

City of Duluth
Planning Commission
September 9, 2014 Meeting Minutes
City Council Chambers - Duluth City Hall

I. Call to Order

President David Sarvela called to order the meeting of the City planning commission at 5:00 pm on Tuesday, September 9, 2014, in City Hall Council Chambers.

Roll Call

Attending: Marc Beeman, Drew Digby (arrived at 5:37 during agenda item D), Terry Guggenbuehl, Garner Moffat, Tim Meyer, Patricia Mullins, David Sarvela and Zandra Zwiebel

Absent: Luke Sydow

Staff Present: Steven Robertson, Jenn Reed Moses, Suzanne Kelley, Alison Lutterman, Chuck Froseth and Cindy Stafford

II. Public Hearings

A. PL 14-116 Future Land Use Change from Recreation to Traditional Neighborhood by the City of Duluth

Staff: Suzanne Kelley introduces the city's plan to amend the comprehensive land use plan – future land use map from recreation to traditional neighborhood. This is in vacant city property that is 3 acres in size, located at the intersection of 41st Avenue East and Jay Street. The city was awarded a grant from Minnesota Department of Employment and Economic Development (DEED) to remove the existing contaminants. A condition of the grant was that 8 to 12 single family housing units be built on this parcel and that three of the housing units be priced under \$226,881. Meetings have been held with the neighbors and the consensus is that development be focused on conservation oriented design principles and that the housing units be aesthetically pleasing and energy efficient. The change also requires approval from the parks and recreation commission. Staff has been working with engineering and business development to coordinate utility and street improvements. Staff recommends approval. Chair David Sarvela asks what the next step is for choosing the plat layout. Kelley notes request for proposals have been sent out to developers. A selection committee will be formed which will include some of the neighbors. Terry Guggenbuehl asks if there is an easement for the alley. Kelley said it's platted and may have to be vacated. Chair Sarvela asks if the parks commission is aware of this issue. Kelley states yes there has been some discussion which occurred about three months ago. Marc Beeman asks if there has been consideration for park uses. Kelley notes there was inconsistency in regards to a dog park and/or soccer field. Residential was more agreeable as long as it was developed well and there was some space left for some other park use.

Applicant: N/A

Public: N/A

Commissioners: Garner Moffat hopes future development will reflect the character of the neighborhood and that existing streets will be used to cut down on city burden of maintaining additional streets. Chair Sarvela likes the conservation design and would like to see open areas.

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

VOTE: (6-1, Beeman opposed)

- B. PL 14-118 Rezone from RR-1 to MU-C at 4602 West Arrowhead Road by Hunters Park Congregational Jehovah Witness

Staff: Steven Robertson introduces the applicants' request to change the zoning of two of their three parcels located at 4602 W. Arrowhead Road from RR-1 to MU-C. Staff recommends approval with the conditions listed in the staff report. Tim Meyer asks about the access point to the parcel. Robertson notes the applicant owns the land adjoining to West Arrowhead.

Applicant: Jacob Skidmore representing the Hunters Park Congregation addresses the commission and thanks them for their consideration.

Public: Donald Jensen – 2135 Miller Creek Drive – lives in the development south of the proposed rezoning. He has procedural concerns including he didn't feel all of his neighbors were notified. He noted only 8 of the 63 units received the notification letter. He questions staff's statement about no negative impacts to the surrounding area noting the existing buffering of trees and wet lands. He feels an Environmental Impact Study (EIS) is needed. He is opposed, but if it the rezoning occurs he wishes for it to be restrictive and impose height restrictions and an adequate sound barrier be maintained. Linda Ross Sellner – Arrowhead Road – asks if there are wetlands delineated. Chair Sarvela notes this will be conducted later in the development process. She is concerned about the potential loss of green space.

Commissioners: Patricia Mullins addresses the speakers concerns and notes there will be a future land review for any new development. Robertson notes a plan review, and a public hearing, would be needed for any structure larger than 500 square feet. The city also has tree preservation standards in the event a future property owner wanted to cut down some of the trees between the properties.

MOTION/Second: Guggenbuehl/Mullins recommend approval as per staff's recommendation.

