



CITY OF DULUTH

Community Resources Department
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City of Duluth
Planning Commission
Minutes of Tuesday, June 9, 2009
City Council Chambers

I. Call to Order: President Akervik called the meeting of the Planning Commission to order at 5:02 p.m., **Tuesday, June 9, 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, Drew Digby, Mindy Granley, Frank Holappa, Katelyn Kuor, Joan Morrison, Heather Rand, David Sarvela, John Vigen

Absent Excused: Jim Stebe

Staff Present: Kyle Deming, Chuck Froseth, John Judd, Alison Lutterman, Cherie Merritt, Cindy Petkac

III. Public Hearings

*Items **FN09041, FN09042, FN09052, FN09053, FN09054** were heard and discussed together but voted on separately.*

Staff: Petkac presented an overview of the five applications for review and approval related to the Kohl's matter. Kohl's is proposing to reconfigure its existing parking lot, add a delivery truck access drive along the west side of the store and construct a pile supported concrete parking structure to replace 111 parking spaces lost as a result of improvements to U. S. Highway 53 by the Minnesota Department of Transportation. Petkac noted that to facilitate the wetland restoration, stormwater from the roof of the building will be diverted to the wetland restoration area. The remaining stormwater will be routed to an existing grit chamber and will result in a reduction of 74,036 sq ft of impervious area draining to it.

FN09041 - WRMO Shoreland Impervious Variance. The site is located in a natural environmental waters shoreland area which requires a maximum impervious surface area of 30%. The variance request is for 69.3%. The percentage of impervious surface before the MnDOT condemnation was 62.5% The variance is necessary for Kohl's to be able to provide the same number of parking spaces that it had prior to condemnation which Kohl's feels is

necessary to remain a viable store. Thus a strict enforcement of WRMO would create an undue hardship which could jeopardize the future viability of Kohl's at this location.

FN09042 - C-5 Plan Review. Principal modifications to the site include changes to the driveways and pedestrian access, reconfiguring the existing parking lot, adding a delivery truck access drive, constructing a new elevated parking structure and landscaping/screening.

FN09052 - Shoreland Special Use Permit for 2255 cubic yards of fill and to excavate 3570 cubic yards of earth. Grading and construction operations include filling for the parking structure, excavation for the wetland replacement area and excavations and removals of the Sundby Road connection.

FN09053 - WRMO Floodway Special Use Permit to fill 2066 cubic yards and excavate 3523 cubic yards of earth.

FN09054 - WRMO Wetland Variance to fill 18,744 sq ft of wetlands and replace on-site with 24,064 sq ft of new wetlands. The variance is necessary for Kohl's to be able to provide the same number of parking spaces that it had prior to condemnation which Kohl's feels is necessary to remain a viable store. Thus a strict enforcement of WRMO would create an undue hardship which could jeopardize the future viability of Kohl's at this location.

Staff recommends approval of all applications.

Discussion: Barrett asked if the current entrance to Kohl's at Sundby Road is being removed. Petkac said yes, part of the condemnation process for the project is that Mn DOT closed that access. Both new entrances are accessed from Maple Grove Road. The wetland that is impacted is to the west of the building, with new wetlands being created to the north of the building. Land will come back to the City as there will be an exchange for the parking area. Sarvela queried a square footage on a June 3, 2009 memo that mentions the redesign of the parking area dropping to 65.8% impervious. Petkac said the 69% impervious total in the report includes shoreland and non-shoreland area. Granley asked if Gary Minck is okay with any drainage and volume issues. Petkac said Minck's requests are included in the C-5 Review response and that Kohl's responded to Minck's concerns as well. Sarvela asked if roof storm water runoff is to be diverted to an area underneath the parking area. Petkac said no, it is to be diverted to two separate locations.

Applicant: Bill Burns, Hanft Fride Law Firm; Mark Lee and Bob Doren of Kohl's. Burns thanked the staff for work involved, that although small the project is very complex. The EAW proceeding happened as well as a land sale with the City of Duluth, which involved a small part of the plat having to be vacated. The usual TEP reviews have been involved. Burns added that staff did a great job in summarizing the requests. Original parking for facility was about 80% of what is allowed. Mark Lee also thanked staff and the Planning Commission.

