



City of Duluth  
Planning Division

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City of Duluth  
Planning Commission  
June 6, 2013 Special Meeting Minutes  
Room 303 - Duluth City Hall

I. Call to Order

President Terry Guggenbuehl called to order the special meeting of the City Planning Commission at 5:00 pm on Thursday, June 6, 2013, in Room 303 – Duluth City Hall.

II. Roll Call

Attending: Drew Digby, Terry Guggenbuehl, Garner Moffat, Patricia Mullins, David Sarvela, Luke Sydow and Zandra Zwiebel

Absent: Marc Beeman and Tim Meyer

Staff Present: Keith Hamre, Charles Froseth, Alison Lutterman and Cindy Stafford

III. Public Hearings

- A. PL 13-085 Amending Chapter 5 of the City Code, Adding New Article VII, Regarding Synthetic Drug Establishments. Section 5-48 (a) No synthetic drug establishment shall:  
(6) Be located within 500 feet of any park, school, day care facility, or area zoned residential or mixed use neighborhood, as per ordinance 13-039-O.

**Staff:** Keith Hamre gives an overview of the proposed Text Amendment to the Licensing Code as it pertains to three zoning districts: R-1, R-2 and MU-N. City Attorney Alison Lutterman presents the ordinance which will regulate the sale of synthetic drugs. There is difficulty in banning the substances due to a loophole in which the drug manufactures change one ingredient and therefore the drug is considered a new non-banned substance. The City is therefore moving forward with business licensing on the non-banned substances, which is similar to other licensing including: alcohol, tobacco, taxi drivers and garbage drivers. Under the municipal planning act, before the City Council can enact the ordinance they need to receive a recommendation from the Planning Commission on the zoning restriction; 500 feet distance appears to be reasonable.

**Applicant:** N/A.

**Public:** No speakers.

**Commissioners:** Luke Sydow questions the feasibility of the Mall location. Garner Moffat mentions the Lincoln Park neighborhood noting this is a city wide issue, and wonders why we are permitting the usage at all. Per Lutterman, the City must abide by the Interstate Commerce Clause and preemption. Cities do have limitations on activities that wholly ban commercial activities that are otherwise prohibited by State and federal law. Due to the commerce clause concerns, instead of banning the activity, communities can license and regulate the activity. Chair Guggenbuehl refers to the activity as similar to the adult entertainment industry. Lutterman, the difference is consumption of synthetic drugs isn't protected by the First Amendment. A reasonable recommendation to the Council could include future restrictions in zoning. Any currently operating existing businesses would be grand-fathered in. Moffat is concerned about new businesses being forced into economically challenged neighborhoods. Lutterman is unaware of any new businesses seeking a future location. Existing locations must



comply with business regulations. Moffat asks if there is an aversion to applying a greater number than 500 feet. Hamre, it would then become a first read, and would delay the Council's decision. David Sarvela notes the sooner it's passed, the sooner the City will incur licensing. Moffat feels it's a step in the right direction, but that step is too small.

**MOTION/Second:** Zwiebel/Sarvella recommends approval with recommendation that a stricter ordinance be looked at (similar to adult entertainment establishments) where activity would be restricted to certain zones.

**VOTE: (7-0)**

IV. Other Business

- A. General Discussion on Item 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, tabled from May 14, 2013 meeting.

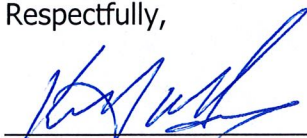
**Staff:** Hamre stresses that the developer did not want to be rezoned, but staff felt it was the right fit. He understands the concerns with the regulating plan and changes to the regulating plan. Charles Froseth put together a memo which states a public meeting will be held on any changes in use to the regulating plan. They want to remain transparent and have the public and the planning commission be involved. The Bluestone developer has made no request to change the regulating plan. Hamre notes that placing conditions are not allowed on a rezoning.

**Commissioners:** Patricia Mullins asked if the biggest concern was adding big-box retail to the area. Hamre, they would need to change the regulating plan. Drew Digby notes the UDC language that a change in the regulating plan would not require feedback from the Planning Commission or the City Council. Chair Guggenbuehl notes that the timing of the rezoning is raising red flags. Sydow notes the height restrictions issue. 75' is big departure from existing Woodland School. Digby states that the UDC language should include Planning Commission and City Council feedback in uses within the MU-P as part of the rezoning. Sydow notes the MU-P allows for drive-thru. Increased vehicular travel would change the neighborhood. Mullins and Zwiebel are concerned with the neighbors' input and what is happening in their neighborhood. Chair Guggenbuehl asks if this topic merits a brown bag meeting. Sydow asks if this is a pressing issue for next Tuesday. Digby asks if the City attorneys could look at what is currently in the UDC zoning application versus what's in the regulating plan for clarity. Digby noted that Mark Lampert would like zoning certainty in order to move forward to find renters. Lutterman, the developer currently has an established regulating plan. If he wanted to change the regulating plan, he would have to meet the current zoning rules. Special Use permits would require Planning Commission approval. Special Use permits can be conditioned; whereas, zoning cannot. Chair Guggenbuehl recommends putting this topic on July's agenda.

V. Adjournment

Meeting adjourned at 5:45 p.m.

Respectfully,



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Keith Hamre, Director – Planning and Construction Services