

City of Duluth  
Planning Commission  
May 14, 2019 Meeting Minutes  
Council Chambers - Duluth City Hall

Call to Order

Vice-President Margie Nelson called to order the meeting of the city planning commission at 5:00 p.m. on Tuesday, May 14, 2019, in city hall council chambers.

Roll Call

Attending: Jason Crawford, Gary Eckenberg, Margie Nelson, Michael Schraepfer, Luke Sydow, and Zandra Zwiebel

Absent: Janet Kennedy, Tim Meyer, and Sarah Wisdorf

Staff Present: Adam Fulton, Robert Asleson, Steven Robertson, Kyle Deming, Chris Lee, and Cindy Stafford

Approval of Planning Commission Minutes

March 26, 2019, Special Meeting

April 9, 2019

**MOTION/Second:** Schraepfer/Eckenberg approve the minutes

**VOTE: (6-0)**

Presentations

1. PL 19-057 St. Louis River Corridor Duluth Natural Areas Program Nomination by City of Duluth Parks Department – Diane Desotelle, natural resources coordinator, addresses the commission. She gives an overview. Designating the lands will ensure citizens and visitors will always have access to this special area where they can appreciate as well as continue to better understand the natural environment. Gary Eckenberg asks about land ownership. Desotelle states 50% is considered tax forfeited land. Eckenberg asks if the land can be developed. Per Desotelle, the county would need to agree, but they have support of county staff to go forward with the nomination. Zandra Zwiebel confirms they are still getting confirmation and approval from individual land owners. There are nine parcels of land. The goal of the management plan is habitat improvement. Zwiebel questions access points. Desotelle notes there are several access points to the Western Waterfront Trail. Zwiebel asks if there will be site specific management plans for each of the designated areas. Desotelle said there will be one plan, but there could be specific goals for each area. There is a Natural Resource Commission which will have their first meeting in June. Regarding Mud Lake, the meeting has been postponed to the end of May. Zwiebel asks if they are expected to nominate this today before the Mud Lake meeting. Deputy Director Adam Fulton notes they would be recommending to the city council and not making the final decision. Zwiebel asks what impact the DNAP will have on LSMRR. Desotelle states the causeway is outside of the boundaries. Luke Sydow asks again what impact the DNAP designation will have on the LSMRR railroad. He confirms the railroad can be included as part of the management plan. Desotelle affirms.

**MOTION/Second:** Eckenberg/Sydow support the nomination of areas along the St. Louis River to the Duluth Natural Areas Program

**VOTE: (6-0)**

### Unfinished Items

2. PL 19-014 UDC Text Amendment Exempt Vacation Dwelling Units in Form Districts from the Maximum Cap of 60 Units by the City of Duluth

**Staff:** Steven Robertson gives an overview. The city is proposing exemption from vacation rental limits in form districts and relaxing the standards related to off-street parking and minimum stays except for districts in the higher-ed overlay. Staff recommends approval.

**Applicant:** N/A

**Public:** N/A

**Commissioners:** Michael Schraepfer and Nelson comment they approve of staff's recommendation to exclude the higher ed overlay district, which will address parking concerns.

**MOTION/Second:** Zwiebel/Schraepfer recommend approval as per staff's recommendations with added condition that the higher ed overlay district be excluded.

**VOTE: (6-0)**

Agenda Items #3 & # 7 have PL 19-028 PL 19-031 were removed from the consent agenda

### Consent Agenda

4. PL 19-034 Minor Subdivision at 431 East Skyline Parkway by Ralph Raschick
5. PL 19-037 Minor Subdivision at 4306 Enterprise Circle by Duluth Seaway Port Authority
6. PL 19-033 Vacation of Pedestrian Easement and Dedication of Replacement Easement at 4500 Cambridge Street by Saint Francis of Assisi, Inc.

**Public:** There are no speakers.

**MOTION/Second:** Sydow/Zwiebel recommend approval of the consent agenda items as per staff's recommendations.

**VOTE: (6-0)**

### Public Hearings

3. PL 19-028 Renewal of Existing Vacation Dwelling Unit Interim Use Permit at 124 North Hawthorne Road by Theresa Hanson

**Staff:** Chris Lee gives an overview of the applicant's proposal to use their house with seven bedrooms for a vacation rental. Up to 14 people will be allowed to stay in the home. Staff received two comments from neighbors regarding police calls and parking concerns. Staff recommends approval with the three conditions listed and would be open to an additional condition regarding parking.