Discussion: Granley asked if Kohl's considered reuse or a pervious mix. Bob Doren said they looked into it, but because of construction timing they had to pass that up. Mark Lee added that part of the reason that the pervious ratio is going down is that they are giving up more land than they are getting. Bob Doren said they try to avoid any undermining. Digby expressed concerns of 69% pervious surface when 30% is usually required. Burns said that if this was a virgin site it is highly doubtful it would be approved. However, the store has been on-site for 20 years and MN DOT did not make a proposal. Rather they presented the plan

which included the location where Kohl's store is placed. Burns said that many state, county and city agencies have been involved. Kohl's realizes they cannot go to optimum parking and are dealing within the confines of what exists. He doesn't know that anything better could be accomplished on their behalf. Kohl's is giving up more land than they are getting, with the City's land being kept in permanent conservation. The actual shoreland area is not the whole site. Mark Lee added they are sensitive to minimizing any impact of wetland flooding by doing the elevation for the parking and lessening the intensity of impact. Digby put his question back out to fellow Commissioners, stating he would like to be convinced it is the best possible solution. Rand said in an ideal world it would be as it would be required for a virgin site. However, with the hand they were given, they are trying to keep it viable, even with the condemnation by the MN DOT. Canal Park is an area where pervious surface can be at 98% or 99% and the Planning Commission has had to give leeway in order to preserve buildings. Rand is of the opinion the Kohl's group has been diligent in bringing forth their best effort. Vigen said that in the 1990's most environmental groups, as well as the Planning Commission, didn't vote in the affirmative to have Kohl's built at its present location, knowing of the sensitivity of the area. Despite those concerns the City Council overrode and approved the site. Regarding the current situation, when the public sector comes in and condemns a property, taking an established parking area, the company must do its best within the replacement. The solution could have been just to fill and rebuild but instead they are elevating the parking lot and doing a land exchange, as well as working diligently on storm water issues. Granley said she is confident if Kohl's was be built new today they would not pick that site.

- A. **FN09041 - Water Resource Management Ordinance variance for impervious surface area for 2115 Miller Trunk Highway by I & S Group for Kohl's (CP)**

MOTION/Second: Rand/Barrett - to approve FN09041, Water Resource Management Ordinance variance for impervious surface area in a shoreland area. Unanimous

- B. **FN09042 - C-5 Plan Review for 2115 Miller Trunk Highway by I & S Group for Kohl's (CP)**

MOTION/Second: Rand/Appold - to recommend approval of FN09042, C-5 Plan Review .
Unanimous

- C. **FN09052 - Water Resource Management Ordinance special use permit for fill in a shoreland area, 2115 Miller Trunk Highway, by I & S Group for Kohl's (CP)**

MOTION/Second: Rand/Barrett - to approve FN09052, Water Resource Management Ordinance special use permit for fill in a shoreland area. Unanimous

- D. **FN09053 - Water Resource Management Ordinance Special Use Permit for fill in a flood way district, 2115 Miller Trunk Highway, by I & S Group for Kohl's (CP)**

MOTION/Second: Rand/Barrett - to approve FN09053, Water Resource Management Ordinance Special Use Permit for fill in a floodway district. Unanimous

- E. **FN09054 - Water Resource Management Ordinance variance to fill a wetland area for 2115 Miller Trunk Highway, by I & S Group for Kohl's (CP)**

MOTION/Second: Rand/Morrison - to approve FN09054, Water Resource Management Ordinance variance to fill a wetland area. Unanimous

- F. **FN09046 - Water Resource Management Ordinance Variance to install retaining wall at 9436 Congdon Boulevard by James and Patricia Suchan (JJ/CF)**

Staff: Froseth said the retaining wall is before the Planning Commission due to its location near Lake Superior. DNR and Corps were contacted for their comments. Staff recommends approval with conditions as listed in staff report:

1. Approvals of other government agencies are to be secured prior to start of construction.
2. Erosion management controls are to be in place at time of removal of the current seawall and during construction of the new seawall. Management controls are to be approved of by the Planning Division.
3. Erosion management controls are to be in place post-construction. These are to be approved of by the Planning Division.
4. Alterations to the approved plan that do not alter major elements of the plan may be approved by the Supervisor Land Use Controls without further Planning Commission or City Council action; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50 or Chapter 51.

