

**Town of Duluth
Planning Commission
Meeting Minutes
October 26, 2017**

The meeting was called to order at 7:02 pm by Chair Jo Thompson.

Present: Jo Thompson, Wayne Dahlberg, John Schifsky, Jerry Hauge, Larry Zanko, Dave Edblom, and Liz Strohmayer.

Absent: No one.

Also present: Sue Lawson, Planning Director, Rolf Carlson, Town Board liaison to the Planning Commission., and Corlis West, Town Board Supervisor.

The agenda was approved as presented.

Public Hearing: Andrew Hagglund Variance

Sue introduced Scott Witty, the attorney representing the Town. Sue said that Andrew Hagglund had let her know earlier that he was out of town and was likely to be late and might not be able to attend the hearing at all.

She read the Town's Communication Agreement and then introduced the hearing and the process. The hearing is for a variance from the requirement that a lot that a year-round home is on has frontage on a public road (Article III Section 8.B). She showed the vicinity map and identified the neighboring properties. She read the variance request from the application: "I was told by the Township I needed a variance to access my property off the Beck Road from the end of Beck Road onto my easement from John Hagglund's land to my land." Article III Section 8B of the Ordinance, Public Access Variance Requirements, says that construction of year-round occupied homes without public access must meet the requirements in that section and obtain a variance.

Sue showed a site map and a drawing of Beck Road where it meets the driveway.

Sue read the criteria that must be met to allow a variance and the responses to those criteria from the application.

Is the proposal in harmony with the general purposes and intent of the Ordinance and consistent with the Comprehensive Plan?

Applicant response: A. The general purpose and intent is to build a driveway to access my easement that goes back to my property. B. My plan to build a driveway to get to my easement from the end of the Township road does meet the Comprehensive Plan which directs the Town for servicing land owners with access off of Township roads.

"Practical difficulties," as used in connection with the granting of a variance, means that

- a. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
- b. The plight of the property owner is due to circumstances unique to the property not created by the property owner;

c. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

Applicant response: A. I intend to build a driveway at the end of the Township road to access my easement to get to my property. B. Yes, I have no other access off my easement to the Township road. C. No. I'm on the end of a Township road where my property is. One small single family will not have a large impact in the negative way.

Is the proposed variance a use that is allowed under the Zoning?

Applicant response: Yes. The only use I have for the variance is to put a driveway in to access my land.

Wayne asked if the easement is currently in place.

Sue said that yes, it was. A copy of the easement is in the meeting materials

John asked if the property owner had been aware when he purchased the property that he would need a variance.

Sue said that Andrew would have to speak to that and he wasn't present.

Public Testimony

Jim Snell passed out a copy of the MN State Statute that the Township used to determine the extent of Beck Road (see attached).

He read from a prepared statement (see attached).

Sheryl Alvar also read from a statement that she had prepared (see attached).

Tyson Smith spoke. He is the attorney for Roger and Julie Beck and was speaking on their behalf. He said that the Haggglunds have not complied with the Town's Ordinance. He said they have not gotten a Land Disturbance Permit when it is clear that the area of disturbance is well over an acre. They also have not complied with the part of the Ordinance dealing with disposition of waste. The Ordinance, referring to home-based businesses and rural industry, says that all waste has to be disposed of in accordance with County, State and Federal regulations. Being paid to deposit Clover Valley School waste on your property must fall under one of these two categories. Solid waste includes demolition debris. Demolition debris is very well defined in State statutes. If you want to create a private landfill for demolition materials, you can, but you have to comply with requirements. Most importantly, you cannot place that waste within 50 ft of the property line. The definition of waste in the Minnesota administrative rules includes crushed concrete, rebar and brick, which is a major part of the demolition fill used for the driveway. The entire driveway is built of waste and much of it is within 50 ft of the property line. This is in violation of the Ordinance and State statutes.

The variance application was untimely. It was dated August 21 and was received on August 23rd. This was well past the deadline the Town had imposed for submission of the variance application.