**Applicant:** Teresa Hanson addresses the commission and notes there has never been a police call. She has received no calls or complaints from the neighbors regarding parking. Schraepfer notes there was a complaint with a picture showing cars parked in the driveway. The applicant confirms they are parking within her driveway, which is allowed. Her property managers are nearby and ready to address any neighbors' concerns. Eckenberg asks about the recommendation. Has it changed? Lee notes the recommendations are the same.

**Public:** There are no speakers.

**Commissioners:** Sydow asks if staff will reach out to the neighbors who complained to give them the manger's and owner's contact info.

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

**VOTE: (6-0)**

7. PL 19-031 Vacation of Oakland Avenue between Gold Street and Maryland Street by City of Duluth Parks Department on behalf of the University of Minnesota, Duluth

**Applicant:** Chris Lee introduces the applicant's proposal to vacate an undeveloped portion of Oakland Avenue from Maryland Street to 1/2 block south of Worth Street, maintaining a utility easement over a 20' portion running from 1/2 block north of Worth Street to 1/2 block south of Worth Street.

**Public:** No speakers

**MOTION/Second:** Zwiebel/Sydow recommend approval with the added condition that the signing and replacement of the dedication of the trail easement be in place prior to filing the vacation.

**VOTE: (6-0)**

8. PL 19-032 R-P Regulating Plan Amendment to allow Type I, Type VI and Type VII Buildings on the west side of North 53rd Avenue West north of Ramsey Street by Talle & Associates for Ramsey VI

**Staff:** Kyle Deming introduces the applicant's proposal to amend an approved regulating plan to change building types for four parcels to allow construction of an 8-unit structure or 4-unit structure while retaining the existing single-family detached structure. Any amendment to the Regulating Plan that involves changes to land use, density, or height are required to follow the rezoning process and receive approval from the city council. Staff recommends approval.

**Applicant:** Ken Talle of Talle & Associates addresses the commission. This addition to his development will bring the project total to 120 new dwelling units to the neighborhood. He welcomes questions.

**Public:** There are no speakers.

**Commissioners:** Eckenberg asks about the letters they received about parking concerns. How many parking spots are dedicated? Deming states that 1.25 spaces per dwelling unit are required. There is a transit reduction of 30%, which is about 1 parking space per unit regardless of bedrooms. Talle states there is one detached garage per unit and there is off-street parking spaces provided, which brings the count to about 1.5 per dwelling unit. They have exceeded the parking requirement. Talle notes there are off-street parking spots available, which will be done in conjunction with this project. Schraepfer confirms they are all 2-bedroom apartments.

**MOTION/Second:** Schraepfer/Crawford recommend approval as per staff's recommendations.

**VOTE: (6-0)**

9. PL 19-042 Vacation of Skywalk Easement in Minnesota Power Building at 30 West Superior Street and Vacation of Easements with rededication of replacement easements for the plazas on either side of Lake Avenue at Superior Street by Minnesota Power

**Staff:** Kyle Deming introduces the applicant's proposal for safety reasons to vacate the skywalk through the first and second floors of their building after dedicating a replacement easement and providing for the construction of a stairway from the south end of the skywalk bridge over Superior Street; and, to vacate an existing public plaza agreement for Lake Superior Plaza to be replaced with updated agreements that allow

public access, but reduce the size of Lake Superior Plaza to provide a security buffer between the Plaza and the MN Power building. Public access is no longer needed to that particular side of the building. Staff recommends approval with the conditions listed in the staff report. Deputy Director Fulton notes there are other agreements in motion related to this project that do not typically come before the planning commission.

**Applicant:** Patrick Mullen of MN Power addresses the commission. The area is completely Minnesota Power space. Safety and security is important. He welcomes questions.

**Public:** Kathleen Spencer, 315 N. Lake Ave., addresses the commission. She asks about the area where vehicles pull up to unload equipment including the Christmas tree. She thinks this access is important and wants to go on record stating she thinks they should keep it. Mullen states for safety reasons, they are considering landscaping so cars won't have direct access.

**Commissioners:** Eckenberg notes the correspondence they received from Terri Alexander, and asks staff to address. City attorney, Robert Asleson states the city is in the process of approving a new plaza agreement, which includes the maintenance of the facility. The terms are still under consideration.

**MOTION/Second:** Zwiebel/Sydow recommend approval as per staff's recommendations.

**VOTE: (6-0)**

10. PL 19-029 Variance from the Shoreland Setback to build a New Single Family Home at 442 North 85th Avenue West

**Staff:** Chris Lee introduces the applicant's proposal for a variance from UDC requirements which mandate a 150' structure setback for construction in proximity to a tributary of Knowlton Creek, a designated cold water river. The applicant proposes to construct a new 72' by 40' single family home on the site. They are requesting to reduce the setback from 150' to approximately 89'. Staff recommends approval subject to the conditions listed in the staff report. Zwiebel asks about the no mow zone. Is it a requirement? Lee states there could be a condition added. Lee recommends asking the applicant in good faith not to mow that area.