Applicant: Jim and Pat Suchan - This is not a seawall, but a retaining wall which is build of concrete and is failing and is located at the top edge of the sea wall. They will use a versilock wall block which will vary in size from 18" to 12". When the replacement wall is completed a boreal native plant company will redo the upper part of the hillside with native materials common. No permit is needed from Building Safety.

Discussion: Granley asked how far back from the shore the sea wall is. Suchan noted it varies in distance and showed a photo of debris they wish to remove. Appold asked if a more imperious surface will be added. Suchan said the imperious surface remains the same.

Public Input:

Katie Kuettel - 9440 Congdon Blvd (In Favor) - Kuettel said she lives just east of the Suchans. The sea wall is at the water's edge and they want to replace retaining wall, which is crumbling and is destined to fall in if left in its current condition. Versilock should not be impacted by wave action. The request will improve the existing wall and reduce erosion.

MOTION/Second: Barrett/Morrison - to approve FN09046, Water Resource Management Ordinance Variance to install retaining wall, with conditions. Unanimous

- G. **FN09051 - Water Resource Management Ordinance Special Use Permit for building a garage in a flood fringe, 13214 W 2nd Street by Diane Shea (JJ/CF)**

Staff: Diane Shea wishes to build garage located in the floodway. A permit will be required through the Building Safety Division. Staff recommends approval with conditions.

Discussion: Barrett asked if this was new construction whether it would be allowed. Froseth said it would have to be looked at differently as this is for an accessory building and not a residential dwelling.

Applicant: Jerry Smith, American Garages, representing owner - Smith said the property owner is attempting to build a 30' x 28' garage. Board of Zoning Appeals has approved a variance for setbacks. About 300 yards of fill will be hauled to the site.

Discussion: Vigen asked if fabric armor will installed to keep dirt from sloughing off. Smith said yes. Kuor asked distance from the River and possible flooding of the site. Smith said he can't see a problem as there is no record of flooding at this site and the site is 85'-165' from the river. Appold asked if there is a setback from the River or from Mission Creek. Froseth said the site is outside of the site back requirements for both waterways.

MOTION/Second: Morrison/ Appold - to approve FN09051, a Water Resource Management Ordinance Special Use Permit for building a garage in a flood fringe with conditions.
Unanimous

H. FN09055 - Floodplain Map Amendment for Ordean School Site by Independent School District 709 (CP)

Staff: Petkac said a map amendment needs Council approval as well as that of the Federal Emergency Management Agency and Department of Natural Resources. Salo Engineering conducted a study in the past year for flood plain, flood way and flood fringe. A letter was submitted to FEMA, with an approval letter being included in the staff report packet, as well as a letter from Patricia Fowler of the DNR stating information which must be kept as part of the public record and also stating the official FEMA map remains unchanged. Staff recommends approval to Council.

Applicant: Kerry Leider, Facilities Manager, ISD 709 - Leider said everyone wants and needs as accurate information as possible. Upon viewing of the City's plates, Salo Eng was hired to research the map. Salo Engineering used an aerial photography service, following up with an on-the-ground survey. Calculations were accomplished from the railroad tracks to Superior Street, with a much larger area included in Salo's calculations. There is now a variance between City plates and what FEMA considers accurate at this date and time. Once this amendment is accomplished ISD 709 can appropriately design for the site accordingly for the needs of the eastern high school project.

Akervik asked what has been done to define and facilitate what particular parcel would be used for areas of the eastern high school. Leider said they want to make sure they have the most accurate current information before going forward as they didn't want to find themselves with any opposing information at a later date.

Barrett said she attended an EAC discussion but as ex-officio representing the Planning Commission she cannot vote and they didn't have quorum. However, the EAC was of the opinion the map is an accurate portrayal of fact and information.

