested the commissioners move forward. She said it's not going to be a big monstrosity as some think it will be and she appreciates the concerns of the neighbors but she feels comfortable moving forward with this issue.

MOTION/Second: Rand/Vigen (with amendment to put power line on westerly side of Kruger Junction Road near Kruger Road) to **Recommend Approval** of a Special Use Permit for an electrical substation at Swan Lake Road and Kruger Junction by Minnesota Power with Conditions noted in the staff report

Vote: 4-4 (Nays: Morrison, Stebe, Banks, Akervik); Motion Failed

Morrison said she cannot support this as she would not want to live next to a power substation. She does not want to approve the application as it is. Stebe said more effort should be made to put the substation in a less residential area. Nelson said the area is zoned for this purpose.

- F. **FN09123** - Amendment of Section 50-30 (b) to allow parking in the front yard in an R district for uses authorized by Special Use Permit. (KD)

Staff: Deming reported on Alison's drafting of the amendment. Staff is recommending approval.

Discussion: Barrett questioned the language "shall not exceed an additional 30 percent." Alison said that's already part of the code and the amended language is the underlined language in clause B.

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| <p>MOTION/Second: Vigen/Morrison to Recommend Approval of the amendment of Section 50-30 (b) to allow parking in the front yard in an R district for uses authorized by Special Use Permit.</p> <p style="text-align: right;">Vote: Unanimous 8-0</p> |
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IV. Consideration of Minutes: November 10, 2009. Motion/Second by Akervik/Sarvela
Vote: Unanimous 8-0

V. Communications

VI. Old Business

VII. Reports of Officers and Committees

- A. **Downtown Waterfront Mixed Use District:** Approved the detachable awnings for Little Angie's Cantina and Grill. Vigen questioned Amazing Grace's fencing on the public sidewalk. Morrison said it is being looked into.
- B. **Zoning Advisory Committee:** Rand reported on the Unified Development Code meetings. She urged the other commissioners to come to the meetings.

VIII. New Business

- A. **FN09120** - Request for City-owned land; sale of former DWP Railroad right-of-way at between Gogebic Street and Bessemer Street by Spirit Valley Land Company LLC. (KD)

Staff: Deming reported this is congruent with the Comprehensive Plan. The applicant agreed to provide public trails for the park system and to dedicate and improve a trail on the DWP when he improves the road in that location. The city will not be losing the ability to have a trail on the DWP. Staff recommends approval with conditions.

Discussion: Sarvela asked where the location of the Superior Hiking Trail was in regards to this land. Kyle said it is above the area being proposed for sale.

Applicant: **Bill Burns (representing Brad Johnson, applicant):** Said this is a total of almost 80 acres. He supports the staff report.

Brad Johnson: Said the conductivity of trails have been well thought out. 90 percent of all the neighbors like this. Akervik asked where it will come out. Johnson said the ski area by the parking lot roadway will drop down by Spring Street or a new junction called Riverside Drive. Vigen asked what will happen with the pink area on the map. Johnson said it will be commercial development.

MOTION/Second: Rand/Morrison to Recommend Approval of a request for City-owned land; sale of former DWP Railroad right-of-way at between Gogebic Street and Bessemer Street by Spirit Valley Land Company LLC. Vote: Unanimous 8-0

- B. **FN09121** - Reconveyance of tax forfeited land formerly acquired by the City in two locations, approximately eight acres north of the Lake Superior and Mississippi Railroad east of Riverside, and 2.8 acres north of the former Riverside School. (KD)

Staff: Deming reported staff recommends approval to city council

Discussion: Sarvela asked if there is a view of the trail from the houses.

MOTION/Second: Rand/Barrett to Recommend Approval the Reconveyance of tax forfeited land formerly acquired by the City in two locations, approximately eight acres north of the Lake Superior & Mississippi Railroad east of Riverside, and 2.8 acres north of the former Riverside School. Vote: Unanimous 8-0

IX. Other Business

- X. Adjournment. Motion Akervik/ Morrison, Stebe and Vigen to adjourn. President Akervik adjourned the meeting at 7:42 p.m.

Respectfully,



Cindy Petkac
Land Use Supervisor

CP:jb