**Applicant:** Mike Talarico, attorney for the applicant, addresses the commission. He gives an overview and welcomes questions. Zwiebel notes the mitigation plan and supports it.

**Public:** No speakers.

**Commissioners:** N/A

**MOTION/Second:** Crawford/Zwiebel approved as per staff's recommendations.

**VOTE: (6-0)**

11. PL 19-035 Variance from Corner Side Yard Setback for a garage at 5419 London Road by Philmore Properties, LLC

**Staff:** Chris Lee introduces the applicant's proposal for a variance from the corner yard setbacks to construct a 24' x 24' garage on the rear of the property. There is currently a garage on the site that is located on the property lines that will be removed and replaced with this proposed structure, which will be in greater compliance with the UDC. The proposed garage will be 5' from the corner side yard setbacks, reducing the setbacks by 15' from 20' to 5' for a detached accessory structure. Staff recommends approval subject to the conditions listed in the staff report.

**Applicant:** Present, but did not speak.

**Public:** No speakers.

**Commissioners:** N/A

**MOTION/Second:** Zwiebel/Crawford approved as per staff's recommendations.

**VOTE: (6-0)**

12. PL 19-036 Variance from Shoreland Setbacks for a garage and home addition at 435 W. Toledo St. by Kelly Kairos

**Staff:** Chris Lee introduces the applicant's proposal for a variance from UDC requirements which mandate a 150' structure setback for construction in proximity to the East Branch of Chester Creek, a designated cold water river. The applicant is proposing to construct a new 24' by 18' addition to their single family house and construct a new 22' x 24' garage on the site. They are requesting to reduce the setback from 150' to approximately 95' and 75'. Staff recommends approval subject to the conditions listed in the staff report. Sydow asks about the shed. Will it be kept?

**Applicant:** Kelly Kairos addresses the commission. She didn't consider removing the shed, but would entertain the possibility.

**Public:** No speakers.

**Commissioners:** N/A

**MOTION/Second:** Schraepfer/Crawford recommend approved as per staff's recommendations.

**VOTE: (6-0)**

(Commissioner Schraepfer recuses himself for the next two agenda items.)

13. PL 19-038 Interim Use Permit for Lake View Land Co LLC for Vacation Dwelling Unit at 1235 Minnesota Avenue

**Staff:** John Kelley introduces the applicant's proposal to use their dwelling as a vacation rental property. A vacation dwelling unit allows for periods of occupancy between 2 and 29 days. Staff recommends approval with the conditions listed in the staff report. Sydow asks if the IUP was applied for and received, and now it is back due to an owner change. Kelley affirms. Sydow asks if there were any police calls recorded. Kelley states no. Sydow asks a procedural question for the wait list of vacation rentals. Fulton notes the IUP is not transferable between properties, but an existing property can be applied for from the new owner.

**Applicant:** Lake View Land Co, LLC – did not speak.

**Public:** No speakers.

**Commissioners:** Sydow confirms the updated standard regulations for vacation rentals do apply.

**MOTION/Second:** Crawford/Sydow recommend approval as per staff's recommendations.

**VOTE: (5-0, Schraepfer abstained)**

14. PL 19-039 Interim Use Permit for Lake View Land Co LLC for Accessory Vacation Dwelling Unit at 1235 Minnesota Avenue

**Staff:** John Kelley introduces the applicant's proposal to use their accessory dwelling unit as a vacation rental property. An accessory dwelling unit allows for periods of occupancy between 2 and 29 days. Staff recommends approval with the conditions listed in the staff report.

**Applicant:** Lake View Land Co., LLC – did not speak.

**Public:** No speakers.

**Commissioners:** N/A

**MOTION/Second:** Sydow/Crawford recommend approval as per staff's recommendations.

**VOTE: (5-0, Schraepfer abstained)**

15. PL 19-024 Appeal of a Land Use Supervisor's Decision Related to Required Improvements of a Driveway Easement

**Staff:** Adam Fulton gives an overview. Lori and Mychal Franklin have appealed the Land Use Supervisor's determination that the proposed compacted gravel specification constitutes a paved surface for purposes of the UDC. Staff recommends a verbal motion to affirm the Land Use Supervisor determination based on the findings in the staff memo. Should the planning commission wish to reverse the determination, the verbal motion to reverse should include findings of fact to support that conclusion. MNDOT specification of compacted gravel at least 6" in thickness is required. Zwiebel notes the drainage issues. Are the pictures they received of the road the way it looks now? Deputy Director Fulton defers to the appellant. Sydow has concerns about separating the drainage issues from the materials questions, because they are directly related. Deputy Fulton shares the driveway exhibit on the overhead. The permeability between pavement and the proposed compacted gravel is similar and drainage for the driveway is required. Zwiebel asks about the UDC requirements. Fulton notes the 50-41.4-p. includes no definition of pavement in the UDC. The determination was made due to the rural setting.