He said that the request for the variance does not meet the criteria of practical difficulty part B, that the plight is unique to the property and not created by the landowner. The 40 acres has access to Clover Valley Drive. When it was subdivided, the 10 acre parcel did not have access to Beck Road but still had access to Clover Valley Drive. If property owners are allowed to get around this criteria by simply transferring property to a family member, then that criteria has essentially no meaning.

He said that he disagrees with Mr. Witty that a driveway does not have to make use of common access points. The Ordinance states in Article III Section 8.G that “the applicant shall, if possible, make use of common access points to any roads.” The reason for this provision is to not have many driveways coming onto the roads. There is already a common access for this parcel on Clover Valley Drive and the driveway should have been constructed from Clover Valley Drive.

Tyson continued. This is an after-the-fact variance application. The driveway is already in place and they are now asking for permission. This should not be considered a good faith action on the part of the applicant to comply with the Ordinance. Nor did they apply for a land disturbance permit. This is happening now after a lot of consternation on the part of the neighbors. Roger has a video of a dump truck backing up over his No Trespassing sign.

Roger Beck showed a bucket of the waste material that was a part of the driveway construction.

Julie Beck showed a bucket of dirty water that is coming from the site into their basement and then onto the Alvar’s property and into the Snell’s trout stream.

Close of public testimony.

John Schifsky made a motion that the variance be denied and that the question be split so each criteria can be discussed individually. Larry Zanko seconded.

Jo asked Scott to clarify how the extent of Beck Road was determined.

Scott said that Tim Strom was present at the meeting on October 25th of last year. The Board passed a resolution that the Beck Road extended to the point where the four properties come together. The Board found that the road was used and maintained up to that point so, by State statute, it is a Town road. So the edge of Johnny Hagglund’s property abuts Beck Road.

Wayne asked how wide the road was determined to be.

Sue said 33 ft.

Sheryl Alvar said that the argument that it was a road of use is faulty because there was no place for a snow plow or bus to turn around and the Town was able to take the road because of this.

Scott said that what is presently before the Commission is the variance application with the criteria to be considered. The Board’s finding of the road is in the past.

Jo said that she was uncomfortable with considering the history of the creation of the road bed as a part of the variance decision. Andrew Hagglund has a legal easement. Whether or not the road was legally constructed is apart from the variance.

Larry agreed. He said that the Commission has the ruling that the Beck Road extends to the corner where the four properties meet and it has the variance application.

Jo said that the other issues are being addressed by other agencies.

John Schifsky made a motion that the variance is in harmony with the general purpose and intent of the Ordinance in that people have a right to have access to their property and the variance is consistent with

the Comprehensive Plan in that part of the CLUP is to make allowances for the development of property in a reasonable manner. Larry Zanko seconded.

The motion passed 6 to 1 with Liz Strohmayr opposing because she did not think the variance was in agreement with the Comprehensive Plan.

John said the variance deals with a relatively small amount of land. Is it related to just this small bit, or the entire parcel?

Scott said that Article III Section 8.B applies to a property owner seeking to access a year round home without public access.

John asked who determined that he has no public access. There is potential access on the west side of the property.

Jo said that it was up to the property owner to decide what the best access point is to his property.

Jo Thompson made a motion that the property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance because the property owner is proposing to build a single family home which is a reasonable use in the Township. Wayne Dahlberg seconded.

Liz asked about the rule that subdivision of parcels cannot result in creation of a landlocked parcel.

Sue said that the previous owner has provided an easement to the property, so it is not landlocked.

The motion passed unanimously.

John Schifsky made a motion that the plight of the property owner is due to circumstances that the property owner created so it does not meet the criteria. Larry Zanko seconded.

Scott Witty advised the Commission that the courts have ruled that a variance cannot be denied solely because someone purchased property with knowledge that it could not be developed without obtaining a variance.

Larry said that the sale of the property was from father to son where the property had access. Access could have easily been from the west side.

Jo said that if the property were accessed from the west side, there would still have to be an easement from Johnny across his property and an easement to cross someone else's 40 acres.

Wayne asked about accessing the property from the north.

Jo said again that it was not up to the Commission where the driveway is placed.