MOTION/Second: Rand/Barrett - to recommend approval of FN09055, Floodplain Map Amendment for Plate 41.
Unanimous

IV. **Consideration of minutes** - May 12, 2009 - To accept: Morrison/ Appold - Unanimous

V. **Communications**

Granley announced a Brown Bag at noon on Friday, June 12th. The subject will be sustainability, and encouraged Commissioners to attend.

VI. **Old Business**

- A. **FN09029 - C-5 Plan Review for Culver's Restaurant located at the northwest corner of Mall Drive and Trinity Road by Brian Bocht for Blue Fjord LLC (CF) (Tabled at April 14, 2009, Planning Commission meeting)**

Froseth reported the applicants are not ready, it remains on the Table.

- B. **FN09033 - Special Use Permit for 1630 Rice Lake Road by City of Duluth, Maintenance Operations (CP) (Tabled at May 12, 2009, Planning Commission meeting)**

Staff: Petkac said the request involves a special use permit for temporary storage of various aggregates currently stored at Kenwood and Hovland Avenues that would be moved to this site. At the May Planning Commission meeting the question was asked in what zone would the use be permitted. For commercial purposes it would be permitted in a C-4 zone area. Questions were raised by the Planning Commission and Mark Lambert, owner of a development across the street from the proposed site. Several City staff met to discuss the matter. It is acknowledged that the Kenwood site is small for the activity to be done there as well as there being a conflict with trail users at the Chester Creek area. It was determined that the Rice Lake Road site is an appropriate location for temporary storage. Conditions would be attached to the Special Use Permit, with Street Maintenance of the opinion they can accept the conditions as submitted. Noxious uses at the site would be screened. With conditions as noted, staff is of the opinion the best possible balance will occur. As a previous police firing range, there is contamination of the site so it cannot be used for many other types of use. Conditions will include: landscaping, berming, gating, height of storage piles limited to 20', only used for City functions, no permanent storage of vehicles and no salt to be stored on the site. The Kenwood Avenue site would then be used as a parking lot for Chester Park trail users.

Discussion: Granley said Mark Lambert expressed concerns such as working hours at the previous Planning Commission meeting. Petkac said, as Barb Kolodge did one month prior, that the Street Maintenance Division's normal hours are 7:00 a.m. to 3:30 p.m. There may be exceptions during inclement weather, which is why that particular condition is not part of the final request. When considering hazardous materials it is not known what is being pulled off a roadway. Once a permit is approved, if there are concerns and complaints, they will be dealt with. Appold asked about a series of cones located on the site. Screening was discussed and she is wondering if cones indicate reducing the size of the site to be utilized. Petkac said that the entire length along Rice Lake Road will be screened. Appold asked if there is a setback requirement for screening and landscaping. Petkac said the project will meet the setbacks for the zone. She added that the area is defined legally in the staff recommendation in the staff report of the May meeting. Petkac went on to say that it appears to be about 200'. Morrison asked for a more detailed definition concerning the mention of debris being removed periodically. Petkac said that Street Maintenance has a concern with setting a time limit.

Recyclables will be moved to the Kenwood site, removed approximately every two weeks, maybe each couple of months. Morrison said they will not just accumulate the recyclables. Petkac said they wish to wait until there is a complete load. Akervik asked if the Kenwood site could be considered contaminated, with previous use of materials left on site for recycling and asked how much bigger the new site is in comparison to Kenwood. Petkac said the Rice Lake Road site is about two times larger. The request for the permit and move includes a concern for the trail. Akervik asked if there have been any complaints of trail users that would indicate potential conflict. Lutterman said that claims received by the City pass by her desk. Since her starting with the City in 1990, she is not aware of any claims with the trail in the area of Kenwood Avenue.

Petkac said that MN DNR expressed concerns with the location of trail to the Kenwood Pit and approached Barb Kolodge about another location. Banks asked if the City is having money issues is there a way to ascertain savings and he is not convinced it is the best location. CP said relocation is not due to cost benefit, as the Rice Lake site is about the same distance as the Kenwood site from where the equipment is stored.