VOTE: (7-0)

- C. PL 14-119 Rezone from R-1 to MU-N at 4121 Grand Avenue by Superior Choice Credit Union

Staff: Steven Robertson introduces the applicants' request to change the zoning of lots 26 to 30 of Chandler Park Addition from R-1 to MU-N. Staff recommends approval with the conditions listed in the staff report.

Applicant: Henry Chastane represents the owner and addresses the commission and asks if there are any questions. Zandra Zwiebel asks if they have a proposed starting date. They hope to begin October 1st, pending a favorable decision.

Public: Gloria Walters – 4115 Grand Avenue – lives adjacent to the property. She is neutral on the topic, but has concerns and wonders if she will have input on a proposed fence to shield her house and property. Walters is concerned about the building process and the toxic nature of asphalt. Chair Sarvela asks about buffering which will be 15 feet with a dense vegetative screen or a fence. The applicant is proposing a vegetative screen.

Dan Williams – 4127 Grand Avenue - current land owner is in favor of the rezoning.

Commissioners: Mullins asked if Walters' concerns will be addressed. Robertson notes they will be addressed at the next special meeting in two weeks.

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

VOTE: (7-0)

- D. PL 14-114 Vacation of Street Easement at 104 West Central Entrance by Land and Lease Development LLC

Staff: Jenn Moses introduces the applicants' request to vacate the alley east of lot 12, west of lots 13-16, Duluth Heights Fifth Addition, maintaining a drainage and utility easement over all of the vacated alley. Applicant will also dedicate drainage and utility easements over the east 5 feet of Lot 12 and the west 10 feet of Lots 13-16. Applicant intends to develop the site with a Dunkin' Donuts. Staff recommends approval with the conditions listed in the staff report.

Applicant: Brian Swanson addresses the commission and asks if there are any questions.

Public: N/A

Commissioners: N/A

MOTION/Second: Zwiebel/Moffat recommend approval as per staff's recommendation.

VOTE: (7-0, Digby abstained)

- E. PL 14-111 Variance from Maximum Off-Street Parking Limits at 104 West Central Entrance by Land and Lease Development LLC

Staff: Jenn Reed Moses introduces the applicants' request. They are proposing a new Dunkin Donuts and are requesting a variance for the maximum parking requirement. Currently the UDC would allow a maximum of 17 parking spaces and the applicant is requesting a maximum of 22 parking spaces. Staff recommends denial based on no demonstration of practical difficulty and the need for relief is not due to circumstances unique to the property. Zwiebel asks if it is denied now, could it be changed later based on code changes. Moses affirms. Guggenbuehl suggests tabling until the text amendment passes.

Applicant: Brian Swanson addresses the commission and notes the adjoining car wash business and emphasizes the need for additional parking. Zwiebel asks the applicant if there are time constraints. Applicant states mid-October.

Public: N/A

Commissioners: Mullins clarifies if text amendment is enacted they won't need the variance. She asks if they can separate the text changes. Robertson states yes, but they hope to consider most of the text amendments, including the parking issue at the special meeting. Mullins feels the need for parking is important to alleviate stress from busy Central Entrance. Zwiebel would like to override the motion and recommend tabling, but motion was made, so she would be in favor of denial. Chair Sarvela agrees and notes upcoming text amendment.

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

VOTE: (7-1, Mullins opposed)

- F. PL 14-115 Variance from Rear and Side Yard Setback at 209 West 7th Street by Barta and Korach Partnership

Staff: Jenn Reed Moses introduces the applicants' request. They would like to build a second floor on the existing 764 square foot home that was built in 1909. This would require a variance to build 4' from the rear property line (instead of the required 25') and 4' from the side property line (instead of the required 6'). Staff recommends denial for the reasons listed in the staff report.

Applicant: Dean Korach addresses the commission and notes the difficulty is the topography of lot. They don't want to increase the building footprint. Their roof system needs to be replaced and they would like to increase the home's square footage at the same time. Guggenbuehl asks about putting in a partial second floor. The applicant thinks it would be an eyesore. Meyer asks what the height limit is. Moses states 30 feet

and adds there was an email received from a neighbor who was concerned about their view. The applicant notes he will keep the height to the 30 foot restriction and doesn't think it will block anybody's view. The applicant notes the alley dead ends to the west. Digby asks if this was an accessory building would the setback be different. Moses states five feet.