Wayne pointed out that even if the access were from Clover Valley Road, it would require the same type of variance.

John said that it was not clear if the owner knew he needed a variance when he purchased the property.

Jo said he needed access and the person selling provided the easement.

Wayne said that he was not sure if anyone knew that the road didn't go all the way back to Roger's. If that were the case, it would be a half mile from the property to Clover Valley Drive and a quarter mile from the property to the Beck Road. He said that it doesn't make sense to have a half mile driveway to Clover Valley Drive.

Jo said that how the driveway placement was decided was not pertinent to deciding the variance.

John said that his decision on whether or not to grant a variance depends in part on whether there are other options. If there is access from Johnny's driveway and it is the same distance as coming in from the SE corner then there is the possibility of another access. It is a part of his reasoning process.

The motion failed 5 to 2 with Larry Zanko and John Schifsky voting in favor.

Jo Thompson made a motion that the plight of the property owner is due to circumstances unique to the property because the property is an interior lot.

The motion passed 5 to 2 with Larry Zanko and John Schifsky opposing.

Jerry Hauge made a motion that the variance, if granted, will not alter the essential character of the locality because they are building a residence with a driveway, consistent with other residences and driveways in the town. Jo Thompson seconded.

Larry asked what constitutes the essential character of a locality. Does it include changes to surface water flow? When he visited the property, the main flowage of water, originally across the parcel, is now diverted to the east end of the property. He said he did not know how to address this.

Dave said that it is the variance that is in question regarding essential character of the locality, not the physical road.

Jo said that the actually physical construction of the road needs to be addressed in some other way. The question is, does Andrew Hagglund having an access to his property change the essential character of the neighborhood? Adding traffic may seem out of character to immediate neighbors, but it is not out of character with the overall neighborhood.

Jerry said that if he gets the variance, he still has to meet standards in constructing the driveway.

Sue said that the Ordinance does not speak to what kind of fill can be used for the driveway or where the landowner should place the driveway. Her understanding is that if there are issues with water flowage when the driveway is constructed, then that is a trespass on another person's property and is a civil matter that would need to be remedied in court.

Jerry asked what the minimum width for a driveway was. Beck Road is 33 ft wide and the Hagglund property only has half of that which is 16 ½ ft.

Sue read from the Ordinance: "For each parcel served by a public road, there will be only one 20 to 32 ft wide driveway entrance unless permission is given by the appropriate authority."

Jerry said that it doesn't state a minimum width.

Jim said that the definition of a road of use is the maintained surface, so it is actually 10 ft.

Corlis said that there is a minimum width for emergency access.

Liz said that 14 ft is recommended by Firewise, but not required. She noted that a lot of the concerns she is hearing from people are less about the driveway than how they are building it. The variance does not concern that.

The motion passed unanimously.

Sheryl Alvar said that she was concerned about traffic on the road.

Jerry said that he does not see how the variance can be denied, but he has a lot of issues with how the road is constructed. They have an obligation to build the road in a reasonable manner.

The main motion to deny the variance failed 5 to 2 with John Schifsky and Larry Zanko in favor.

Jo Thompson made a motion to approve the variance from the requirement that a lot that a year-round home is on has frontage on a public road as required by Article III Section 8.B of the Town of Duluth Zoning Ordinance Number 5 based on the findings and discussion above that it meets the criteria for allowing a variance. Jerry Hauge seconded.

John said that the Commission has been narrowly focused throughout the discussion. It was helpful for Wayne to point out that the Commission would be dealing with this no matter where the access was located. It seems inappropriate to focus on the variance and then stipulate how the road is built. It is not logical. What conditions can be put on granting an access? The nature of the road is not the focus of the variance.

Sue said that the permit the Town issues for a driveway is for access to a Town road.

Larry said that there will be a driveway. The driveway as it is now is creating a difficulty for the neighbors because of water flow. If the Commission doesn't address it tonight, when will it be addressed? It seemed to him like the drainage should be corrected to where it was. He said that the Township goes to great lengths to protect surface water. Had there been no construction, the drainage would still be in place.