Vigen said as a community since he has been in the Kenwood area since 1973 and even before that, there are records of studies of salt debris from spring clean up and opposition by citizens. What is legally defined versus what is seen as marked shows a discrepancy of what is being permitted. There are a lot of depository sites throughout the area. Concrete bunkers are being used and left in defined drop off sites. Would like to see a requirement of some kind of barrier set up defining where there will be drop off locations.

Petkac said the entire area is defined for use by vehicles entering and exiting the site with the actual area of the space used for aggregate to be defined within a smaller area. Vigen said with the entire area being permitted there is no way to know what use that complete area will be used for in the future.

Sarvela said he uses the trail often, interruption of the trail is caused and would like to see it removed but is not pleased with the location being proposed. Is there a way to restrict lighting. Petkac said it could be added to the conditions.

Rand said she is not open to taking off the Table, she feels a wrong use at a wrong location.

Staff asks that it be taken off the table and voted up or down.

MOTION/Second: Remove from table. Akervik/Vigen. Unanimous

Digby expressed concern for single family homes. CP said there are homes nearby but they are buffered from the site by natural vegetation. But Boulder Ridge has view site of the location? CP said Deming took photos which indicate what is viewed is the back of the firing range site. Digby asked if tenants were queried and CP said requirements are that owners within 350 feet of the site be notified. Appold said staff recommendations seem vague and don't address requests of the PC at the May meeting. What is the interim working depth, that should be well defined. Vigen said Kenwood Avenue is a preexisting condition, pre the apartment building construction. Here, there is the construction being accomplished after a residential building has been built. What happens when heavy equipment moves material around and there are particulars being spread into the air? There is concern for the residences within the area. There must be controls in place. Answers are not provided to questions

asked at the May PC meeting. Is this the only site available. He is of the opinion the PC is looking for guarantees of safety. Words such as may and periodically don't put a firm meaning to the conditions. The Maintenance Operations people should sit down with neighbors and further address concerns.

Rand was leaning toward leaving on the table. Would like to see a time limit put on the Special Use Permit. She considers it not a compatible use in a neighborhood.

Discussion: Lambert - share concerns, looking for protection, thanked CP for her balancing of what her client has requested. Lambert received a call of non-negotiable conditions with no firm details. Concerns of hot mixes and/or other hazardous issues. Millions of dollars involved, worried about noise, back up buzzers, late night hours of operation. Put some protection boundaries out there. Although it is the City's property he would like to see conditions put forth in such a manner as to be fair.

Digby thought Petkac's work was great but is not convinced it is the right spot with the nice development that is in the area. He would never feel good about having it there.

MOTION/Second: Rand - Deny the Special Use Permit/Banks. 11/1 (Barrett)

- C. FN09027 - Vacation of Ensign Street from Chambersburg Avenue to Church Place from Independent School District 709 (CF) (Tabled at May 12, 2009, Planning Commission meeting)

MOTION/Second: Remove from Table. Appold/Digby. Unanimous

Staff: This was tabled at May meeting to allow city staff and ISD 709 to meet and consider alternatives and to respond to the Fire Marshal's concerns. Froseth said a meeting was held with ISD 709 which included various Departments of the City to consider alternatives. Staff is recommending vacation of Ensign Street as it fits the definition of uselessness.

Barrett asked if there is a wetland that prevented Leonard Street from being completed. Froseth said at the east end of Leonard Street it is very steep and is only 33' wide at this point.

Applicant: Kerry Leider, ISD 709. Has addressed concerns of Mr. Quigly of cut through traffic on his property, the church and the health center, as well as Piedmont Dental and the Milk House. They discussed concerns brought up by the Fire Marshal. Minnesota Department of Education has obligated ISD 709 to increase the size of the site. ISD 709 is the opinion the neighbors would like the school to remain in the neighborhood. A sidewalk will be constructed and maintained, there are currently no sidewalks along Ensign.