Public: N/A

Commissioners: Digby notes the strategies of the comprehensive plan and although they could add some sort of hybrid second floor, it would change the character of the neighborhood. Meyer asks what the surrounding homes' setbacks are. Moses, it varies. Mullins agrees with Digby and notes in regards to the character of the neighborhood and the impermeable surface it's better to build up than out. Moffat thinks it's feasible to build within the permitted areas and will be voting against. Meyer notes it doesn't affect the view shed and notes the fabric of the neighborhood and the historic context. Guggenbuehl is against the variance and doesn't feel there is a consistency to the neighborhood. Zwiebel questions which neighbor had the view concern and confirms if it was a garage the setback would only be 5 feet. **MOTION/Second:** Digby/Beeman approve with practical difficulty being the location of the existing structure and the topography of the lot which is opposed to staff's recommendation.

VOTE: (6-2, Guggenbuel and Moffat opposed)

G. PL 14-123 Variance from Skyline Overlay at 1300 Block of East Skyline Parkway by George Hovland

Staff: Jenn Moses introduces the applicant's request. Skyline Parkway Overlay district has the purpose of protecting views from Skyline Parkway toward Lake Superior and the harbor from a wide variety of vantage points and to encourage the construction of narrower buildings that are farther from the parkway rather than wider buildings located closer to the parkway. Moses shows a map with SP-O and R-1 setbacks, showing remaining buildable area. Applicant is proposing a 24' x 84' home that would require three variances; it would occupy approximately 66% of the width of the lot (over the maximum 50% allowed in the SP-O), have its long axis located parallel to Skyline Parkway (instead of within 20 degrees of perpendicular) and would be 25' from the front property line (half the distance of the 50' setback along the SP-O). Staff considered the purpose of the Skyline Parkway Overlay and finds that this proposal is inconsistent with purposes of UDC. There is a substantial amount of buildable area in the flattest portion of the lot. Applicant has not demonstrated that it is not possible to build within the allowed buildable area and therefore has not demonstrated that they need the variance in order to have reasonable use of the property. Applicant notes topography, but SP-O regulations take topography into account. Neighboring houses existed prior to adoption of the UDC. Staff recommends denial of all three variances because it is inconsistent with the comprehensive plan and UDC, is not needed for the preservation and enjoyment of a substantial property right and does not demonstrate practical difficulty, and the special circumstances are not peculiar to this property. Digby asks when Skyline Overlay was adopted. Moses, it was adopted with the UDC in 2010. Digby asks whether applicant would have a right to build the way zoning existed when property was purchased. Alison Lutterman notes zoning can change and any new uses must comply with the new rules. Guggenbuel notes the alley beneath the lot is not improved to a certain point, but the easement is there. Moses, yes neighbors living to the east use the alley, but it's not improved to this location.

Applicant: Ferdinand Peters - 1425 Belmont Rd - addresses the commission. He is the owner of the property and is an attorney. He has a survey which he feels disproves the staff report findings. Moses displays the survey on the overhead projector. 84' in length

would be less than 60%. He argues it isn't changing the character of the neighborhood and neighbor's houses are also within 25'. He states there is a wetland on the property and that the practical difficulty is the topography of the land. Alley is unimproved. Applicant believes that you should not have views all along Skyline Parkway for traffic safety issues. City property nearby should instead be developed with parking and used as a vantage point. The house will be on cantilevers and you can see through it from Skyline Parkway. His practical difficulty is that he can't be close to Skyline because his reason for purchasing the lot was to build right on Skyline. He believes his request is reasonable and does meet the UDC and the comprehensive plan. The stormwater system is not appropriate for him to build on the lower portion of the lot. Guggenbuehl asks if their architect has attempted to draw any plans according to regulations, because it seems as if there is plenty of space on the property. Applicant states no, this is the only plan they drew. Digby asks the applicant to clarify position about the overlay district, as the entire district is based on the unusual topography along Skyline. He asks whether this property has anything about it that is substantially different from other properties along Skyline. Or, is the argument that the entire overlay district is bad policy because it doesn't let people build the way they want? If so, that is an argument to change the UDC but not for the variance. Applicant is going with the factors of a variance; code states what is necessary to apply for a variance and that is what he is doing. He bought the property in 2006 with expectations to build a certain type of house. Not all the lots have as extreme of a slope as he does. Meyer notes that as an architect the first thing he determines when building a home is the zoning ordinance, to see if a home could be built within those parameters. He finds it hard to find a practical difficulty. It's a beautiful concept, but asking for a lot of variances. Would like to see architect look at buildable area and put together an option that meets the regulations. There is a way to design the home within the rules. Doesn't see a way to support the variance other than that applicant wants to push this design forward. Would like to see an attempt to meet the rules.