Jo said that Tyson said that Andrew Hagglund needed a land disturbance permit, but he did not because the disturbance is over an acre in size so a stormwater permit is required instead. The two issues, the way the road was constructed and the stormwater part are being overseen by two different departments of the MPCA.

Wayne said there are laws in place that if you disturb over an acre of land there are certain things that have to be done and have not been done yet. Stormwater is a big concern and has to be properly dealt with. The other agencies responsible for this oversight need to address the neighbors' concerns.

Dave asked if the requirements for exceeding one acre of land disturbance were the same as for exceeding allowable impervious lot coverage.

Sue said that they are two different things. The MPCA has determined that the disturbance is greater than one acre so a State stormwater permit is required. When they apply for that permit there are best management practices for construction and post-construction standards they need to comply with. That is different from the stormwater plan that is required for exceeding impervious surface on a parcel.

Jo said that the Town could request a copy of the permit from the MPCA.

Wayne said that his interpretation is that the Commission can make recommendations that these situations be addressed, but he doesn't know that they can include them as conditions.

Scott said that the State statute addresses scope of a condition: "A condition must be directly related to and bear a rough proportionality to the impact created by the variance." This is also in the Town's Ordinance on page 76, paragraph 7.

Jo said that it is a rare case that the variance is about a use as opposed to dimensions.

Sheryl asked if the variance shouldn't have been requested before construction.

Jo said not necessarily. You can put a road in and not have a building. This is not a variance for the road, it is for access. Andrew now plans to build a house.

Sheryl said that they used the road as an access and trespassed to get to their property.

Wayne said that he would like to propose a condition that the property owner provide a stormwater plan to appropriately address the runoff resulting from the driveway.

Jo agreed, but said that John Hagglund owns the property that the driveway crosses and Andrew Hagglund is the variance applicant. It is her understanding that there is already a SSWP being administered by the MPCA.

John said that he would like to put conditions on the variance to address the situation with construction and runoff and garbage in the roadbed materials, but the variance is for the access and he agrees that conditions cannot be put on this. The whole situation is unfortunate for the neighbors and he sympathizes with them.

The motion passed 6 to 1 with Jo Thompson, Wayne Dahlberg, Liz Strohmayr, Jerry Hauge, John Schifsky, and Dave Edblom in favor and Larry Zanko against.

Decision:

In accordance with the findings stated above, the Planning Commission of the Town of Duluth hereby approves the application for a variance from the requirement that a lot that a year-round home is on has frontage on a public road (Article III Section 8.B, Town of Duluth Zoning Ordinance Number 5).

The findings written and approved.

The minutes from September 28 were approved as presented.

Director's Report

Sue said that the Town Board concurred with the language the Commission proposed regarding short-term rentals. The Board did not have an opinion on what constitutes "close" or "nearby." Some thought that less than a mile would be "close." So the Commission should think about that for the next meeting.

There will be a variance hearing at the November 16 Commission meeting. The variance is for relief from the setback from Lake Superior. The date of the normal December Commission meeting would be

the 28th. So far there have been no applications that would require a hearing in December. The Commission agreed to meet on the 28th, hoping to get some regular business done.

Liz said she may not be able to attend.

Sue said that an appeal has been filed in the courts on the decision approving the Bille's variance. She didn't know if an injunction has been issued.

With all of the business the Commission has had before it, there has been no time to work on the SMU-8 dimensional requirement issues. Hopefully, things will slow down and the Commission can get to work on it again in January. The original working group was John, Sue, Wayne, Beth and Clint Little.

John said that he would not be at the November 16 meeting.

Concerns from the Audience

None.

The meeting adjourned at 10:04.

Attachments:

- MN State Statute 160.05
- Jim Snell Testimony
- Sheryl Alvar Testimony

2017 Minnesota Statutes

160.05 MS 1953 [Repealed, [1957 c 943 s 72](#)]

160.05 DEDICATION OF ROADS.

Subdivision 1. **Six years.** When any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, it shall be deemed dedicated to the public to the width of the actual use and be and remain, until lawfully vacated, a public highway whether it has ever been established as a public highway or not. Nothing contained in this subdivision shall impair the right, title, or interest of the water department of any city of the first class secured under Special Laws 1885, chapter 110. This subdivision shall apply to roads and streets except platted streets within cities.