**Applicant:** Steve Olson, attorney for the Franklins, address the commission. They have four areas of concern. Environmental harm. The area has trout streams. The millings (which contain toxins) will work its way down to the streams. This is a narrow easement. Every year new millings will need to be added, which will be swept away by the rain and plowing. The easy answer is to require paving, which will eliminate the harmful effects of the millings. Zwiebel asks again about the definition of pavement. Olson, thinks the proposed material isn't 100% dust free, where pavement would be. Eckenberg notes materials such as concrete, or bituminous. How is the proposed material different from this requirement? Olson notes it can't be proven that this proposed material is dust free. The millings will end up on the Franklins' property. City attorney Asleson notes the requirement states the material needs to be a dust-free hard material. The original proposal was for mixed material. They consulted with the city engineer. MNDot specs lists that it is indeed qualifies as dust-free. The city engineer agrees. Zwiebel asks what is the difference between an aggregate and millings? Deputy Director Adam Fulton states that millings are made up of reused road materials that would presumably contain residual binding material. Sydow notes the millings would need to be laid with another agent. His fear is that the millings won't bind.

**Public:** Greg Gilbert is in support. Zwiebel asks if another additive will be added to the millings. Barbo notes the alternative is binding and will be rolled out. They have been taking care of the road for 25 years. Scott Weyandt, engineer, addresses the commission. He is concerned with the product. The millings are low on oil. There is only 20' of width and a 7% grade. He doesn't know if this proposed product can remain stable. The surface is not as smooth as asphalt. Where will it go when plowed? The millings are impervious, but they are weaker.

**Commissioners:** Sydow is concerned about setting a precedent. Deputy Director Fulton notes this is specific to this rural area. Nelson visited the site. She thinks it will be a challenge no matter what, but she is inclined to agree with the land use supervisor's determination. Zwiebel notes they are being asked to determine if this is a viable paving product and based on inexperience would have to agree with the land use supervisor's decision. Per Deputy Director Fulton, the city engineer determined in general this would

pass as a dust-free solution, but he noted that the question under consideration is not dust, it is whether the proposed materials constitute a paved surface. Schraepfer sees both sides. Eckenberg is in support of the land use supervisor's decision. He also is concerned with setting a precedent. They are just an advisory committee to the city council. Sydow doesn't see a signature on LHB or the city's approval signature. Per Fulton, a PE signature is not required at this time for purposes of considering whether the MnDOT specification constitutes a paved surface.

**MOTION/Second:** Eckenberg/Zwiebel affirm the land use supervisor's decision based on the staff memo.

**VOTE: (5-1, Sydow opposed)**

#### Other Business

16. PL 19-058 Hartley Duluth Natural Areas Program Management Plan Extension by City of Duluth Parks Department

**Staff:** Adam Fulton gives an overview. The Duluth city council approved the provisional designation of Hartley as a Duluth Natural Area on September 24, 2018. To make the decision permanent, a management plan and program protections need to be enacted within one year or the planning commission may extend the deadline. Additional time (until February 28, 2020) is requested.

**Applicant:** N/A

**Public:** No speakers.

**Commissioners:** Sydow would like to extend the time frame a bit more than what was requested.

**MOTION/Second:** Sydow/Zwiebel recommend extension of the deadline until April 1, 2020

**VOTE: (6-0)**

#### Communications

Manager's Report –

Mud Lake Special Joint Meeting – Rescheduled to May 30, 2019, at the DECC; Deputy Director Fulton notes the brown bag and the upcoming special meeting. He thanks the commissioners in advance for their extra time.

Reports of Officers and Committees

- Heritage Preservation Commission – Zwiebel – Lincoln Park has submitted their application to SHPO. She notes the pastoret terrace, and the document created by Chad Ronchetti.

#### Adjournment

Meeting adjourned at 8:00 p.m.

Respectfully,



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Adam Fulton – Deputy Director  
Planning and Economic Development