Public: Al Gartner – 1315 E. Skyline Parkway – opposes it. He feels the house is too large and would be setting a precedent for future houses. Thomas Anderson – 1325 E. Skyline Parkway – lives kitty corner to the property. He notes along with cars there are also walkers with dogs, jogging, and that view is important for them too. There aren't too many places in Duluth where you can enjoy a run with those views. He opposes the variance. Concerned about view from his property. Sara Junkie - 1421 Belmont – is here with others from the neighborhood. Concerned with water runoff and says there already is a runoff problem. The applicant states his current plan is to have the least impact on the neighborhood. If he builds on the hill it will lessen the impact versus building lower on the lot.

Commissioners: Guggenbuehl feels applicant does not have practical difficulty and needs to work with an architect to work within the regulations. Zwiebel is uncomfortable with making a decision without all the facts. The house sketch brought today was different than what was in application, and applicant is stating property is different width. Feels there are inaccuracies in information provided. She is familiar with the road and notes there are walkers and bikers that enjoy the view along the Parkway, and reasons to want to keep the integrity of the neighborhood.

MOTION/Second: Guggenbuehl/Meyer deny as per staff's recommendation.

VOTE: (7-1 Beeman opposed)

H. PL 14-121 Special Use Permit for New 75 Foot Tall Monopole Cell Tower at 1805 East Skyline Parkway (Chester Creek Park) by Sprint PCS

Staff: Steven Robertson introduces the applicants' request for a special use permit to construct a telecommunications facility at the city owned Chester Park. The facility will include a 75 foot tall stealth monopole (with cellular antennas placed within the monopole) and a 20 foot by 20 foot fenced area for equipment. This facility will be a replacement facility to house relocated antennas from the recently demolished ski jump. Staff recommends approval with the conditions listed in the staff report. Chair Sarvela asks if special use permits were needed before. Robertson, prior to 2010 the zoning code allowed antennas to be added to existing structures via a building permit; only towers 50 feet or higher required a special use permit. Mullins notes camouflaging examples included in their packets. Robertson mentions the monopine example (term for a monopole that appears as a fake tree), which staff thought would stick out in a forest of mostly deciduous trees. Zwiebel notes there isn't a lot of room in the ski area for an additional obstacle and she doesn't want trees to be removed. Meyer asks why the tower can't be outside the park. Robertson stated that staff considered this a replacement facility for the existing, legal facility that was on the ski jump. He also notes the challenges of finding a spot that meets the applicant's coverage and capacity needs which also complies with the zoning rules as far as the priority list. Digby questions the pole being within the tree line and has concerns about the 20' x 20' fenced area at the base of the pole. He would appreciate input from the parks department about their preference for the proposed location. He would like to delay the decision until hearing from parks. Guggenbuehl asks if there was consideration to add it to the ski lift. Per Robertson, he wasn't involved in the discussions, but much deliberation was given to the proposed location.

Applicant: Steve Stulz representative from Sprint addresses the commission. They have worked extensively with zoning, and with the city's telecommunications consultant, CMS, and with the city property manager and in conjunction with parks department for 2 1/2 years. It was an existing site, but they also meet all UDC codes for a new site. Sprint had other sites picked out, but the city negotiation team vetoed those choices and directed them to this location. He asks the commissioners if they have any questions. Digby asks the applicant if the parks commission was involved. Per applicant, Kathy Bergen has been involved along with the park manager. Zwiebel appreciates the park being included in the discussion. The applicant states per the lease agreement with the city, at the end of construction, ownership will be turned over to the city. They will have control over long-term use.