Subd. 2. **Roads on and parallel to railroad right-of-way.** The continued use of any road by the public upon and parallel to the right-of-way of any railway company shall not constitute such a road a legal highway or a charge upon the town in which the same is situated, and no right shall accrue to the public or any individual by such use.

History: [1959 c 500 art 1 s 5](#); [1973 c 123 art 5 s 7](#); [1982 c 424 s 40](#); [1984 c 562 s 5](#)

Duluth Township Planning and Zoning

My name is Jim Snell, my wife Erika and I own the property just east of the Hagglund property. We moved here in 2006, but my Great Grandfather homesteaded this property in 1905. This property has been in our family for 112 years and 4 generations. I remember as a kid coming up and spending time with my Grandpa walking thru the woods in the area .

After finding that the Beck road ended at 1141 feet, which I kind of knew from Grandparents, I placed a No Trespassing sign at the surveyor's mark of the end to Beck road on September 29th 2016. On September 30th 2016 I got a call, shortly before 1 pm, from Roger Beck that a Stack Bros. Construction worker (Bill Nelson) asked him who placed the No Trespassing sign. Roger stated he did not know for sure, but it could be my neighbors since they own the property.

On Friday September 30th 2016 at approximately 1 pm, Andrew Hagglund called my home. He explained to me that he needed a 40 foot easement for his proposed driveway, he knew at this time he had an issue with footage width for his driveway. I stated to him that he needed more like 179 feet since the Beck road was surveyed and indicated it was only built to the 1141 foot mark. He again stated that he only needed the 40 feet and asked what it would take to grant him that easement. I offered to meet him at the end of the Beck road to go over and explain the gap of approximately 179 feet. He was unable to meet since he was out of town for work. He again continued to demand what it would take to give him the easement. At this point my wife was having some medical issues in which I had to attend to and I told Andrew that I would have to call him back to discuss.

I never did call him back, my wife Erika ended up having a stroke and was in the hospital and recovery for several weeks.

After finding out about the proposed driveway at the Hagglund property and the gap on the Beck road, I decided to go to the county and gather documents. On Tuesday October 4th 2016 I went to the County Records office. The first document I got was the definition of all Township roads, which was from 1987. The Beck road was built to the 1141feet, short 179 feet of the 1320 feet of the property line. I had the County person look to see if there were any easements dated from 1935 when the road was built. The computer system goes from the 1940 to present, which no easements were granted. Also I went into the basement to the written records that go back to 1935 to the 1940's, and again no easements were granted.

On Tuesday October 25th 2016, I attended the special session Town Board meeting that was to discuss the Beck road. Tim Strum caught us up on why the Township could legally take over the 179 feet and extend the road. A 6 year maintenance clause in the state statue was discussed. In which if the Township maintains the road (snowplowing, grading) it is considered now a township road of use. The town board did vote and all 3 voted in favor of the motion, (Mount, Stolp and Edblom). 2 members (Gustofson and Crow) were not present at the meeting.

After the vote, John Hagglund asked when they could start the driveway. Dave Mount responded that they know what they intend to do with the property and that he would have to possibly check aerial

photos from the past to see if there was an access point at the SE corner of the property. John did state that there was a turn a round for the county to plow and that possibly they could use that. Dave said that just wait and we will see. Katie also asked if the driveway permit could be issued that night. Travis Stolp indicated that the permit was in her and Andrews name and that the property was in John's name. Katie asked if they could just amend the permit that night and Travis said no. Travis also stated that he would have to check on some things and to make sure all their I's are dotted and T's crossed to make sure they have a legal driveway. Travis said he understood the urgency since he is a contractor also, but what would be another couple of weeks to wait.

After the meeting in the parking lot, Andrew made a comment to me about not returning his phone call. I stated to him that Erika had a medical issue and also had a stroke, in which he replied "WHAT EVER", and we all left.