Discussion: Lutterman to Mr. Leider, purchasing a parking lot that is used by the Church? Leider said they are looking into whether it will be leased or purchase. Lutterman said there could be a concern of frontage for the church. Leider said house on corner of Ensign and Chambersburg has been purchased so the church will have frontage on Chambersburg. Vigen noted egress will be to Chambersburg asked about increased traffic load and if all lots are filled will parking overflow impact the neighborhood. Leider said they have not prepared a traffic study as there is no need for a study.

Morrison spent many times this past year going past ViewCrest and has not seen a problem with the church but rather overflowing of the nursing home parking lot.

PUBLIC INPUT:

Mary Johnson, Piedmont Dental Administrator (In Favor)- they are in support of the school district's request. Elementary schools draw families which is important to the operation of the dental clinic and dental education programs are important at the elementary school age. Although their parking will be displaced they are in support of the vacation.

Scott Quigley - Piedmont Plaza - legal ownership issues has been addressed, as well as cut through traffic issues.

Mark Weda, Hermantown, Congregational President, Christ Lutheran Church - on behalf of congregation. Very much in favor of keeping the school in the Piedmont.

Tom Wisocki, 3221 Florine, Christ Lutheran Church (In Favor)- would like to see the project go forward. When the process first started the church had concerns and now have concluded they will be in an improved situation.

Bob Oversteen, Partridge Lane - appreciate concerns being pointed out. Many in the congregation were very apprehensive but they did not want the school to disappear from their neighborhood. Not a perfect picture but compromises can and are being made.

Kuor asked about concerns of cutting through parking lots such as Piedmont? Dental Clinic Administrator said they do not share a parking lot. There is no access from the shopping center as there are large concrete blocks in place.

MOTION/Second: Barrett - to approve/Appold. Unanimous

VII. Reports of Officers and Committees

- A. Downtown Waterfront Mixed Use District - met 6/9, reviewed DECC lighting, had annual election.
- B. Zoning Advisory Committee - email invite will be forthcoming for 5 public meetings, would like Commissioners to attend at least one neighborhood meeting in order to have input in the final process.
- C. Education Committee - Brown Bag June 12th

Morrison was of the thought having a special meeting to discuss the EAW for ISD 709 was better left as a separate meeting with concerns of length of meeting. The meeting was postponed due to request by the school district for more time. Akervik asked if the next meeting is closed and not a public meeting. Morrison said there are a lot of items to address. Akervik said he is of the hope a lot will be addressed upon receiving staff's report. Petkac said the final packet will contain comments, responses, findings of fact with the four factors in the EAW rules will be discussed. School district staff will be present for questioning. Morrison said Howie's blog presents 9 points. Only the public comments received by the City during the public comment time line can be researched, studied and discussed and part of the public record. Digby asked about recusing himself as ISD 709 requested he presented information at a Chamber lunch. Lutterman doesn't see a legal conflict of interest for Commissioner Digby.

VIII. New Business

- A. FN09060 - Review of the May 21, 2009 list of 40 parcels (19 tracts) of tax-forfeited land

reclassified to non-conservation by the St. Louis County Board. (KD)

Commissioner Granley - subcommittee met, 5 commissioners total attended and commented. Parcels were studied one by one. The subcommittee changed the recommendation on Parcels 3, 5, 8 and 23 from staff's position that the parcels remain non-conservation to the current recommendation that they be retained in conservation for trout stream, flood plain, and storm water protection. Parcels 5 and 8 have a stream running through them.

Total of parcels is 8 for non-conservation and 11 for conservation.

MOTION/Second: Granley/Barrett - to accept staff's recommendation with the addition of Parcels 3, 5, 8, 23 to the conservation list for trout stream, flood plain, and storm water protection purposes. Unanimous

IX. Other Business

Petkac introduced John Judd, new Senior Planner. Chuck is transferring over to Community Development.

Barrett asked if 30 days have passed and if she is now can vote. She noted the EAC has a list short on members to conduct business. To which Lutterman responded membership is established by ordinance and the Mayor appoints members. Barrett noted there is no staff support to the EAC

Akervik asked for a representative for HPC.

X. Adjournment - Appold/Barrett - adjourn at 7:53.

Respectfully,



**Cindy Petkac
Land Use Supervisor**



**Charles Froseth
Senior Planner**

CP:CF:cm