Public: Ann Holtz – resident of Chester Park for more than 10 years is opposed to the special use permit. She doesn't want the future of the park to be a treeless antennae farm and uses the term a technological "un"-amusement park. She is opposed for many reasons including the commercial use of a public park, environmental concerns, and public safety. She notes radiation concerns as doesn't feel the FCC's guidelines are strict enough. Karl Hodil – 15 North Chester Parkway is the closest resident to the cell tower. He is opposed. He has been a resident for 25 years and notes the city does not take care of the park. He questions who is going to monitor construction and who will perform testing once the facility is in place. The FCC is not hands on in monitoring the emissions and the residents have no way of knowing what it is. He doesn't feel there is a consensus among the parks department and the city councilors. Steve Holtz – 1511 Belmont Road – lives just below the park. He is opposed to a cell tower in a public park. Maintenance and repairs is damaging to the roads and trails. Jane Hovland – lived by park for 35 years. Park is degrading over time. She strongly opposes. Sharla Gardner – city councilor – she was under the impression that pole would be in the same place.

Councilors hiked the park on Sunday and looked at the new proposed location. She asks the commissioners to at least table the issue. She is concerned about the safety of the tower.

Commissioners: Meyer we all love our cell phones, but doesn't feel a cell tower should be placed in our parks. He is concerned that a lease can be accepted without any permits. He would be in favor of tabling. Digby would like to hear from the parks commission and if they are in support or against it. Robertson addresses Meyer's concern and notes that the lease is contingent on applicant getting all required permits, including zoning and building. Robertson can't comment on health issues as the FCC regulates standards for RF emission, just zoning issues, but there are other examples of cell towers on public property. Guggenbuehl notes the examples Robertson included were more logical. He would be in favor of denial for the proposed site. Moffat doesn't want to discourage usage in all parks, but has concerns with this particular location. Beeman would like to hear from an expert on the issue. Chair Sarvela notes the issue of health is not being considered. The FCC trumps this factor. Beeman is against the cell tower. Applicant reiterates the city has an independent third-party telecom consultant who monitors radiation and structure issues. They are forced to find sites that meets codes and, this site complies. They are open to keeping the new tower in the current temporary tower location. Zwiebel notes safety concerns with potential impacts of RF emissions. The applicant would be in agreement to testing to make sure it complies with the FCC. Mullins asks the applicant if they could use the same site as the temporary location. The applicant states yes. They would need to replace it, but could use the same location. Sarvela asks why is the new proposed site is more beneficial. The applicant states 2 1/2 years of planning was put into this location. Zwiebel asks about setting a precedent. Robertson stated that in the UDC requirements for cell towers, the city doesn't separate general city property versus a park property. Beeman asks how many towers will eventually be needed. The applicant states demand is expanding exponentially. Chair Sarvela thinks it would be helpful to see a map of coverage before and after. Jason Hall, the project manager of the site addresses the commission. As part of the application, the city consultant requires before and after propagation maps. They have nine pages of maps, but in general the coverage will include St. Scholastica and UMD which are sprint high priority areas. He notes the trees now are about 55'-65' high. The pole would be just above the tree line. They are in agreement with building on the existing temporary location. Guggenbuehl states a motion and Beeman seconds. Moffat is in agreement with the denial aspect, but had some comments about the language. Moffat states that antennas would be appropriate on city property in some places; he notes an example of cell towers on Wade Stadium. Guggenbuehl amends his motion to state the specific mono pole at the proposed site. Digby states if the commissioners deny the request, it would be streamlined to city council and at that point they could overturn it. He mentions tabling will allow for more consideration.

MOTION/Second: Guggenbuehl/Beeman deny the mono pole in a multi-use recreation area does not fit with current land use. Guggenbuehl withdraws the motion.

VOTE: (N/A)

MOTION/Second: Digby/Meyer table until further weigh in from parks commission.

VOTE: (8-0)

5 minute recess is announced by Chair Sarvela. The meeting resumes at 8:22.

- I. PL 14-091 Environmental Assessment Worksheet for Slip 2 Capping and Swallowing (Between Pier B and Bayfront Festival Park in the Duluth-Superior Harbor). Optional

Public Hearing. Public Comment Period from September 1 to October 1. Decision at October 14, 2014, Regular Planning Commission Meeting. Froseth gives a brief overview. The EAW was sent to the appropriate agencies. There is a barrier that will hold the fill in. This is an optional public hearing. Nobody from the public wishing to speak on this issue.