On November 4th 2016, I stopped at the Township hall and spoke with Ann Cox. I asked her if the driveway permit had been issued for the Hagglund's, she indicated that she had not seen one.

On week of November 4th, I went back to the Beck's to check out their house since they were on vacation. Much to my surprise I saw a dozer parked on the Hagglund's property. I went back the next morning and saw that they had started the driveway project.

On November 11th again I stopped at the township hall and again asked Ann Cox if the driveway permit had come in. She stated that she had not seen it and that I should talk to Travis Stolp.

The driveway permit was not issued until December 1st.

This summer we finally found out what State Statute was used to grant the Road of Use, which was Minnesota Statute 160.05. In this statute it states: that it is deemed dedicated to the public to the width of the actual use and be and remain, until lawfully vacated, a public highway whether it has been established as a public highway or not. The Beck Road is a 33 foot wide road and width of use (maintained) is only 20 feet for the last 179 feet for the road of use, 10 feet on either side of the surveyed pin at the property line. This only gives the Hagglund's a 10 foot access to the Beck Road. The ditch has to remain as a ditch which is 6.5 feet, it can not be filled in to complete the Hagglund's driveway. The property under the 179 foot road of use still remains our property, essentially what the Township did was grant an easement for the Hagglund's to cross our property, as stated by Wendy Gustofson in the November board meeting .

Township ordinance states that a driveway be at least 20 - 33 feet wide and have a clear sight line to the road. With only 10 feet, they do not have a legal driveway access. Also in the ordinance it states that Land-locked lots are prohibited and that access must be provided for each lot transferred. Andrew's lot was created by them, which does not constitute a hardship. There is a legal access to Hagglund property, which is on the Clover Valley Drive. In the beginning of this whole project there was a plan B as stated by Bill Nelson the contractor. This Plan B was to put the driveway on the western edge of the Hagglund property and have access to the Clover Valley Drive.

After the MPCA shut the driveway project down, due to violations to their permits, the contractor accessed the project site from the Clover Valley Drive side to finish installing silt fencing and putting straw and seed over the driveway to prevent run off. So if the contractor could do so, why can't Andrew Hagglund do so too?

With the construction of the Hagglund driveway, we have seen an increase of water flow down the north side of the Beck Road and into our front yard. The creek that runs thru our front yard is considered a trout stream. It is classified as Tributary 3 to the Little Knife River on the DNR's map.

With this all said, we are asking the Duluth Township Planning and Zoning commission to not grant the variance request to access the Beck Road, but to use Plan B as stated by Bill Nelson of Stack Brothers to access Clover Valley Drive.

Thank you for your time;

Jim and Erika Snell

October 25, 2017

Duluth Township Planning and Zoning:

Thank you for notifying me of the request for the variance. I appreciate THIS notice since I should have been notified when the original project was proposed back in the summer of 2016. Here we are one year later, with an unlawful driveway that was constructed with toxic waste from the clover valley school and resulted in a total reroute of water creating a wetland on Beck's property and my own.

There should be no variance with access from the Beck Rd to the Hagglund property.

The Township should abandon the 188' that was 'taken' from Snells and my land and the original status should be returned to us. I have property to the southeast of the Hagglund property. The basis of that act was faulty to the extreme. It was only allowed due to special treatment given the Hagglund family.

This issue was created when the Township of Duluth failed to require Haggglunds' to obtain the correct applications for access and construction of a driveway.

The behavior of Sue Lawson and Travis Stolp has been dishonest and unethical in this situation and as elected officials. They should be asked to resign. Dave Mount's behavior was not any better, allowing the waste from the school to be disposed of in such a way and voting to extend the Beck Rd.

Hagglund's had an access to the Clover Valley Drive and this 'new' driveway was not even necessary. The whole project was completed without any consideration of adjoining property owners and a blatant disregard for the process that others in the township must abide by before any construction.

Again, there should be no variance allowed. The Beck Rd should be returned to it's previous status. The Township board and the Zoning committee should publically apologize to the Becks, Snell's and myself for the appalling behavior in this matter.

Sincerely,

Sheryl Alvar