J. PL 14-117 UDC Text Amendments:

- Section 50-14 Related to Setbacks
- Section 50-18 Related to Stormwater Controls
- Sections 50-19 Sections 50-20 Related to Mini-Storage Facilities, and Primary Use Parking Lots,
- Sections 50-24 and 50-47 Related to Required Off-Street Parking and Variances,
- Section 50-27 Related to Signs, and
- Section 50-41 Related to Definitions

Staff: Robertson introduces the UDC Text Amendments and requests commissioners address Section 50-19 at tonight's meeting. He suggests the commissioners table the other topics until the special meeting on 9/23/14 for more discussion. The items are timely and he notes the stormwater item has to be in effect by January of 2015, so it will need to go to city council in November. Roberson notes Tom Johnson's stormwater memo included in the commissioners' packets. He mentioned Moses' memo on parking counts. Staff hears repeatedly in their pre-application meetings parking concerns in regards to the construction of banks, credit unions and restaurants. Staff feels grocery stores weren't as much of an issue as they originally thought with the exception of a few including Whole Foods Coop.

Applicant: N/A

Public: Brian Swanson, developer of Dunkin' Donuts addresses the commission. He wants parking to be focused on the type of restaurant. More is always better.

Commissioners:

Sections 50-20 Related to Primary Use Parking Lots, - Digby notes parking issues and bank size. He notes the change to downtown banks. A large bank is a different operation than small branch banks in driving locations. Should there be an argument that smaller locations should have different parking standards than larger banks? He also notes the Coop is a tiny operation and parking is limited.

-Section 50-18 Related to Stormwater Controls – Moffat appreciates more time to review this. Climate change storm and rain events have historically been getting stronger.

MOTION/Second: Zwiebe/Moffat table all items except 50-19.

VOTE: (8-0)

Sections 50-19 related to Mini-Storage Facilities - Mini storage allowed in RR-1, and airport safety zone. Discussion.

MOTION/Second: Moffat/Guggenbuehl recommend approval.

VOTE: (8-0)

Digby notes the commission's previous request which was to be included in the next batch of UDC changes. They would like to see a text amendment providing for more review and approval from the planning commission for MU-P and R-P zone districts. Currently the Planning Commission's approval is only required for changes to use, density, or height of existing approved regulating plans for MU-P or R-P projects.

III. Other Business

- A. Note: Special Planning Commission Meeting Tuesday, September 23, 2014, at 5:00 PM, City Council Chambers, to Discuss:
-PL 14-099 Special Use Permit for Townhouses at Mississippi and Lyons Street by Green Capital LLC (Public Hearing Held on August 12, 2014)
-PL 14-101 Quick Plat at Mississippi and Lyons Street by Green Capital LLC (Public Hearing Held on August 12, 2014)

Moffat announces a Lincoln park small area plan meeting on September 17, 2014 at Harrison Community Center from 5-8 p.m.

IV. Communications

- A. Managers' Report – Digby asks when the next Superior Street meeting will be held, and he notes the MIC 2040 plan. He suggests the Commission should have input on land use implications through a presentation by MIC. Discussion to include how does the transportation plan impact the comprehensive plan. Froseth has not heard when the next Superior Street meeting will be.

- B. Consideration of Minutes - August 12, 2014

MOTION/Second: Meyer/Beeman recommend approval.

VOTE: (8-0)

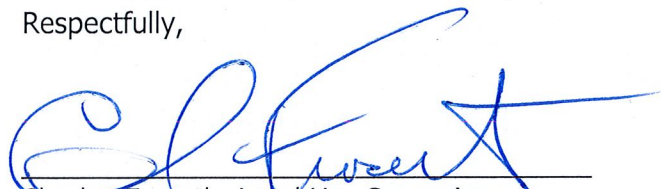
- C. Reports of Officers and Committees

Heritage Preservation Commission Representative, Patricia Mullins gives an overview. There are lots of nominations being proposed for landmark status. There is an intern working on firehouses, brownstones, cisterns and the work people's college. Landmark status proposals also include: Skyline Parkway, wheeler field and wade stadium and St. Louis County rail line. There is a big push from parks for the Enger Tower nomination.

- D. Adjournment

Meeting adjourned at 9:03 p.m.

Respectfully,



Charles Froseth, Land Use Supervisor